



The Legacy of TARP's Bank Bailout Known as the Capital Purchase Program

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INTRODUCTION

While Treasury is in the process of conducting its final auctions of its TARP stake in community banks to private entities in a desire to end the bank bailout known as the Capital Purchase Program (“CPP”), it is important to examine the lessons learned from the program. CPP was the first TARP program, much has been written on it, and most people are generally familiar with it. SIGTARP has issued a series of reports based on documents and interviews with Treasury officials and others detailing Treasury’s active role and extraordinary actions to ensure the health of the biggest CPP banks, which threatened the stability of our financial system. Two Treasury Secretaries have published books on Treasury’s unprecedented actions to stand behind the largest CPP banks. The essential purpose of the CPP program according to the two Treasury Secretaries was to bring stability to the financial system by saving those banks that threatened it. Faced with the threat of collapse of the financial system, CPP, and other TARP and federal rescue efforts targeting the largest banks, did contribute to preventing a collapse of the financial system.¹ Secretary Paulson states in his book that by early 2009, “it was clear that our actions had prevented a meltdown” and along with other federal efforts “had stabilized the financial system.” In December 2009, Secretary Paulson’s successor Secretary Geithner would also declare the system had greater stability when he announced CPP as “effectively closed” and in “wind-down,” despite the fact that more than 600 of the 707 CPP banks remained in the program. In 2012, Treasury announced that it would auction off its interest in small banks, and proceeded to auction 26% of all CPP banks. Taxpayers have recovered far more than had been expected, recovering \$197.2 billion of the original \$204.9 billion TARP principal investments, as well as \$12.1 in payments of dividends and interest, and \$8 billion from warrants designed to compensate taxpayers for the risk they took on these investments.²

Nevertheless, three aspects of this bank rescue program bear noting in addition to other aspects highlighted in SIGTARP’s reports.

First, Treasury’s treatment of smaller TARP banks has and still does differ markedly from its treatment of the largest TARP banks. CPP is a TARP program that took place in two stages, with Treasury’s framework and actions changing course after year one of its more than six years, when all but one of the largest TARP banks were out of TARP. Unlike the extraordinary actions Treasury took for the largest banks, for smaller TARP banks whose size did not threaten the entire financial system, Treasury’s actions related to investment and divestment (to buy or sell). Treasury shifted course from the very public and active role it took with the largest CPP banks, to becoming more like a passive, private investor concerning the smaller banks in CPP. This shift occurred despite the fact the TARP investments were still held by the US Government, TARP is an emergency Government program with important public policies, and that Treasury was using public funds.ⁱ Unlike Treasury’s immediate investing of TARP funds in the largest banks, it would

ⁱ There is an additional TARP bank bailout known as CDCI, where Treasury made TARP investments in 84 banks and credit unions, 28 of which transferred from CPP. The CDCI program continues with 66 banks and credit unions as of December 31, 2014.

take up to six months to invest in small banks. Unlike those large banks which were permitted by the Government to exit TARP without meeting established criteria, the Government held smaller TARP banks to stricter capital and other standards, even though community banks faced challenges raising capital to repay TARP. As SIGTARP has reported, Treasury allowed some of the largest banks to exit TARP without meeting the Government's criteria because of pressure from the banks that wanted to exit TARP to avoid the public stigma of remaining in TARP and limits on executive compensation. Treasury's approach to Citigroup was extraordinary, as detailed in SIGTARP reports.ⁱⁱ Despite Treasury's concerns over market reaction that the Government would be nationalizing a bank, Treasury converted its preferred stock to common stock to help Citigroup's capital ratios, and planned a careful and orderly exit of its stake in Citigroup over an extended period of time, which benefitted Citigroup. Unlike the restructurings, exchanges, or discounts that Treasury made for Citigroup and other large TARP recipients including AIG, GM, and Ally, Treasury only agreed to a small number (5% of 707 original CPP banks) of restructurings or exchanges for smaller banks, instead auctioning its CPP shares in smaller community banks when Treasury deemed it was ready to exit, rather than allowing the smaller banks to determine the timing of their own TARP exit.

Second, while stability of the nation's financial system was the goal of TARP as initially proposed by Treasury, it was not the only worthwhile and necessary purpose or policy goal that Congress required for Treasury to use TARP funds. Treasury and other Government officials told SIGTARP, and have publicly stated that they were empowered to take on these extraordinary measures for the largest CPP banks to achieve a particular policy goal—financial stability—the sole purpose of TARP as initially proposed by Treasury. However, even though our financial system was at risk of collapse from the threat of too-big-to-fail banks, Congress required in the final TARP law that Treasury use TARP funds to do more than just save the financial system, but also to protect home values, life savings, retirement funds, and college funds, to preserve homeownership, and to promote jobs and economic growth. These policies were to be met throughout the lifetime of TARP programs.

Treasury's actions and statements through CPP, after the initial TARP injections, have been singularly focused on Treasury's original purpose in devising TARP—to save the national financial system—a worthwhile and necessary purpose, but one tied only to the largest banks (2% of the number of banks in CPP) and announced by Treasury as having been achieved by the time all but one of the largest banks exited TARP in December 2009, when Treasury Secretary Geithner announced the program as “effectively closed.” Beyond initial TARP injections, Treasury had far less focus on applying the other worthwhile and necessary purposes and policies that apply to smaller banks, banks that provide liquidity to their communities, hold families' life savings and college savings accounts, make mortgages, and promote local jobs and economic growth.ⁱⁱⁱ While stability needed

ⁱⁱ SIGTARP, “Exiting TARP: Repayments by the Largest Financial Institutions,” 9/29/2011, p. 36, www.sig tarp.gov/Audit%20Reports/Exiting_TARP_Repayments_by_the_Largest_Financial_Institutions.pdf.

ⁱⁱⁱ Of the 707 banks that received TARP funds in CPP, 92% were institutions with less than \$10 billion in assets (67% were community banks with less than \$1 billion in assets).

to be the primary and initial goal to help prevent a financial collapse of the whole system, the importance of the remaining goals and policies have been, and remain critical to, the goals of TARP for the smaller banks in TARP and the communities they serve around our nation, throughout the lifetime of CPP.

