

CLIENT ALERT

TARP-RELATED EXECUTIVE COMPENSATION RESTRICTIONS CLARIFIED

The Legacy Securities Public-Private Investment Program (PPIP) announced by the Department of the Treasury in March 2009 calls for the formation of Public-Private Investment Funds (PPIFs), in which Treasury and private investors will “co-invest” funds to purchase certain legacy securities. Treasury’s investment in the PPIFs will use funds from the Troubled Assets Recovery Program (TARP). The PPIFs related to Legacy Securities will be managed by asset managers who have been selected by Treasury as eligible and who raise sufficient equity to satisfy Treasury’s requirements.

Pursuant to the Emergency Economic Stabilization and Recovery Act of 2008 (EESA), recipients of TARP funds may be subject to certain executive compensation restrictions. As such, there has been much speculation as to whether the EESA compensation restrictions would apply to asset managers of Legacy Securities PPIFs.

On April 21, 2009, Treasury issued an updated “Frequently Asked Questions” circular announcing that the executive compensation restrictions will not apply to asset managers of, or private investors in, PPIFs, provided the PPIFs are structured such that the asset managers themselves and their employees are not employees of, or controlling investors in, the PPIFs, and other investors are purely passive.

In addition, while testifying before a congressional oversight panel yesterday, Treasury Secretary Timothy Geithner indicated that the executive compensation restrictions required by EESA do not necessarily need to be applied to the PPIFs.

Secretary Geithner testified that Treasury is in the process of completing a draft of a rule for applying compensation restrictions to PPIFs. When asked whether the executive compensation issues will discourage participation in the PPIFs, Secretary Geithner indicated that he felt strongly about the need for clarity early and that a draft of the rule will be released for comment in the next couple of weeks. He further stated that, in crafting the rule, Treasury will seek to apply the law requiring executive compensation restrictions to recipients of TARP funds as required under EESA, while, at the same time, “doing as good a job as Treasury can do in making the programs work.”

These statements are consistent with Treasury’s April 9, 2009 statement to the Office of the Special Inspector General of TARP (SIGTARP). Treasury previously announced in its March 23, 2009 release of “Frequently Asked Questions” that the TARP restrictions on executive compensation would not apply to “passive investors.” Treasury was quoted in the SIGTARP’s Quarterly Report to Congress released yesterday that if fund managers seek to be co-owners of the PPIFs, “they would not be passive investors and could be subject to the executive compensation restrictions.” That report can be found [here](#).

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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