

Privacy Impact Assessment
For the
**TARP Standards for Compensation & Corporate Governance
Executive Compensation Information System**

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Summary:

The Department of the Treasury (UST), Office of Financial Stability (OFS) is publishing this Privacy Impact Assessment (PIA) for the Trouble Asset Release Program (TARP) Standards for Compensation and Corporate Governance – Executive Compensation Information System. Treasury established the TARP pursuant to its authority under the Emergency Economic Stabilization Act (EESA) of 2008 to provide immediate liquidity and stability to the financial system. EESA, as amended by the American Recovery and Reinvestment Act (ARRA) of 2009, requires that the Secretary of Treasury (Secretary) promulgate standards governing executive compensation at financial institutions that have received assistance under TARP. This PIA is being conducted because TARP Standards for Compensation and Corporate Governance – Executive Compensation Information System contains personally identifiable information (PII).

In October, 2008, the UST established TARP under the Emergency Economic Stabilization Act (EESA). EESA provided immediate authority and facilities that the Secretary could use to restore liquidity and stability to the financial system. Section 101(a) of EESA authorizes the Secretary to establish the TARP to “purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with EESA and policies and procedures developed and published by the Secretary.”

On February 13, 2009, Congress enacted the ARRA, which the President signed into law on February 17, 2009. The ARRA amended in its entirety section 111 of EESA. Section 111 of EESA provides that certain entities that receive financial assistance from Treasury under the TARP will be subject to specified executive compensation and corporate governance standards to be established by the Secretary.¹

On June 15, 2009, the Secretary released the Treasury’s Interim Final Rule for TARP Standards for Compensation and Corporate Governance, which sets forth standards that will govern executive compensation at firms participating in the TARP. The rule established the Office of the Special Master and gave the Special Master specific powers designed to ensure that executive pay at these firms is structured in a way that will protect taxpayers’ investment. The Special Master has sole power and authority for:

1. **Review of Payments:** For any TARP recipient receiving “exceptional assistance” (an “Exceptional Assistance Recipient”), the Special Master is required to review and approve any payment of compensation to the 5 senior executive officers and 20 next most highly paid employees.
2. **Review of Structure:** For any Exceptional Assistance Recipient, the Special Master is required to review and approve the structure of compensation for all executive officers and the 100 most highly compensated employees.
3. **Interpretation:** The Special Master has interpretive authority over the executive compensation provisions of EESA and the Interim Final Rule. Accordingly, the Special Master will make all determinations as to the application of those provisions to particular facts, and all decisions as to whether their requirements have been met.

¹ 31 CFR Part 30 Tarp Standard for Compensation and Corporate Governance

4. **Review of Prior Payments:** The Special Master is required to review any bonuses, retention awards, and other compensation paid to the 5 senior executive officers and 20 next most highly-compensated employees of each TARP recipient prior to February 17, 2009, to determine whether the payments were contrary to the public interest. If the payment is determined to be contrary to the public interest, the Special Master will be responsible for negotiating for reimbursements of such payments.

The Special Master is guided by the rules and principles identified in 31 C.F.R. § 30.16 and the Treasury regulations in evaluating the TARP recipients' employee compensation. For example, Treasury regulations expressly make clear that the Special Master must consider the competitive market forces in determining compensation levels that will permit the companies to remain in business, to thrive financially, and to eventually repay the taxpayer for Tarp financial assistance. The companies must be able to attract sufficient talent to prosper. At the same time, however, the law requires the Special Master to take into account whether the terms and conditions of compensations are performance based and tie compensation to the companies' prospective performance and financial success. In addition, the regulations make clear that the Special Master's compensation determination should be made in such a way that considers whether senior executives are provided incentives to avoid taking excessive risk to receive greater amounts of compensations. The law also anticipates that a portion of compensation be tied to repayment of Tarp financial assistance, and requires companies to "claw back" incentive compensation that is based upon inaccurate financial statements or performance metrics.

In sum, the standards and performance the Special Master use in evaluating employee compensation can be founded in the statute and the accompanying Treasury regulations. In these laws, Congress and Treasury provided the Special Master the guidance needed to make his determination.

System Application/General Information

1. What is the purpose of the system/application?

The purpose of this system is to assist the Department in carrying out its responsibilities under Section 111 of the Emergency Economic Stabilization Act of 2008 (EESA), as amended by the American Recovery and Reinvestment Act of 2009 (ARRA), to provide provisions of EESA that apply to entities that receive financial assistance under TARP.

2. What legal authority authorizes the purchase or development of this system/application?

The development and implementation of the system is authorized by 31 U.S.C. 321 as well as Section 111 of the Emergency Economic Stabilization Act (EESA) of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA). 12 U.S.C. 5221.