Just as Treasury previously believed it was empowered to take an active and public role to achieve one purpose of TARP—stability—it could have acted to have a more immediate impact on the daily economic lives of Americans who funded TARP, based on the other policy objectives of TARP, by not forcing smaller community banks out of the program owing money to private parties. Treasury could have either waited a short time for repayment or helped the banks to repay by restructuring or exchanging the shares. While Treasury has preferred to exit its CPP investments as soon as practicable, it is unclear what drives the desire to end forcibly a program that it deemed effectively closed and in wind-down five years ago. It is not as though Treasury's involvement in TARP banks is over. Treasury remained invested in 23% of the original 707 CPP banks at the time of their exit from CPP, including 28 institutions whose CPP investments were transferred to CDCI (another TARP program) and another 137 banks whose TARP funds were refinanced into the non-TARP Small Business Lending Fund ("SBLF") program (two-thirds of SBLF's participating banks transferred out of CPP).

Third, Treasury auctions leave community banks on the hook for TARP investments and dividend payments, only now these are owed to private entities, typically unknown to the bank, that are benefitting from these auctions. These private entities did not replace banks' capital because they did not provide the banks with any new capital, but instead bought out Treasury's stake at discounts from 1% to 90%.

While the auctioned banks are out of TARP, they still have the same financial obligations and responsibilities they had when they were in TARP. Treasury has shifted its stake to private entities that do not have any responsibilities to follow the purposes and goals of TARP and CPP. Instead, these private entities hope to profit off these bailout shares of stock, and some already have. While taxpayers have already suffered a \$1.1 billion loss on these auctions, some of these private entities are turning a profit by buying the TARP bank shares at a discount, and watching banks scramble to find a source of funds to buy them out at a premium (such as in the full amount of what was owed on TARP stock) within a short time. The large private investors who bought the shares are mostly unknown to the banks and not from their communities. Historically, investors and board members of community banks have often come from within those communities and therefore have a vested interest in those communities. The buyers of Treasury's TARP auctions typically lack ties to the communities that these banks serve, and have purchased Treasury's powerful right to place a non-voting director on the board after six missed dividends, which motivated the banks to want to buy them out. In essence, Treasury created a market in which large private investors are not replacing Treasury's TARP capital with new capital into the bank, but instead, in some instances, buying and flipping TARP shares at a profit, often in a matter of weeks or months. Presumably, if the bank was able to obtain the funds needed to pay the

auction buyer the full amount owed on the TARP stock within weeks or months of the auction, it also could have paid Treasury off in that same time frame.

In the second stage of CPP, after the largest banks exited TARP, returning half of the CPP funds Treasury disbursed, along with payments of dividends, interest, and warrants, Treasury's messaging about CPP changed from one that initially focused on investing in small banks to spur lending and help homeowners avoid foreclosure, to the potential to profit on bank shares. While these returns are much better than expected, and maximizing returns is a goal of TARP, Treasury did not make CPP investments with the purpose of Treasury turning a profit and certainly not for the profit of private investors—but that is what has happened.

TREASURY'S ACTIVE ROLE DURING THE CRISIS LEADING TO TARP

Because of its greater Governmental responsibility for financial stability, from the start of the crisis, Treasury was actively and heavily involved in negotiating private deals, prior to TARP, geared at stabilizing the financial system (not as an investor or guarantor).

- Bear Stearns: Secretary Paulson describes in his book, *On the Brink*, how “we raced to save Bear” by working with then-FRBNY President Timothy Geithner to find a buyer for Bear Stearns in March 2008, settling on JPMorgan, and calling JPMorgan CEO Jamie Dimon. Secretary Paulson recounts JPMorgan's concerns over Bear Stearns's size and mortgage portfolio, and states, “It was a bit unrealistic to believe that with no competition we could get JPMorgan to buy Bear Stearns over a weekend.”³ Treasury worked to have the Federal Reserve agree to backstop \$29 billion of \$30 billion of Bear Stearns's mortgage portfolio for JPMorgan. When the Federal Reserve asked Treasury to indemnify it, which Treasury had no power to do, Secretary Paulson wrote what he called the “all money is green” letter that if the Federal Reserve took a loss, it would have fewer profits to give to Treasury.⁴ While Treasury's involvement was not surprising given its Governmental responsibility over the economy, it had asked the largest U.S. commercial depository institution, JP Morgan, to acquire one of the largest broker-dealers, Bear Stearns, creating a much larger institution.
- Lehman Brothers: In September 2008, Treasury became concerned over the health of Lehman Brothers. Secretary Paulson recounts in his book telling Warren Buffett by phone that an investment by Warren Buffett would send a strong signal to credit markets.⁵ Even though the Government would not backstop Lehman's assets,⁶ Secretary Paulson recounts that his phone log to Lehman's CEO Dick Fuld would show nearly 50 calls between Bear Stearns's failure and Lehman's collapse,⁷ and that he decided to “lean on Ken Lewis” the CEO of Bank of America as a potential buyer of Lehman.⁸

The Government, including Treasury, would treat investment banks differently after the failure of Lehman. Secretary Paulson states in his book that “the Fed had no authority to guarantee an investment bank’s trading book, or for that matter any of its liabilities.”⁹ Following the failure of Lehman, investment banks were encouraged by the Government and allowed to pair with large commercial depository institutions that could act as a source of strength for investment banks. This included Bank of America acquiring Merrill Lynch, and large parts of Lehman being acquired by Barclays. Secretary Paulson states in his book, “We discussed a range of ways to combine the investment banks with commercial banks. Our rationale was simple: confidence in the business model of investment banks had evaporated, so merging them with commercial banks would reassure the markets.”¹⁰

In addition, Treasury and other Federal officials worked towards broker-dealers Goldman Sachs and Morgan Stanley converting their charters to bank holding companies. Secretary Paulson states in his book that he came to the conclusion with FRBNY President Geithner and Federal Reserve Board Chairman Ben Bernanke that the course of action “least likely to lead to a failure of either” was “Plan B”, stating “the Fed needed to turn Morgan Stanley and Goldman Sachs into bank holding companies.”¹¹ He also stated that if Goldman Sachs and Morgan Stanley fell, the financial system might vaporize and with it, the economy.¹² As bank holding companies, these companies would later participate in the bank bailout program known as CPP, as opposed to another TARP program.

