

**Questions for George Madison
Senator Chuck Grassley
July 31, 2009**

1. The Special Inspector General for the Troubled Asset Relief Program (SIGTARP) was created by the Emergency Economic Stabilization Act of 2008 (EESA) (P.L. 110-343). SIGTARP was given additional authorities and responsibilities by the Special Inspector General for the Troubled Asset Relief Program Act of 2009 (P.L. 111-15). Despite these express authorizations to “conduct, supervise, and coordinate an audit or investigation of any action” under the EESA, the Department of the Treasury continues to question where the SIGTARP is located in the U.S. Government. In fact, Treasury has gone so far as to request that the Office of Legal Counsel (OLC) at the Department of Justice issue a formal opinion as to where the SIGTARP is located. The Office of the General Counsel (OGC) at Treasury requested this legal opinion based upon concerns that they would waive applicable privileges, such as the attorney client privilege. The official request also asks whether SIGTARP reports to the Secretary.

On July 7, 2009, you responded to a number of written questions regarding the authority of the Secretary of the Treasury to withhold information from the SIGTARP and whether the Secretary has the authority to halt an audit or investigation. You indicated in your responses that “Section 3(a) of the Inspector General Act of 1978 provides that the Secretary is prohibited from ‘prevent[ing] the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.’” This provision you cite is in the Inspector General Act of 1978 and incorporated to SIGTARP in the EESA. Treasury has questioned whether this provision of the Inspector General Act is applicable to SIGTARP because of what they view is the open question of whether SIGTARP reports to the Secretary. Your response indicates that you believe the SIGTARP has the authority to operate independently from Treasury and that the Secretary cannot halt an audit or investigation initiated by SIGTARP because the EESA incorporates this provision from the Inspector General Act. Because your position appears to be at odds with that of Treasury, please answer the following:

- Do you believe the SIGTARP is part of the Department of the Treasury? If not, please explain why you believe SIGTARP is not part of the Treasury.**

Yes.

- Do you believe that the SIGTARP reports directly to the Secretary? If not, please explain why you believe SIGTARP does not report to the Secretary.**

Section 3(a) of the Inspector General Act of 1978 provides that “[e]ach Inspector General shall report to and be under the general supervision of the head of the establishment involved . . .” EESA does not address the applicability of this provision to SIGTARP although the Inspector General Act is generally incorporated by EESA. The SIGTARP in his legal memorandum (dated April 7, 2009), which at his request was submitted to the Department of Justice, states that “SIGTARP is Not Subject to Secretarial Supervision.” Accordingly, there is an ambiguity in EESA about whether this provision of the Inspector General Act applies to SIGTARP.

The career attorneys at the Department requested guidance from the Department of Justice on this question. However, even if the SIGTARP is under the general supervision of the Secretary as provided for under the Inspector General Act, this general supervision would not allow the Secretary to interfere with a SIGTARP audit or investigation.

- **Do you believe that turning over documents from Treasury to SIGTARP would waive any applicable privileges, including but not limited to, the attorney client privilege? Why or why not?**

I do not believe that any privileges would be waived because I believe that the SIGTARP is part of the Executive Branch.

- **If confirmed, will you withhold documents and information from SIGTARP until DOJ/OLC issues an opinion on the status of SIGTARP? Why or why not?**

No, as stated above, I do not believe that there are any privilege issues because I believe that the SIGTARP is part of the Executive Branch. Also, I have been advised that all documents requested by SIGTARP have been provided.

- **You indicated that the Secretary does not have the ability to halt an audit or investigation initiated by the SIGTARP. Do you believe OGC has the authority to halt an audit or investigation initiated by the SIGTARP?**

No.

- **If confirmed, will you rescind the DOJ/OLC request sent by OGC? Why or why not?**

As discussed above, the question whether the SIGTARP is under the general supervision of the Secretary as provided for under Inspector General Act is unclear under EESA. As you know, the legal analysis of both the Department's career attorneys and the SIGTARP have been furnished to the Justice Department. In addition, the SIGTARP stated in his legal memorandum that has been furnished to you previously: "SIGTARP does not object to your plan to seek guidance from OLC." In light of these facts, I believe that the request to seek the correct legal answer to this question should remain with the Justice Department. I would add again that, regardless of what the OLC's opinion is on this narrow legal question, it is clear that the Treasury Department does not have the authority to halt an audit or investigation by the SIGTARP, nor would I, if confirmed, withhold documents or information from the SIGTARP.

