

CLIENT ALERT

SIGTARP MAKES NEW RECOMMENDATIONS REGARDING PPIF

In his *Quarterly Report to Congress* submitted on April 21, 2009, the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) made a series of new recommendations to address what the SIGTARP identified as certain “inherent vulnerabilities” in the Department of the Treasury’s Public-Private Investment Program (PPIP).

The report indicates that certain aspects of PPIP make it inherently vulnerable to fraud, waste and abuse. Of specific concern to the SIGTARP are issues related to conflicts of interest facing fund managers, collusion between participants and vulnerabilities to money laundering. Accordingly, the SIGTARP made a series of recommendations to address its concerns.

With respect to conflicts of interest, the SIGTARP recommends that the Department of the Treasury impose strict conflict of interest rules on fund managers of Private-Public Investment Funds (PPIFs) formed pursuant to PPIP. The SIGTARP further recommends that these rules apply to fund managers across all PPIP programs, and that the rules specifically address whether and to what extent the managers can (i) invest PPIF funds in legacy assets that they hold or manage on behalf of themselves or their clients, or (ii) conduct PPIF transactions with entities in which they have invested on behalf of themselves or others.

In connection with its concerns regarding collusion, the SIGTARP recommends that Treasury (i) mandate transparency with respect to the participation and management of PPIFs, including disclosure of the beneficial owners of all of the private equity stakes in the PPIFs and of all transactions undertaken in them; (ii) obtain and publicly disclose certified reports—from all PPIFs across all programs—that include all transactions and the current valuation of all assets; (iii) require PPIF fund managers to retain all books and records pertaining in any way to the PPIF (including all e-mails, instant messages and all other documents); (iv) require PPIF fund managers to permit the SIGTARP and other oversight entities access to the fund manager’s books and records and to employees, upon request; and (v) require private investors to provide access to the private investors’ books and records, at least to the extent that they relate to the PPIF investment.

In addition, the SIGTARP recommends that Treasury require PPIF fund managers to (i) provide PPIF equity stakeholders (including TARP) “most-favored nations clauses,” requiring that the fund managers treat the PPIFs (and the taxpayers backing the PPIFs) on terms at least as favorable as those given to all other parties with whom they deal; (ii) acknowledge that they

owe the PPIF investors—both the private investors and TARP—a fiduciary duty with respect to the management of the PPIFs; and (iii) have a “robust” ethics policy in place and a compliance apparatus to ensure adherence to such policy.

To address its concerns related to money laundering and to prevent the participation of actors prone to abusing the system, the SIGTARP recommends that Treasury require that all PPIF fund managers have stringent investor-screening procedures, including comprehensive “Know Your Customer” requirements at least as rigorous as those of a commercial bank or retail brokerage operation. Additionally, the SIGTARP recommends that fund managers should be required to provide Treasury with the identities of all of the beneficial owners of the private interests in the fund, so that Treasury can do appropriate diligence to ensure that investors in the funds are legitimate.

The report also includes a number of additional recommendations with respect to the Legacy Loans Program and the Legacy Securities Program established by the PPIP, as well as the Term Asset-Backed Securities Loan Facility. Those recommendations will be summarized in a separate client alert.

CONTACT INFORMATION

We also invite you to visit the firm’s [Economic Recovery Resource Center](#) for news and analysis concerning the government’s economic recovery programs and their impact on business and the law.

If you have any questions concerning this alert, please contact—

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