Former Treasury Secretary Henry Paulson wrote in his book *On the Brink* that Treasury “devised TARP to save the financial system.”¹³ However, that was not Congress’s sole intent when approving the final TARP law. Congress did not enact Treasury’s initial three-page proposal submitted on September 20, 2008, which would have authorized Treasury to spend TARP funds taking into consideration “providing stability or preventing disruption to the financial markets or banking system; and protecting the taxpayer.”^{14,iv} The final TARP law states a dual purpose of restoring stability and liquidity, and ensuring that Treasury used the funds in such a way that would do more than just save the financial system, but also to protect investments of individuals and families across the nation including home values, life savings, retirement funds, and college accounts, to preserve homeownership, and to promote jobs and economic growth. Secretary Paulson recounts in his book:

The House and Senate needed to be able to sell any legislation we came up with, and the political calculus was tricky just weeks before an election. Averse to bailouts, voters would never grasp the pain of a meltdown unless they experienced it. As Barney [Frank] put it: “No one will ever get reelected avoiding a crisis.”

^{iv} SIGTARP, “Emergency Capital Injections Provided to Support the Viability of Bank of America, Other Major Banks, and U.S. Financial System,” 10/5/2009, p. 11, www.sigtar.gov/Audit%20Reports/Emergency_Capital_Injections_Provided_to_Support_the_Viability_of_Bank_of_America.pdf.

Nancy Pelosi noted: “We have to position this as stimulus and relief for the American homeowner.”¹⁵

Stage 1 of CPP: Focused on Stability of the Financial System, Treasury Took Dramatic Action After Initial CPP Investments to Support the Largest TARP Banks and Ensure Their Health

TARP did not change the level of active involvement by Treasury. In the same way it had acted in the crisis and with the same Government officials involved, Treasury continued its active role, only this time as an investor in the largest CPP institutions. Because of its greater Governmental responsibility, Treasury worked with Federal banking regulators to make the TARP investments, learning confidential information that no other investor would ever learn. Most people are well aware, and SIGTARP reported in detail, of how Secretary Paulson made phone calls to the CEOs of nine institutions on October 12, 2008, and requested that they come to Washington, DC the next day.^v The next day, Secretary Paulson, then-FRB NY President Geithner, and others told the CEOs that they needed to accept a collective \$125 billion in capital injections for the “good of the country.”^{vi} Secretary Paulson later told SIGTARP that if necessary, the Government would have made it clear to the nine executives that they did not have a choice in the matter.^{vii} The CEOs agreed with their banks becoming the first CPP recipients. Secretary Paulson recounts in his book that Treasury decided to make the CPP investments in return for preferred stock rather than common stock to avoid concerns that Treasury was nationalizing banks.¹⁶

Treasury then announced that CPP would be available to a broad array of qualifying financial institutions that were deemed healthy and viable by Federal regulators and Treasury.^{viii} This would require Treasury to learn confidential information about CPP banks. On October 20, 2008, seven days later, then-Treasury Secretary Paulson announced the purpose of CPP:

We expect all participating banks to continue to strengthen their efforts to help struggling homeowners who can afford their homes avoid foreclosure. Foreclosures not only hurt the families who lose their homes, they hurt neighborhoods, communities and our economy as a whole...Our purpose is to increase confidence in our banks and increase the confidence of our banks, so that they will deploy, not hoard their capital. And we expect them to do so, as increased confidence will lead to increased lending...

^v SIGTARP, “Emergency Capital Injections Provided to Support the Viability of Bank of America, Other Major Banks, and U.S. Financial System,” 10/5/2009, pp. 15 & 17, www.sig tarp.gov/Audit%20Reports/Emergency_Capital_Injections_Provided_to_Support_the_Viability_of_Bank_of_America.pdf. These institutions included four large commercial depository banks (Bank of America, Citigroup, JPMorgan Chase, and Wells Fargo), three investment banks (Goldman Sachs, Morgan Stanley, and Merrill Lynch), and two custodial and processing institutions (State Street and Bank of New York Mellon).

^{vi} SIGTARP, “Emergency Capital Injections Provided to Support the Viability of Bank of America, Other Major Banks, and U.S. Financial System,” 10/5/2009, p. 18.

^{vii} *Ibid.*

^{viii} SIGTARP, “Exiting TARP: Repayments by the Largest Financial Institutions,” 9/29/2011, p. 4, www.sig tarp.gov/Audit%20Reports/Exiting_TARP_Repayments_by_the_Largest_Financial_Institutions.pdf.

This efficient process—with standardized forms and standardized review—will encourage banks and thrifts of all sizes to participate in the program. By doing so, they will increase their capital base so that they can provide the lending necessary to support the U.S. economy as we work through this difficult period.

At the start of the CPP program, Treasury made the decision to treat injections of TARP in all banks the same regardless of size: the application process was the same for all banks, all banks would receive an amount of TARP money up to 3% of risk-weighted assets, and all would pay a 5% annual dividend to Treasury, rising to 9% after five years as an encouragement to repay TARP. But that is where the similarities stop.

The Government took immediate action at the height of the crisis to inject half of all CPP funds into the first nine banks, and additional CPP funds in other large institutions, but would take up to six months or more to make TARP investments in smaller institutions. Treasury made most TARP injections into the largest CPP banks in 2008. In May 2009, Treasury reopened CPP for small banks throughout the country.¹⁷

After the initial TARP injections, Treasury took extraordinary action to stand behind the largest TARP banks out of concern for their health. The initial TARP injections were not sufficient to bring stability to the national financial system. As SIGTARP has reported through a series of reports, Treasury used TARP to embark on extraordinary efforts along with Federal regulators, to stand behind the largest banks and ensure their survival even after the initial TARP investments by acting as a very active Government investor.^{ix}

- **Citigroup:** In November 2008, as SIGTARP previously reported, following a frantic weekend dubbed “Citi Weekend,” worried that Citigroup would fail absent a strong statement of support from the U.S. Government, and that such failure would cause catastrophic damage to the economy, federal officials decided to rescue Citigroup by providing Citigroup asset guarantees (including with TARP funds) and a \$20 billion TARP capital infusion in exchange for preferred shares of Citigroup stock.^x On the Thursday before Citi weekend, November 20, 2008, Secretary Paulson and FRBNY President Geithner held a conference call with FRB Chairman Bernanke, FDIC Chairman Sheila Bair, and Comptroller John Dugan to discuss Citigroup’s condition. During that call, FRBNY President Geithner told the other principals, “we’ve told the world we’re not going to let any of our major institutions fail. We are going to have to make it really clear we’re standing behind Citigroup.” Treasury created two additional programs to provide the assistance to Citigroup and labeled those programs as “extraordinary assistance.” The Targeted Investment Program (“TIP”) in

^{ix} SIGTARP, “Extraordinary Financial Assistance Provided to Citigroup, Inc.” 1/13/2011, www.sig tarp.gov/Audit%20Reports/Extraordinary%20Financial%20Assistance%20Provided%20to%20Citigroup,%20Inc.pdf.