3. Under which Privacy Act SORN does the system operate? (Provide the system name and unique system identifier.)

TARP Standards for Compensation and Corporate Governance – Executive Compensation Information System--Treasury/DO.219

Data in the System

1. What categories of individuals are covered in the system?

This system of records contains information about TARP recipients. The information pertains to:

- (a.) Senior Executive Officers (SEOs). SEO is an employee of the TARP recipient who is “named executive officer”, as that term is defined by Instruction 1 to Item 402(a)(3) of Regulation S-K of the Federal securities laws. 17 CFR 229.402(a). A Tarp recipient that is a “smaller reporting company,” as that term is defined by Item 10 of Regulation S-K, 17 CFR 229.10, is required to identify SEOs consistent with the immediately preceding sentence. A Tarp recipient that is a “smaller reporting company” must identify at least five SEOs, even if only three named executive officers are provided in the disclosure provided that no employee must be identified as an SEO if the employee’s total annual compensation does not exceed \$100,000 as defined in Item 402 (a)(3)(1) of Regulation S-K. 17 CFR 229.402(a)(3)(1).
- (b.) Most highly compensated employees; the term “most highly compensated employee” means the employee of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that a former employee who is no longer employed as of the first day of the relevant fiscal year of the TARP recipient is not a most highly compensated employee unless it is reasonably anticipated that such employee will return to employment with the TARP recipient during such fiscal year.
- (c.) Other employees. Certain other employees of TARP recipients may be covered by the system in the event that the TARP recipient or the employee requests guidance from the Department with respect to the employee’s compensation or the Department otherwise provides guidance with respect to the employee’s compensation.

2. What are the sources of the information in the system?

- a. Is the source of the information from the individual or is it taken from another source? If not directly from the individual, then what other source?**

Data on covered employees is provided by the individuals' employer. The records include, but are not limited to, identifying information such as: name(s), employer; employee identification number, position, and quantitative and qualitative information with respect to the employee's performance. The types of records in the system may be comprehensive compensation data provided by the individual's employer for current and prior years; information relating to compensation plan design and documentation; and company performance data relating to compensation plans.

- b. What Federal agencies are providing data for use in the system?**

The system receives no data from other federal agencies for use.

- c. What State and/or local agencies are providing data for use in the system?**

The system receives no data from state and/or local agencies.

- d. From what other third party sources will data be collected?**

In addition to data provided by the individual's employer, the Special Master's staff may also extract data from company filings submitted through the SEC's EDGAR database. Staff may obtain compensation data from Equilar Inc., which compiles data from public filings. Information collected from these sources may consist of comprehensive compensation data provided by individual's employer for current and prior years; information relating to compensation plan design and documentation; and company performance data relating to compensation plans.

- e. What information will be collected from the employee and the public?**

No information is collected directly from either the employee or from the public.

3. Accuracy, Timelines, and Reliability

- a. How is data collected from sources other than bureau records verified for accuracy?**

The accuracy of the data submitted by each company is certified by the company's chief executive officer upon submission. Data extracted from the SEC's Edgar database is required to be accurate by the SEC. Finally, data

collected from Equilar Inc. reflects data that is extracted from SEC filings. Access to Equilar-compiled data is through a subscription service and can be checked against actual SEC filings.

b. How is data checked for completeness?

Special Master's Office staff review all submitted data elements.

c. Is the data current? What steps or procedures are taken to ensure the data is current and not out-of-date? Name the document (e.g., data models.)

All requested data is current for the applicable time periods. With respect to data provided by Equilar, the data can be checked against actual SEC filings.

d. Are the data elements described in detail and documented? If yes, what is the name of the document?

At present, the data elements are contained in Excel spreadsheets. These spreadsheets are not titled.

Attributes of the Data

1. Is the use of the data both relevant and necessary to the purpose for which the system is being designated?

Yes. The data that the Office of the Special Master has requested, and which the companies are required to submit information by the Interim Final Rule (IFR) on Executive Compensation, is both relevant and necessary for the determinations of compensation payments and structures required by the IFR.

2. Will the system derive new data or create previously unavailable data about an individual through aggregation from the information collected, and how will this be maintained and filed?

No new data is created beyond what is provided by the individual's employer or what is obtained through publicly disclosed filings.

3. Will the new data be placed in the individual's record?

Since no new data is created, no data is added to an individual's record.

4. Can the system make determinations about employees/public that would not be possible without the new data?

Not applicable. No new data is created or derived.

5. How will the new data be verified for relevance and accuracy?

Not applicable. No new data is created or derived.

6. If the data is being consolidated, what controls are in place to protect the data from unauthorized access or use?

Access to the data is limited to members of the Office of the Special Master who are chartered to review, analyze and develop recommended compensation structures.

7. If processes are being consolidated, are the proper controls remaining in place to protect the data and prevent unauthorized access? Explain.

The data is submitted in an encrypted manner by the company to a secure Treasury mailbox. Data is then moved to either a controlled access SharePoint or controlled access shared drive.

8. How will the data be retrieved? Does a personal identifier retrieve the data? If yes, explain and list the identifiers that will be used to retrieve information on the individual.