- **If confirmed, will you pledge to work cooperatively and provide all documents, information, and access to witnesses in a timely fashion to the SIGTARP? Why or why not?**

Yes, it is in the best interest of all involved for the Department to work cooperatively with the SIGTARP.

- **Do you believe Treasury has the authority to withhold any documents, information, or witnesses from SIGTARP? If so, why (please cite all applicable case law and statutes supporting your position).**

No.

2. **On July 23, 2009, the Government Accountability Office (GAO) released its sixth report on the Troubled Asset Relief Program (TARP). This report addresses the Department of Treasury's Home Affordable Modification Program (HAMP), a plan to use \$50 billion in TARP funds to encourage banks to lower the monthly mortgage payments of borrowers facing foreclosure. I have previously written to Treasury asking that they ensure that homeowners who improperly obtained mortgages by misrepresenting their income not be rescued with taxpayer dollars.**

- (a) **Will you promise that Treasury will conduct a review of the original loan documents of homeowners that apply for mortgage modifications under the HAMP program to confirm that Treasury does not allow homeowners who misrepresented their income on the loan applications to be rescued with taxpayer dollars? If not, explain in detail why not?**

I share your concern that the Home Affordable Modification Program be sufficiently targeted to help homeowners who acquired their mortgages in good faith and who are making every possible effort to stay current on their mortgage payments. I would promise that, if confirmed, I would arrange for Treasury officials to meet with you to discuss what types of procedures could be developed to accomplish this goal consistent with the program's objectives. In seeking to target the assistance in this manner, I understand that Treasury must deal with the following issues, among others:

- i) In order to determine whether a borrower misrepresented their income at the time the loan was originated, Treasury would need to determine if the information containing the representation as to income is still available. While the current servicer may have that information, in many cases it does not because it was not the originator of the loan and it never obtained, or it did not retain, the records.
- ii) In order to establish whether a representation made at the time of origination was accurate, Treasury would need to obtain documentation as to a borrower's income at the time. A servicer would need to obtain tax returns, pay stubs or similar data as of the date the loan was originated. There may be many borrowers who did not misrepresent their income but who may not have that information or may not be able to obtain it easily. This could cause otherwise worthy recipients to be rejected or to not apply.
- iii) If such information is obtained and it indicates that there was a misrepresentation, Treasury must make sure that the borrower, rather than a third party, was in fact responsible for the misrepresentation. For example, it has been widely reported that in the subprime market, borrowers were often encouraged to overstate their income, or brokers and originators even overstated a borrower's income on an application without a borrower's knowledge.
- iv) In developing procedures to determine whether misrepresentations occurred and who was responsible for them, Treasury must consider the consequences of such procedures on who will apply for the program, and what communities will be helped. While the goal of such procedures is to target assistance to deserving borrowers, Treasury must be careful not to develop procedures that result in reducing or limiting the assistance to other deserving borrowers who do not have the records, or whose records are missing. Treasury also faces a risk of reducing or limiting assistance to deserving communities. This is because many of the communities most in need of assistance may also be communities that were most vulnerable to aggressive or improper marketing practices because of the level of financial literacy or knowledge.

It is for these reasons that I would like to, if confirmed, arrange for a meeting between your staff and Treasury officials to discuss these issues further.

(b) Will you promise that Treasury will require borrowers to sign, under penalty of perjury, that their original loan application was free from fraud and/or misstatements, and that their loan modification application is free from fraud and/or misstatements? If not, explain in detail why not?

I agree with you that it would be desirable to review original loan documents for fraud, throughout the mortgage market, and not just for modified loans, to detect both borrower and lender mis-statements; however it is my understanding that, given that the original application information is often unavailable to the current servicer or the borrower, there are practical obstacles involved in any effort to systematically verify borrower certifications regarding original loan applications, which would require borrowers to make certifications about documents to which they no longer have access. It is my understanding that given the overriding imperatives of keeping people in their homes and protecting home values in hard-pressed communities, Treasury has concluded that the focus should be on preventing fraud in what they have control over - loan modifications.

Treasury, however, currently does require that borrowers certify on loan modifications that under penalty of perjury all documents and information provided in connection with their loan modification application is free from fraud and/or misstatements. Some examples of such documents are attached.