^x *Ibid.*

TARP allowed Treasury to make targeted investments in financial institutions beyond those under CPP if it believed a loss of confidence would threaten other institutions, the broader financial markets, or the economy as a whole.^{xi} TIP would have only one other participant, Bank of America. The Government also agreed to guarantee a portion of losses on a designated pool of \$306 billion in Citigroup's assets through another extraordinary assistance TARP program called the Asset Guarantee Program ("AGP"). AGP provided certain loss protections "for assets held by systemically significant financial institutions that face a high risk of losing market confidence due in large part to a portfolio of distressed or illiquid assets." Citigroup would be the only company to get a guarantee under AGP.^{xii}

- **Bank of America:** Weeks later, federal officials would agree to provide \$20 billion in TARP funds to Bank of America under TIP. As SIGTARP previously reported, on December 17, 2008, Bank of America's CEO Kenneth Lewis called Secretary Paulson and Chairman Bernanke and informed them that substantial losses at Merrill Lynch could justify Bank of America invoking a clause in the merger agreement which would allow them to either renegotiate with Merrill Lynch or back out.^{xiii} Federal Reserve and Treasury officials feared that this could lead to a destabilization of Bank of America, Merrill Lynch, and the broader financial system. Secretary Paulson testified before the House Committee on Oversight and Government Reform that he told Bank of America's CEO that the Federal Reserve could remove the bank's management and board if the merger was abandoned.^{xiv} As SIGTARP previously reported, Secretary Paulson and Mr. Lewis told SIGTARP that, after agreeing to go forward with the merger, Bank of America executives asked for a letter committing the Government to future financial support.^{xv} Secretary Paulson refused to provide written assurance. Secretary Paulson told SIGTARP that he and Chairman Bernanke assured Mr. Lewis that the Government would provide assistance to his bank and that they were not going to let a systemically significant institution fail.^{xvi} On January 16, 2009, Treasury made an additional \$20 billion TARP investment in Bank of America through TIP in exchange for preferred stock. The Government also agreed to guarantee a portion of losses on a pool of up to \$118 billion in assets held by Bank of America under AGP, but the final agreement was not completed and in May 2009, Bank of America requested termination of its participation.^{xvii}
- **Availability of Additional TARP for Largest Institutions:** According to then-FRBNY President Timothy Geithner in his book *Stress Test*, over Christmas 2008, he thought of a "new idea for deploying TARP", including stress tests

^{xi} SIGTARP, "Extraordinary Financial Assistance Provided to Citigroup, Inc." 1/13/2011, p. 6, www.sig tarp.gov/Audit%20Reports/Extraordinary%20Financial%20Assistance%20Provided%20to%20Citigroup,%20Inc.pdf.

^{xii} Bank of America announced a similar asset guarantee agreement, but the final agreement was never executed.

^{xiii} SIGTARP, "Emergency Capital Injections Provided to Support the Viability of Bank of America, Other Major Banks, and U.S. Financial System," 10/5/2009, www.sig tarp.gov/Audit%20Reports/Emergency_Capital_Injections_Provided_to_Support_the_Viability_of_Bank_of_America.pdf.

^{xiv} *Ibid.*

^{xv} *Ibid.*, p. 26.

^{xvi} *Ibid.*, p. 26.

^{xvii} *Ibid.*, pp. 28-29.

on the largest institutions (most of which were in CPP), which could provide additional TARP capital.^{18,xviii}

Under Secretary Geithner, Treasury continued to run TARP not as a passive investor, but in an active role as a public investor, concerned with the health of the largest CPP banks and their image in the market. Treasury appears to have viewed these actions in keeping with its policy under Secretary Geithner to act on a “commercial basis,” so that the market would not view Treasury as controlling a bank. That started on his first day in office, when as Secretary Geithner describes, “We pressured Citi to cancel a tone-deaf plan to buy a new corporate jet.” Treasury announced the stress tests and the new related TARP program in a February 2009 speech. Secretary Geithner describes the need for the speech in his book as follows, “My Treasury team wanted to reassure the markets by emphasizing our determination to do whatever it took to prevent more bank failures.”¹⁹ These assurances to the market were not limited to acting as a passive investor, or even as a private investor, nor were the actions that followed despite the fact that the initial focus—a market crash—had been averted. Secretary Paulson states in his book that by early 2009, “it was clear that our actions had prevented a meltdown” and along with other federal efforts “had stabilized the financial system.”

While there had not been a “meltdown,” in early 2009, despite Treasury’s dramatic efforts the market still lacked confidence in some of the nation’s largest financial institutions. One of those institutions was TARP bank Citigroup. As SIGTARP previously reported, Treasury began a process through discussions with Federal regulators out of concern for Citigroup’s results in the stress tests where it would end up converting its \$25 billion in CPP stock in Citigroup from preferred stock to common stock (that Treasury would later sell in the market) because Citigroup needed common equity. As Secretary Geithner explains in his book, “We didn’t want to let Citi fail, but we also didn’t want to nationalize banks unless absolutely necessary.”²⁰ As previously reported by SIGTARP, according to Secretary Geithner, Treasury did not take a majority position, reassuring the markets that it wanted to avoid nationalization.²¹ Treasury’s decision to convert would serve to delay its exit from its TARP stake in Citigroup. However, Treasury justified that because of the larger policy goal of stability. According to a memorandum prepared by Treasury’s Investment Committee, taking no action to convert the Citigroup investment to common stock could have hastened the deterioration of Citigroup and reverberated throughout the US economy, contributing materially to weaker economic performance and higher unemployment.²²

As SIGTARP earlier reported, the largest institutions were permitted to repay TARP without meeting the Government’s TARP exit criteria after pressuring Treasury and Federal banking regulators to exit as Federal regulators bowed at least in part to pressure by institutions seeking a swift TARP exit to avoid executive

^{xviii} The TARP capital would be provided under a new TARP program known as Capital Assistance Program, a program that closed with no participants or investments.