Data is submitted and stored, generally, in Excel format. Data includes the employee's name and a randomly assigned id number. Data may be consolidated or reviewed based on name and/or employee id. Other records may be received and stored in PDF format. These may be reviewed online or in paper copy. These documents may include name and/or employee id.

9. What kinds of reports can be produced on individuals? What will be the use of these reports? Who will have access to them?

Data is reviewed on an individual and aggregate company basis to determine the appropriate compensation structure for the individual and company. The data is maintained within the Office of the Special Master.

Maintenance and Administrative Controls

1. If the system is operated in more than one site, how will consistent use of the system and data be maintained in all sites?

The system is not operated in more than one site. Data is maintained on a controlled-access shared drive, a controlled-access SharePoint, a relational database with limited access and paper copies maintained in the Office of the Special Master in the Main Treasury building.

2. What are the retention periods of data in this system?

The records will be maintained indefinitely until a record disposition schedule submitted to the National Archives Records Administration has been approved.

3. What are the procedures for disposition of the data at the end of the retention period? How long will the reports produced be kept? Where are the procedures documented?

The records will be maintained indefinitely as indicated in the above answer.

4. Is the system using technologies in ways that the bureau/office has not previously employed (e.g., monitoring software, Smart Cards, Caller-ID)?

No.

5. How does the use of this technology affect public/employee privacy?
Not applicable.

6. Will this system provide the capability to identify, locate, and monitor individuals? If yes, explain.

Yes. The Department collects information from each TARP recipient in connection with the review of compensation payments and compensation structures applicable to SEOs and certain highly compensated employees. Information with respect to certain payments to highly compensated employees will also be reviewed in connection with a determination of whether such payments were inconsistent with the purposes of section 111 of EESA or TARP, or were otherwise contrary to the public interest.

7. What kinds of information are collected as a function of the monitoring of individuals?

The type of information collected may be:

- a. Comprehensive compensation data provided by the individual's employer for current and prior years;
- b. Information to compensation plan design and documentation; and
- c. Company performance data relating to compensation plans

8. What controls will be used to prevent unauthorized monitoring?

Access to data is limited to the Special Master and his staff, who have a need-to-know.

9. Under which Privacy Act SORN does the system operate? Provide number and name.

10. If the system is being modified, will the Privacy Act SORN require amendment or revision? Explain.

This is a new system of records with a new SORN.

Access to Data

1. Who will have access to the data in the system? (e.g., contractors, users, managers, system administrators, developers, others.)

Information in the system will be accessible only to the Special Master and his staff. In addition, the Office of the Special Master may disclose information as permitted by the Privacy Act and pursuant to the System of Records Notice for this system.

2. How is access to the data by a user determined? Are criteria, procedures, controls, and responsibilities regarding access documented?

Access to the data is limited solely to members of the Office of the Special Master. This includes access to the shared drive, SharePoint and paper copies.

3. Will users have access to all data on the system or will the user's access be restricted?

Only members of the Office of the Special Master have access to all the data on the system.

4. What controls are in place to prevent the misuse (e.g., unauthorized browsing of data by those having access? (list processes and training materials.)

Data in electronic format is encrypted or password protected. Direct access is limited to employees within the Office of Financial Stability whose duties require access. The building where the records are maintained is located after hours and has a 24 hour security guard. Personnel screening and training are employed to prevent unauthorized disclosures

5. Are contractors involved with the design and development of the system and will they be involved with the maintenance of the system? If yes, was Privacy Act contract clauses inserted in their contracts and other statutory and regulatory measures addressed?

Contractors were involved with the design and development of the system, but do not have access to any PII contained within the system. However, Treasury inserted Privacy Act clauses in the Agreements with the contractors, and these terms are mirrored in any

contracts enter into with contractors. In addition, the contractors and the system of records are subject to the Treasury's regulations on conflicts of interest and confidentiality of information issued pursuant to EESA.

6. Do other systems share data or have access to the data in the system? If yes, explain.

No.

7. Who will be responsible for protecting the privacy rights of the public and employees affected by the interface?

The Treasury will be responsible for protecting the privacy rights (as specified in the Privacy Act, 5 U.S.C. § 552a, and other relevant legal requirements).

8. Will other agencies share data or have access to the data in this system (e.g. Federal, State, Local, and Others)?

Other agencies will not have access to information contained in the system, except as permitted by the Privacy Act or the System of Records Notice for this system which details a number of Routine Uses to allow disclosure of data from this system to other Federal Agencies.

9. How will the data be used by the other agency?

Information contained in the system may be used by other agencies in connection with the administration of the Program and for legal and/or compliance purposes. Please see response to item 8 immediately above.

10. Who is responsible for assuring proper use of the data?

The Treasury and the Office of the Special Master are responsible for assuring that information contained in the system is used properly.

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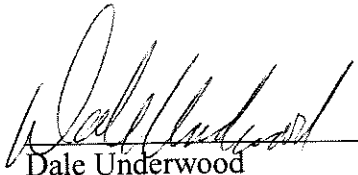
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Approval Signature

 4/6/2010
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