(c) Will you promise that Treasury will require borrowers to complete IRS Form 4506-T for the years covered by the original and modified loan periods? If not, explain in detail why not?

Borrowers are currently required to complete an IRS Form 4506-T for the most recently filed tax return period, to document income for a HAMP modification.

Borrowers do not have to supply an IRS Form 4506-T for the period covering the origination because neither income nor DTI at time of origination is required for consideration for a modification and to require servicers to verify income at origination would add further complexity and slow the pace of modifications.

(d) Will you promise that Treasury will protect taxpayers by requiring fraud insurance for each modified loan? If not, explain in detail why not?

My understanding is that fraud insurance is not required for each modified loan because of the extensive income verification already required as part of the modification program. For example, two paystubs, verification on residence, and the IRS Form 4506-T are all required for modifications.

I am aware that Treasury maintains fraud prevention as a top priority for the program. Treasury expects to have in place the strong safeguards against fraud or misuse of this

program administered by Freddie Mac, the compliance agent. Additionally, expenditures on fraud insurance could decrease the amount of limited tax dollars available to help prevent avoidable foreclosures. Finally, the program is subject to all of the oversight currently applied to the TARP program, including oversight by the GAO, two Congressional panels and a Special Inspector General.

- 3. Redefault rates are a serious problem in loan modification programs. A recent report by the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) showed redefault rates of 52 percent during the first 12 months after mortgage modification in a similar program managed by the FDIC. To combat redefault, Treasury plans to require homeowners with high household debt to undergo counseling. But according to the GAO HAMP report, Treasury does not intend to monitor the counseling to ensure success. Treasury is about to spend billions of taxpayer dollars to prevent foreclosures, and a redefault rate anywhere near 52 percent in this \$50 billion program would be a catastrophe. The purpose is to prevent foreclosures, not just delay them for a year. Will you promise that Treasury will adopt the GAO's recommendation to monitor the counseling process? If not, explain in detail why not? What other steps can Treasury take to reduce the likelihood of redefaults? Please explain in detail.**

If confirmed, I will promise that Treasury will meet with GAO, servicers and counselors to come up with a practical method to monitor the counseling process in order to address redefaults.

- 4. The GAO HAMP report also says that the need for Treasury's \$10 billion Home Price Decline Protection (HPDP) program is 'unclear.' It seems Treasury is proposing to spend taxpayer money to offer incentives for mortgage modifications in areas of the country where home prices are severely depressed without first determining that the modifications would not have occurred anyway. GAO is right to question whether this \$10 billion program is necessary, and recommends that Treasury reevaluate the basis and design of the HPDP program to ensure that HAMP funds are used to maximize the overall benefits of utilizing taxpayer dollars for loan modifications. Will you promise that Treasury will adopt the GAO's recommendation to reevaluate the HPDP program to ensure that HAMP funds are not used to modify mortgages that would have been modified even without the HPDP program? If not, explain in detail why not?**

Yes, if confirmed, I promise that Treasury will commit to re-evaluate the basis and design of the HPDP program to ensure that HAMP funds are being used efficiently to maximize the number of borrowers being helped and to maximize efficient use of taxpayer dollars.

5. **The GAO HAMP report is critical of the lack of staffing in the Homeownership Preservation Office (HPO). Will you promise that Treasury will adopt the GAO's recommendation to fully staff vacant positions in the HPO, including the position of Chief of Homeownership Preservation, as quickly as possible? If not, explain in detail why not?**

Yes.

6. **The GAO HAMP report is critical of Treasury's failure to implement operational procedures and internal controls to ensure that servicers have the capacity to meet HAMP program requirements. This is especially important because, unlike other TARP programs, HAMP expenditures are not investments. Once expended, HAMP payments will not be recouped. Furthermore, under the HAMP program servicers are tasked with distributing incentive payments to borrowers and investors, meaning that servicers, i.e., private banks, will be distributing taxpayer dollars. This makes adequate internal controls by Treasury over servicers a matter of paramount importance. Will you promise that Treasury will adopt the GAO's recommendation to expeditiously develop a means of systematically assessing servicers' capacity to meet program requirements so that Treasury can understand and address any risks associated with individual servicers' abilities to fulfill HAMP program requirements? If not, explain in detail why not?**

Yes. My understanding is that Treasury has implemented and continues to adapt an extensive and robust internal control system for HAMP. I further understand that Treasury will continue to evaluate internally and will, with Freddie Mac and Fannie Mae, address any risks associated with individual servicers' abilities to fulfill HAMP program requirements consistent with GAO's recommendations.