^{xix} SIGTARP, “Exiting TARP: Repayments by the Largest Financial Institutions,” 9/29/2011, p. 36, www.sig tarp.gov/Audit%20Reports/Exiting_TARP_Repayments_by_the_Largest_Financial_Institutions.pdf.

compensation restrictions and the stigma associated with TARP.^{xx} While regulators negotiated the repayment terms with individual TARP banks, SIGTARP previously found and reported that Treasury participated in critical meetings on repayment guidance, commented on individual repayments proposals, and at least in one instance urged the bank (Wells Fargo) to expedite its repayment.^{xxi}

In December 2009, when all of the largest TARP banks but Citigroup (who repaid the \$20 billion in TIP in December 2009) repaid their TARP investments, Secretary Geithner stated that CPP was effectively closed, and testified that the stability of the financial system had improved dramatically and credit was flowing again. On December 9, 2009, Secretary Geithner sent a letter to Speaker of the House Nancy Pelosi stating, “The Capital Purchase Program, through which the majority of TARP investments in banks have been made, is effectively closed.” The next day, Secretary Geithner testified before the Congressional Oversight Panel, “Confidence in the stability of the financial system, in the security of American savings has improved dramatically, credit is flowing again.”^{xxii}

In December 2009, Treasury announced Citigroup’s intention to repay taxpayers, stating “Treasury has repeatedly stated that the United States never intended to be a long term shareholder in private companies. As banks replace Treasury investments with private capital, confidence in the financial system increases, Government’s unprecedented involvement in the private sector diminishes, and taxpayers are made whole.”^{xxiii} This relates to Citigroup raising equity to repay the second TARP infusion of \$20 billion in the TARP exceptional assistance program TIP, rather than the first \$25 billion in CPP. This designation was critical because an exceptional assistance TARP recipient’s executive compensation was subject to stricter limitations and fell under the purview of Treasury’s Special Master for Executive Compensation. Citigroup CEO Vikram Pandit told SIGTARP that a desire to escape management compensations restrictions was a factor motivating Citigroup’s desire to exit TARP.^{xxiv} Treasury also delayed its sale of Citigroup common stock from its initial plan to sell some of its CPP common stock in Citi concurrently with Citi’s own equity offering until after Citigroup raised capital in the markets to repay the \$20 billion from TIP. Rather than rush to sell the stock in the market, Treasury sold this stock into the market from April 2010 to December 2010, making Citigroup the last large bank to exit TARP.^{xxv} Treasury engaged in a careful and orderly exit of its common stock in Citigroup throughout the next year.

^{xx} SIGTARP, “Exiting TARP: Repayments by the Largest Financial Institutions,” 9/29/2011, p. 60, www.sig tarp.gov/Audit%20Reports/Exiting_TARP_Repayments_by_the_Largest_Financial_Institutions.pdf.

^{xxi} *Ibid.*, p. 62.

^{xxii} *Ibid.*, pp. 42-43.

^{xxiii} *Ibid.*, pp. 42-43.

Stage 2: Treasury Changed its Approach Dramatically After the Largest Banks Exited TARP's Bank Bailout in December 2009 Announcing the Program Effectively Closed and in Wind Down Even Though Hundreds of Smaller Banks Remained in the Program

By declaring CPP effectively closed and that the purposes of the program had been achieved when the largest banks exited TARP in December 2009, Treasury failed to recognize the TARP policies that still needed to be met for the hundreds of smaller banks left in CPP banks, that were still facing a crisis, needed TARP, and would remain in CPP for years to come. On December 23, 2009, Treasury announced that it hired asset managers to manage its portfolio “in the wind-down phase of” CPP. Treasury announced, “CPP, which is currently only open to small banks, will effectively close at the end of the year.” As of December 31, 2009, there were 649 of the 707 original banks in CPP, and 591 of these banks had less than \$100 million in assets.²⁴ At that time, 74 TARP banks had already missed paying their TARP dividends.²⁵

CPP was not closed, but Treasury's efforts were in “wind-down” mode focused on disposing of the TARP shares. It is unclear whether Treasury assumed that the policies and purposes of CPP and TARP were already met for smaller TARP banks just by virtue of them holding on to the TARP capital injection. While capital is needed for lending, just because Treasury provided capital did not mean that the TARP banks were using TARP funds to increase lending—one of the purposes of CPP as announced by Secretary Paulson. Despite the fact that the explicit goal of CPP was to increase lending to U.S. businesses and consumers, lending had decreased at the time Secretary Geithner declared the program effectively closed.²⁶

After the 17 largest stress-tested banks exited TARP having returned half of the original CPP funds that had been invested plus dividends, interest, and warrants, Treasury's statements about CPP changed to largely discuss profitability as other large regional banks subsequently exited TARP. When PNC Bank repaid TARP, Treasury's February 10, 2010, statement only discussed returns, without discussion of any other of TARP's worthwhile and important goals, announcing that, “Treasury currently estimates that programs aimed at stabilizing the banking system will earn an overall profit.” Treasury's subsequent CPP press releases were titled “TARP Bank Program Nearing Profitability” in a February 2, 2011, release, “More than 99 Percent of TARP Disbursements to Banks Now Recovered” in a March 16, 2011, release, and “TARP Bank Programs Turn Profit” in a March 30, 2011, release.²⁷

While maximizing return to taxpayers is an important policy goal of TARP and a positive development for taxpayers, there were other important TARP goals and policies which continued to be required for the 566 banks in CPP as of March 31, 2011. Of the banks left in CPP, 529 were small with less than \$100 million in assets. Many of these small banks were struggling. The number of banks that had missed paying TARP dividends had grown in one quarter from 155 to 173. For these banks and the communities they served, the purpose and policies of TARP and CPP remained a critical need.²⁸

Beyond reporting on TARP bank repayments or selling warrants, Treasury's actions in 2010 through much of 2012 largely consisted of responding to a small number (5% of 707 original CPP banks) of banks that came to Treasury with a proposal to help them stand on their own feet without TARP. In those instances, on an ad hoc and inconsistent basis, Treasury would determine whether it would exchange or restructure the Government's shares to facilitate a merger or acquisition of the TARP bank and whether or not it would take a discount. On August 2010, Secretary Geithner wrote an Op-Ed for the New York Times entitled "Welcome to the Recovery," in which he stated, "the Government's investment in banks has already more than \$20 billion in profits for taxpayers, and the TARP program will be out of business earlier than expected." However, the hundreds of smaller bank still in TARP were struggling to raise capital to repay TARP.

