



Department of the Treasury Financial Crimes Enforcement Network

Advisory

FIN-2009-A006

Issued: October 14, 2009

**Subject: Advisory to Financial Institutions on Filing Suspicious Activity Reports
Regarding TARP-related Programs**

The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory so that financial institutions may better assist law enforcement when filing Suspicious Activity Reports (SARs) on activities potentially related to the federal government's Troubled Asset Relief Program (TARP) programs. This advisory furthers the Department of the Treasury's broader efforts to ensure that U.S. financial institutions are not used as conduits for illicit activity.¹ Vigilance by financial institutions together with law enforcement efforts to combat illicit activity are important to allow the Financial Stability Plan programs to serve their purpose of laying the foundation for economic recovery. FinCEN requests that financial institutions follow the instructions under the "Suspicious Activity Reporting" section of this advisory for proper completion of SARs that involve TARP-related programs.

Descriptions of TARP-Related Programs

The U.S. Department of the Treasury and the Federal Reserve established 10 programs to respond to the credit crisis and help stabilize and strengthen the U.S. financial system. The Special Inspector General for the Troubled Asset Relief Program (SIGTARP)² has identified seven TARP-related programs, summarized in Appendix A with links to each program's website, which financial institutions may recognize in the normal course of doing business. These programs authorize the allocation of substantial funds to a range of financial institutions and the customers they serve, and therefore, are vulnerable to various forms of fraud, money laundering and other financial crimes.

Information on TARP-related programs can be found at www.financialstability.gov. Information on SIGTARP can be found at www.sigtar.gov. Financial institutions may contact SIGTARP directly at 202-927-9319 for further information, including whether a transaction or attempted transaction involving the institution relates to one of the programs.

¹ Financial institutions are reminded of their obligations under the Bank Secrecy Act and the regulations at 31 C.F.R. Part 103 to implement risk-based policies, procedures, and processes, including those relating to customer due diligence, to avoid misuse of the U.S. financial system and aid in the identification of potentially suspicious transactions.

² SIGTARP was established by the Emergency Economic Stabilization Act of 2008 ("EESA"). The responsibilities of SIGTARP include conducting, supervising and coordinating audits and investigations related to TARP.

Potential Indicators of Suspicious TARP-Related Activities

The trends and indicators of potential suspicious activity associated with the TARP-related programs are, in many cases, similar to the trends and patterns that financial institutions recognize in the context of non TARP-related transactions. Financial institutions should be able to utilize their Customer Identification Programs (CIP) and Anti-Money Laundering (AML) Programs to aid in: (1) identifying customers who qualify for any TARP-related program funding; (2) anticipating the types of TARP-related transactions that may be conducted by such customers; and (3) identifying any suspicious activity attempted by these customers in the context of any TARP-related transactions. Likewise, financial institutions should avail themselves of public information in identifying transactions that might involve a TARP-related entity, such as wire transactions involving [Capital Purchase Program \(CPP\)-funded banks](#) or [Public Private Investment Program \(PPIP\) Fund Managers](#).

The following examples are not an exhaustive listing of program related suspicious activity that may be revealed in a TARP-related transaction. These examples should be considered in light of a financial institution's unique business plan, operations, customers and customer transactions, to determine whether filing a SAR is appropriate.

- *Conflicts of Interest:* Some TARP-related programs, such as the PPIP (or PPIF),³ are structured to benefit service providers. By their nature and design, including the availability of significant leverage, PPIP transactions in a stagnant mortgage-backed securities market will have a significant impact on how particular assets are priced in the market. As a result, the increase in the price of such an asset will likely benefit anyone who already owns or manages the same asset, potentially including the PPIP manager making investment decisions. One example of a type of activity that may raise suspicions are multiple transactions over a short time period (*e.g.*, “flipping”) that result in a rapid increase in asset valuation in an otherwise stagnant product or geographical market. Institutions involved in these transactions would include specifically qualified funds or other financial and investment professionals in narrowly defined markets.
- *Collusion:* Another potential activity is PPIP managers who might be persuaded, through kickbacks, *quid pro quo* transactions, or other collusive arrangements, to manage the PPIPs for personal gain rather than for the benefit of the PPIP (and, by extension, taxpayers). Some businesses may attempt to structure transactions in a way that disguises collusion among the parties in violation of applicable program prohibitions. One indicator of illegal collusion may be anomalous or out-of-market pricing of assets in seemingly arm's-length transactions among affiliated parties. Additionally, nominee or front individuals or entities could appear in the transactions.
- *Insider Trading:* Due to the significant level of involvement by the federal government and the substantial investment that TARP-related funds represent in existing markets, there is considerable opportunity for insiders to benefit from the diversion of funds before the public disclosure of a TARP-related transaction. For example, one red flag might be a spike in the

³ PPIP is also sometimes referred to as PPIF (Public-Private Investment Fund).

volume of trading in a particular CPP-funded public company immediately prior to a public announcement of the approval, receipt, use of or repayment of TARP-related funds. Insider trading suspicions involving a TARP funding recipient company may – depending on the circumstances – be considered a violation of applicable TARP requirements due to the fungibility of the funds. Since most insider trading is identified retrospectively – *i.e.*, after an announcement – a review of trading in the days prior to the announcement of, for example, activities involving [CPP-funded banks](#) may reveal suspicious trading activity.