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MAKING HOME AFFORDABLE



NOTICE TO BORROWERS

Be advised that you are signing the following documents under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution.

By signing the enclosed documents you certify, represent and agree that:

“Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the program, are true and correct.”

SIGTARP Hotline

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by:

Online Form: www.SIGTARP.gov
Phone: 877-SIG-2009 (toll-free)
Fax: 202-622-4559
Mail to: Hotline
Office of the Special Inspector General
For The Troubled Asset Relief Program
1500 Pennsylvania Ave., NW, Suite 1064
Washington, D.C. 20220

For all other inquiries related to your mortgage, please contact your Lender.

Home Affordable Modification Program Hardship Affidavit

Borrower Name (first, middle, last): _____ Date of Birth: _____
Co-Borrower Name (first, middle, last): _____ Date of Birth: _____
Property Street Address: _____
Property City, ST, Zip: _____
Servicer: _____
Loan Number: _____

In order to qualify for _____'s ("Servicer") offer to enter into an agreement to modify my loan under the federal government's Home Affordable Modification Program (the "Agreement"), I/we am/are submitting this form to the Servicer and indicating by my/our checkmarks ("✓") the one or more events that contribute to my/our difficulty making payments on my/our mortgage loan.

- | | | |
|---|---|---|
| Borrower
Yes No | Co-Borrower
Yes No | |
| <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> | My income has been reduced or lost. For example: unemployment, underemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings. I have provided details below under "Explanation." |
| Yes No | Yes No | |
| <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> | My household financial circumstances have changed. For example: death in family, serious or chronic illness, permanent or short-term disability, increased family responsibilities (adoption or birth of a child, taking care of elderly relatives or other family members). I have provided details below under "Explanation." |
| Yes No | Yes No | |
| <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> | My expenses have increased. For example: monthly mortgage payment has increased or will increase, high medical and health-care costs, uninsured losses (such as those due to fires or natural disasters), unexpectedly high utility bills, increased real property taxes. I have provided details below under "Explanation." |
| Yes No | Yes No | |
| <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> | My cash reserves are insufficient to maintain the payment on my mortgage loan and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts). Cash reserves do not include assets that serve as an emergency fund (generally equal to three times my monthly debt payments). I have provided details below under "Explanation." |
| Yes No | Yes No | |
| <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> | My monthly debt payments are excessive, and I am overextended with my creditors. I may have used credit cards, home equity loans or other credit to make my monthly mortgage payments. I have provided details below under "Explanation." |
| Yes No | Yes No | |
| <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> | There are other reasons I/we cannot make our mortgage payments. I have provided details below under "Explanation." |

Information for Government Monitoring Purposes

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

BORROWER <input type="checkbox"/> I do not wish to furnish this information		CO-BORROWER <input type="checkbox"/> I do not wish to furnish this information	
Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino		Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	
Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White		Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male		Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male	
To be Completed by Interviewer	Interviewer's Name (print or type)		Name/Address of Interviewer's Employer
<input type="checkbox"/> Face-to-face interview	Interviewer's Signature Date		
<input type="checkbox"/> Mail	Interviewer's Phone Number (include area code)		
<input type="checkbox"/> Telephone			
<input type="checkbox"/> Internet			

Borrower/Co-Borrower Acknowledgement

1. Under penalty of perjury, I/we certify that all of the information in this affidavit is truthful and the event(s) identified above has/have contributed to my/our need to modify the terms of my/our mortgage loan.
2. I/we understand and acknowledge the Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate Federal law.
3. I/we understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I/we understand that if I/we have intentionally defaulted on my/our existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this Hardship Affidavit, or if I/we do not provide all of the required documentation, the Servicer may cancel the Agreement and may pursue foreclosure on my/our home.
5. I/we certify that my/our property is owner-occupied and I/we have not received a condemnation notice.
6. I/we certify that I/we am/are willing to commit to credit counseling if it is determined that my/our financial hardship is related to excessive debt.
7. I/we certify that I/we am/are willing to provide all requested documents and to respond to all Servicer communication in a timely manner. I/we understand that time is of the essence.