Beginning in October 2011, out of concern over the high number of bank failures and the struggles of smaller community banks remaining in TARP, SIGTARP sent a series of letters with recommendations to Treasury focusing on the almost 400 small and medium-sized banks remaining in TARP, many of whom were struggling, unable to pay their TARP dividends, or under an order from their banking regulator. SIGTARP raised concerns that beginning in the fall of 2013, the TARP dividend payment owed by these banks would rise from five to nine percent, which could place additional pressures on banks. Given SIGTARP's September 2011 report on the Government's dramatic actions to help the largest banks exit TARP, SIGTARP recommended that Treasury develop a comprehensive plan to determine the criteria for which Treasury would agree to a discount on the TARP funds owed, or restructure or exchange the TARP investment, just as it had done for Citigroup and others. SIGTARP recommended that Treasury consider renegotiating or deferring the rise in dividend rate, which Treasury had the power to do because it was contractual. Treasury should have considered deferring the dividend rate increases because they were based on a five-year period selected in 2008 before it was clear that community banks would face such a struggle to raise capital. SIGTARP also recommended that Treasury exercise its contractual right to appoint a board member for banks that miss six or more TARP dividends to ensure that there was an independent board member.

In May 2012, with nearly half (343) of the 707 CPP banks remaining, Treasury announced that Regions Financial was one of the last large banks to repay its TARP investments, and that Treasury was now going to exit its remaining interests in CPP banks. Treasury stated that TARP along with other Government emergency action helped stabilize the economy and put out the immediate financial fire, and that CPP had made a positive return to taxpayers (including dividends, interests, and warrants). Treasury decided to auction off its shares in community banks, having conducted a test auction in six banks in March of that year. Treasury announced that auctions would be beneficial for community banks because private capital would replace Government support (even though no additional capital would go into the bank) and Treasury would be able to exit its stake, while the bank could still keep the capital. Treasury effectively announced that it would be willing to sell at a discount because it thought the value of its stake in small banks was below the

TARP investment, justifying it “since we’ve already locked in a \$19 billion positive return.”^{xxiv}

Treasury was treating banks differently based on size. Unlike the largest banks that were able to exit TARP with less capital than the regulators and Treasury had set as criteria for a TARP exit, and with less strong types of capital than regulators and Treasury had discussed, smaller TARP banks were held to strict capital standards by Federal banking regulators in order to repay TARP. Unlike Citigroup and others, Treasury did not restructure or exchange its stock beyond a small number (5% of 707 original CPP banks) of banks.

Rather than take an active public Government role to continue to promote the policies required in the TARP law, to promote liquidity, preservation of homeownership, life savings, retirement funds, college savings, and job and economic growth in the communities served by those banks during the life of the program, Treasury determined that it would act similar to a private investor with these smaller banks, many of which were community banks, and only get involved if it related to Treasury’s stake, and only then in limited fashion. Treasury stopped working hand-in-hand with Federal banking regulators and receiving confidential information related to the health of the bank. This was at a time of high bank failures, community banks struggling from the crisis, and constricted lending in communities. SIGTARP recommended that Treasury assess the financial health of a bank prior to the sale of any TARP investment, but Treasury rejected SIGTARP’s recommendation. Treasury also rejected SIGTARP’s recommendation to appoint directors to banks with financial health issues where Treasury already had that right. Treasury rejected SIGTARP’s recommendation to determine through analysis, in consultation with banking regulators, that its auction of these bank shares promotes financial stability. Instead, Treasury responded that it would act as a passive investor and would not access confidential information from regulators, despite having done that the whole time the largest banks were in TARP, and in connection with the decision to invest in all 707 TARP banks.

Treasury’s decisions highlight another difference in its treatment of banks based on size. Unlike the actions Treasury took to monitor the health of the remaining largest TARP institutions AIG, GM, and Ally and engaging in a slow and controlled exit of its stake of these institutions just as it had with Citigroup, Treasury only relied on the decision of the Federal banking regulator as to whether it could exit the bank and then auctioned the bank off immediately.

It is unclear why Treasury changed course to act like a passive investor. To the extent Treasury was concerned over market fear of nationalizing banks, it had already determined that fear was avoided through the use of preferred stock or not taking a majority of common stock. To the extent Treasury was concerned over not acting on a “commercial basis,” the standard it has cited to, it had already undertaken extraordinary action for the largest banks (after initial TARP investments), presumably determining that standard had been met. Treasury is not

^{xxiv} Treasury’s statements about a positive return reflect that TARP banks had paid taxpayers interests, dividends, and warrants that were required by contract to compensate taxpayers for the risks they took in investing in banks during the crisis.

a private investor, but instead the Government, and TARP funds are not private funds, but instead public funds required to be used for public policies.

THE AUCTIONS

Treasury's differential treatment of smaller TARP banks also manifested in auctioning off its TARP shares in smaller banks. These community banks have an outsized importance in lending in the communities where they operate, providing loans to local businesses and families. One officer of a small community bank that Treasury auctioned told SIGTARP that the bank had trouble navigating an exit from TARP and that there needed to be a clearer exit to get out of TARP. That CEO told SIGTARP that the bank did not want to be auctioned and had tried to work with Treasury and its banking regulator to raise capital to exit TARP. The bank CEO relayed to SIGTARP that Treasury and the banking regulators put restrictions on that capital raise that made it difficult. In the end, despite the bank trying to work with Treasury and its regulator on a TARP exit, Treasury auctioned the bank.

Treasury didn't take into consideration whether these small community banks were healthy and stable when deciding whether to auction its TARP shares in these banks or whether the purpose of TARP had been met. In fact, 74 of the 185 banks weren't able to make dividends and interest payments at the time Treasury auctioned its TARP shares in them. In pushing these investments out of TARP, Treasury gave up oversight of the financial health of these institutions and of being able to impact most of the communities in which these banks play important roles to ensure that the other purposes of TARP are met of providing liquidity, preserving life savings and college savings, preserving homeownership, and promoting jobs and economic growth. The sole mission of the current owners of these TARP shares in community banks is to make profit for investors.