- *Advanced Fee Schemes:* Please refer to guidance FinCEN issued in April, 2009 for further information on filing SARs related to loan modification/foreclosure rescue scams in the context of residential mortgages.⁴
- *Money Laundering:* Because of the significant leverage that may be exercised by recipients of PPIP and TALF funds, and the government support of the markets through related transactions, these programs present an opportunity to money-laundering organizations, which are continually looking for ways to “launder” their illicit proceeds. Such transactions might closely resemble traditional money laundering transactions, but would be related to the above-mentioned programs or the trading of mortgage-backed securities.

For additional information on enforcement actions taken, and fraudulent schemes identified, by SIGTARP you may refer to their quarterly reports to Congress.⁵

Suspicious Activity Reporting

In order to assist law enforcement in investigating and prosecuting possible criminal activity that involves TARP-related government programs, FinCEN requests that, when reporting suspicious activity, financial institutions check the appropriate box on the SAR form to indicate the type of suspicious activity and include the term “SIGTARP” in the narrative portion of the SAR.

We further request that the Suspect/Subject Information Section of the SAR include all information available for each party suspected of engaging in the suspicious activity – including information such as individual or company name, address, phone number and any other identifying information.⁶ As noted in FinCEN’s *SAR Narrative Guidance Package*,⁷ financial institutions must provide complete and sufficient descriptions of known or suspected criminal violations or suspicious activity in the narrative sections of SARs.

FinCEN will continue to monitor SARs that identify TARP-related fraud and related crimes and report findings and emerging trends in future advisories and guidance as appropriate. FinCEN also continues to support the SIGTARP and other law enforcement authorities, including in the

⁴ See [Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding Loan Modification/Foreclosure Rescue Scams](#), FIN-2009-A001, April 6, 2009 at http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-a001.pdf.

⁵ The *Initial Report to Congress* (February 6, 2009) and Quarterly Reports to Congress are available at <http://www.sig tarp.gov/reports.shtml>.

⁶ If multiple subjects are involved and the financial institution is filing a paper form, the filer should file one SAR and complete a subject information section for each subject.

⁷ See http://www.fincen.gov/statutes_regs/files/sarnarrcompletguidfinal_112003.pdf

context of the TALF-PPIP Task Force⁸, in the investigation and prosecution of financial crimes. Financial institutions with questions or comments regarding the contents of this Advisory should contact FinCEN's Regulatory Helpline at 800-949-2732.

⁸ The TALF-PPIP Task Force is a multi-agency task force designed to deter, detect and investigate instances of fraud related to the Term Asset-Backed Securities Loan Facility program which was expanded to also include the Public-Private Investment Plan program.

Appendix A

Description of TARP Programs

PROGRAM	DESCRIPTION
<u>Capital Purchase Program (CPP)</u>	Treasury allocated \$250 billion to CPP to provide funds to qualified financial institutions to build capital, increase the flow of financing, and support the economy. These funds are provided via Treasury's purchase of senior preferred stock from the financial institutions. The financial institutions also provide Treasury 10-year warrants to purchase additional stock in consideration for the funding.
<u>Automotive Industry Financing Program (AIFP)</u>	Through the AIFP, Treasury provided emergency loans to General Motors Corporation, Chrysler Holding LLC, and Chrysler Financial Services Americas LLC. Additionally, Treasury purchased senior preferred shares from GMAC LLC, took back warrants to purchase additional stock, and modified the loan terms to General Motors Corporation and Chrysler Holding LLC.
<u>Capital Assistance Program (CAP)</u>	Pursuant to the CAP, financial institutions with more than \$100 billion in assets were required to undergo a "stress test." If, as a result of the stress test, an institution was found to need additional capital, it is given six months to raise private capital; and, if it is unable to do so, then it must accept CAP assistance. In this context, CAP assistance represents Treasury purchasing convertible preferred shares (convertible to common stock) and taking back warrants to purchase additional stock. All other participants in the CPP program are also permitted to apply for additional financial assistance under the CAP (without undergoing a stress test) as well as exchanging the senior preferred shares issued to Treasury under CPP into convertible preferred shares.
<u>Unlocking Credit for Small Businesses (USCB)</u>	Through USCB, Treasury purchases securities backed by Small Business Administration loans. Treasury also called upon the 21 largest financial institutions to begin reporting the amount of their small business lending.
<u>Term Asset-Backed Securities Loan Facility</u>	Under the TALF, the Federal Reserve Bank of

<u>(TALF)</u>	NY can issue up to \$1 trillion in non-recourse loans to investors to make credit more available to consumers and small businesses. As collateral for these loans, the Federal Reserve will receive an interest in securities backed by credit cards, SBA loans, student loans, auto loans, and commercial mortgages. (The TALF may be expanded to allow the posting of securities backed by residential mortgages.)
<u>Making Home Affordable Program (MHA)</u>	MHA, also sometimes referred to as HAMP (Home Affordable Modification Program), is a multi-faceted foreclosure mitigation program. In connection with the program, among other things, Treasury pays incentives to servicers to reform mortgages down to 31% of adjusted income, and to mortgagors for remaining current on their mortgages.
<u>Public Private Investment Program (PPIP)</u>	Pursuant to the PPIP, Treasury will select fund managers, who will raise private capital that will be matched by TARP funds and leveraged with TARP loans. The managers will purchase and manage so-called “troubled” assets. PPIP is also sometimes referred to as PPIF (Public-Private Investment Fund).