Some of these banks tried to negotiate with Treasury in the same way that the largest TARP banks successfully negotiated. The president of one bank told SIGTARP that it wasn't allowed by its regulator to pay dividends prior to Treasury selling its investment at auction. He viewed the rate increase to 9% as adding insult to injury and a driving force in attracting investors to buy the shares at auction. Treasury sold this investment at a loss of over \$2 million. The president of another bank told SIGTARP that it asked Treasury to keep the dividend rate at 5% for a longer period to increase its ability to pay back the investment to Treasury at par. Treasury declined and sold this investment at a loss of over \$2 million and the bank is now at a 9% dividend rate.

Private Fund Investors Have Bought Most of Treasury's TARP Shares in Community Banks at Auction

For the most part, the entities who bought at Treasury auctions of its shares in CPP banks are large private fund investors, mostly unknown to the banks and not from the banks' communities. As of December 31, 2014, more than two-thirds (70%)

of Treasury’s auctioned TARP shares in CPP community banks were purchased by private fund investors. Additional successful auction buyers included brokers purchasing shares on behalf of other entities (12%), CPP banks repurchasing their own shares (7%), other banks (5%), institutional investors (3%), and a small number of senior executives and board members of CPP banks (2%). Figure 3.1 shows the percentage of Treasury’s TARP shares in CPP community banks purchased by each category of auction buyer.

Private fund investors, including hedge funds and private equity firms, have purchased 70% of Treasury’s total auctioned shares in community banks. These private funds only have an interest in making a profit from these shares, either through dividend and interest payments or by selling the shares at a higher price. Private fund investors successfully bid for shares in 171 of the 185 banks that Treasury auctioned. Three private funds alone purchased nearly half (47%) of all shares in CPP community banks auctioned by Treasury. One capital management company was successful in its bids on 86 banks, and acquired 24% of all TARP shares in CPP community banks auctioned by Treasury. Another capital management company successfully bid on 106 banks, acquiring 13% of all TARP shares in CPP community banks auctioned by Treasury. An additional asset management company successfully acquired shares in 40 banks, or 9% of all TARP shares in CPP community banks auctioned by Treasury.

In addition, household-name brokers, presumably purchasing shares on behalf of other entities, successfully bid on 23 banks and acquired 12% of all TARP shares in CPP community banks auctioned by Treasury. Just one such broker successfully bid on 15 banks and purchased 4% of all TARP shares in CPP community banks auctioned by Treasury.

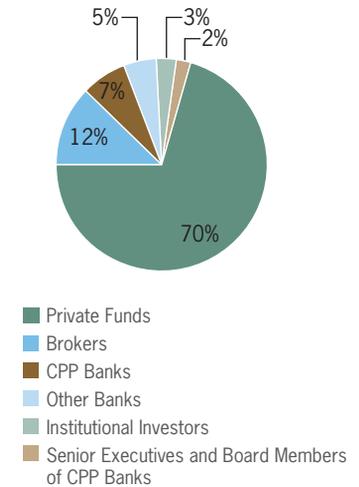
Some banks tried to buy back all of Treasury’s TARP shares in their banks at auction, but only two banks were successful in doing so. Only 7% of total TARP shares in CPP community banks auctioned by Treasury were repurchased by 45 CPP banks. Only half (53%) of those 45 banks were successful in repurchasing more than half of the outstanding TARP investment in their banks. Other CPP banks may have bid on Treasury’s TARP shares in their banks, but were unsuccessful. The 45 CPP banks that repurchased their own shares at auction did so at discounts as large as 40%. Table 3.1 shows the percent of outstanding TARP shares repurchased by CPP community banks at auction.

Other non-TARP banks also wanted to buy TARP shares in banks at auction. Non-CPP banks successfully bid on 33 banks to win 5% of total TARP shares auctioned in CPP community banks. Sixteen of these banks made successful bids in the auctions. One bank was successful on its bids on shares of 14 banks, another was successful on its bids on shares of 12 banks, while the other banks mostly made bids on just one or two banks.

Institutional investors successfully bid for 3% of all TARP shares auctioned by Treasury in CPP community banks. This consisted mostly of one large retirement fund that was successful in its bids on 41 banks. An additional four institutional investment funds were successful in purchasing Treasury’s auctioned TARP shares in six CPP community banks.

FIGURE 3.1

PERCENTAGES OF SHARES PURCHASED BY BUYER TYPE



Note: Numbers may not total due to rounding.

Source: Treasury, response to SIGTARP data call, 1/5/2015.

TABLE 3.1

PERCENTAGE OF SHARES REPURCHASED BY CPP BANKS, AS OF 12/31/2014

CPP Banks	Percentage
1	0-10%
2	10-20%
5	20-30%
7	30-40%
7	40-50%
7	50-60%
2	60-70%
3	70-80%
3	80-90%
8	90-100%

Source: Treasury, response to SIGTARP data call, 1/5/2015.

TABLE 3.2

**PERCENT OWNERSHIP STAKE
IN TARP FUNDS FOR EACH
SUCCESSFUL BID, AS OF
12/31/2014**

Number of Successful Bids	Percentage Ownership Stake in TARP Funds
327	0-5%
160	5-10%
126	10-20%
92	20-30%
64	30-40%
41	40-50%
31	50-60%
27	60-70%
21	70-80%
20	80-90%
26	90-100%

Source: Treasury, response to SIGTARP data call, 1/5/2015.

Senior executives, including presidents, CEOs, and members of the board of directors of CPP banks, successfully bid to purchase 2% of total TARP shares in CPP community banks auctioned by Treasury. These shares were purchased by 70 senior executives and board members of 18 CPP banks.

Individual Auction Buyers Own More than 50 Percent of Treasury's Auctioned TARP Shares in 131 Community Banks

While only two CPP banks were able to repurchase 100% of their TARP shares Treasury auctioned, 10 auction buyers bought the full TARP investment in an additional 10 community banks. These buyers include one bank holding company (purchased 100% of TARP shares in two banks in its region), two private fund investors (one purchased 100% of TARP shares in six banks and another in one bank), and one senior executive of a CPP bank who purchased the outstanding TARP shares at his bank.

The buyers, who typically lack ties to the communities that these banks serve, have purchased Treasury's powerful right to place a non-voting director on the board of these banks after six missed dividends. Overall, auction buyers acquired ownership of 50% or more of Treasury's auctioned TARP shares in 126 community banks, giving them the ability to appoint non-voting directors if a bank misses six or more dividend payments, a right that existed at many banks at the time of auction. Over one-third, or 35%, of successful bids were for ownership stakes in 5% or less of Treasury's TARP shares in CPP community banks. Nearly nine in ten (87%) successful bids were for ownership stakes of less than 50% of Treasury's auctioned TARP shares in CPP community banks. See Table 3.2 for a breakdown of percent of ownership stake in Treasury's auctioned TARP shares in community banks for each successful bid.

While Private Investors Benefit from the Possibility of Buying Treasury's Shares at a Discount and Making a Profit, Community Banks Still on Hook for TARP Investments

Treasury's decision to auction off its TARP shares serves Treasury's intent to end a TARP program. However, the auctioned TARP banks continue to be on the hook for repayment of the TARP principal and dividends. These banks now owe repayment not to the Government, but to the private highest bidder at auction. In addition, by auctioning its TARP shares Treasury has given up its tools to oversee the health of these community banks and the other purposes of TARP, the protection of home values, life savings, retirement funds and college funds, homeowner preservation, and the promotion of jobs and economic growth.

It is not the case that all TARP banks repaid TARP, or even a majority of banks. Only 36% of CPP institutions repaid their TARP in full. Half (50%) of the banks that exited CPP exited with TARP investments still outstanding: a quarter of the banks (23%) transferred to another Government program (through CDCI or SBLF); and another quarter (26%) of the banks had Treasury's TARP investment in

them sold to an auction purchaser. Thirty-two CPP banks failed or filed bankruptcy, which typically resulted in a complete loss of the TARP investment.

Why Treasury needed to auction off these TARP banks to end the program is unclear given that it is not the case that Treasury has ended its investment in all banks. Treasury continues to own a stake in small banks and credit unions under TARP’s CDCI program and continues to own a stake in small banks under the non-TARP SBLF program. The 28 banks that transferred to CDCI, another TARP program, exited CPP still owing these funds to the Government. The 137 CPP banks that transferred to SBLF exited CPP still owing these funds to the Government and constitute the majority of SBLF investments. See Figure 3.2 for details on how banks have exited CPP.

Private Investors Profit from TARP Shares

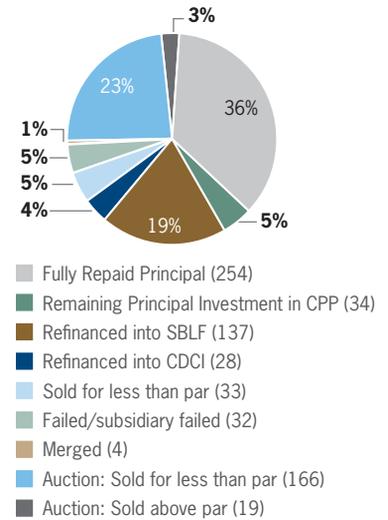
While Treasury has given up at auction its ability to ensure that the important purposes of TARP continue to be met for small TARP banks that are struggling (including promoting stability and liquidity, protecting home values, life savings, retirement funds and college funds, homeowner preservation, and promoting jobs and economic growth), some of these private investors who bought at auction are profiting from TARP shares. The auction buyers bought these bailout shares in banks at discounts of 1% to 90%. Some of the auction buyers have already flipped them back to the bank at a premium to what Treasury received at auction, sometimes getting the full amount of what was owed in TARP. One bank president whose bank’s TARP shares were auctioned by Treasury expressed to SIGTARP his concern that one investor is “making a killing” buying up TARP shares at a discount while the Government is losing money by selling TARP shares at such discounts.^{xxv} In essence, Treasury created a market in which these investors can profit on TARP.

Auctioned TARP banks are motivated to buy out the auction buyer, and to do so quickly, because they care about who has an interest in the bank. One bank president of an auctioned TARP bank told SIGTARP that he is concerned about who own shares in the bank. Buyers at Treasury’s TARP auctions are not generally the typical investor in a community bank such as an individual or entity from that community who has a vested interest in the economic health of that community (whose interests might match some of the purposes of TARP). Instead these are large funds or household name brokers not from that community, who are in the business of investing for profit. That banker told SIGTARP that the bank tried to bid at auction, but it was too difficult at that time. However, he said that the bank’s plan is to raise the money to redeem the shares, but feels that the bank will not get near the discount achieved by the private buyers at auction.

The profits captured by these private investors from flipping TARP shares can be significant and reaped in a short period of time, sometimes in weeks or months. For example, the president of one CPP bank whose TARP shares were auctioned by Treasury told SIGTARP that the bank tried to negotiate with Treasury to buy back the TARP shares but Treasury would not agree. Instead Treasury auctioned

FIGURE 3.2

STATUS OF CPP RECIPIENTS, AS OF 12/31/2014



Note: 34 banks repaid CPP principal but remain in TARP with Treasury holding only warrants.

Source: Treasury, response to SIGTARP data call, 1/5/2015.

^{xxv} Treasury has lost \$1.1 billion in CPP auctions (\$812.4 million in lost principal plus \$251.1 million in unpaid TARP dividends).

the TARP shares at a loss of almost \$3 million. After eight months, the bank took out a loan to buy the shares back from the auction buyer for just under the amount of the original TARP principal. The auction buyer made a \$1.6 million profit on the TARP shares. A number of banks that had TARP shares sold at auction have publicly announced that the bank bought back TARP shares from the private investors who won them at Treasury's auction. For example, in one of its earliest auctions, Treasury lost \$14.3 million by auctioning its TARP shares in Banner Corporation, Walla Walla, Washington, in April 2012, but according to public sources, the bank had bought out the private investors by November 2012.²⁹ Similarly, Treasury auctioned its TARP investment in FirstBank Corporation, Alma, Michigan, in July 2012 for a loss of \$1.9 million, and the bank had bought back the TARP shares from the buyers at an auction less than a year later.³⁰ Treasury lost \$6.8 million auctioning its TARP shares in United Community Banks, Inc., Blairsville, Georgia, in April 2013, but the bank bought back their TARP shares from private investors just months later by January 2014.³¹ Presumably, if these banks were able to obtain the funds needed to pay the auction buyer so soon, it could have paid Treasury the same amount within that same time frame, while Treasury ensured that the critical goals and purposes of TARP and CPP continued to be met. Instead, both opportunities have been lost. Treasury did not make CPP investments so that private investors could profit, but that is exactly what has happened.

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