

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAB (15 CFR 700)	RATING	PAGE OF PAGES 1 20	
2. CONTRACT NUMBER TPD-SIG-10-R-0001		3. SOLICITATION NUMBER RFQ-OIG-10-0002		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED
7. ISSUED BY Bureau of the Public Debt Division of Procurement Avery 5F 200 Third Street Attn: A. White Parkersburg WV 26101		CODE BPD-AAWHITE	6. ADDRESS OFFER TO (Other than Item 7)		
6. REQUISITION/PURCHASE NUMBER SIG-40000-09-0001					

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 6, or if hand carried, in the depository located in _____ until _____ local time _____ (Date)

CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provisions No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME AARON WHITE	B. TELEPHONE (NO COLLECT CALLS) AREA CODE NUMBER EXT.	C. E-MAIL ADDRESS AARON.WHITE@BPD.TREAS.GOV
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agree, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232.6)

10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
N/30 PROMPT PAY			

14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR KLANJAC MANUALI & VISKOVIC LLP 30 WALL STREET 12TH FLOOR NEW YORK NY 10005-1304	CODE 827825980	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
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16B. TELEPHONE NUMBER AREA CODE NUMBER EXT. 646 205-2955	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>	17. SIGNATOR	18. OFFER DATE 12/22/09
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AWARD (To be completed by government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT \$125,000.00	21. ACCOUNTING AND APPROPRIATION See schedule
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) () <input type="checkbox"/> 41 U.S.C. 253 (c) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM B
24. ADMINISTERED BY (if other than Item 7) See Schedule G	25. PAYMENT WILL BE MADE BY See Schedule G	CODE ARC/ASD/SIG
26. NAME OF CONTRACTING OFFICER (Type or print) JEFFREY W. STEPHENSON	27. UNITED STATES OF AMERICA	28. AWARD DATE

(Signature of Contracting Officer)

IMPORTANT - Award will be made on this Form, or on Standard Form 28, or by other authorized official written notice.
AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is unusable

NAME OF OFFEROR OR CONTRACTOR
KLANJAC MANUALI & VISKOVIC LLP

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>Kranjac Manuali & Viskovic LLP</p> <p>[REDACTED]</p> <p>SIGTARP</p> <p>[REDACTED]</p> <p>THIS IS A TIME-AND-MATERIALS TYPE CONTRACT, WITH FIXED LABOR RATES. THE CONTRACTOR SHALL NOT EXCEED THE OBLIGATION OR WORK BEYOND THE HOURS AVAILABLE ON THIS ORDER WITHOUT THE PRIOR APPROVAL OF THE CONTRACTING OFFICER.</p> <p>Admin Office: Bureau of the Public Debt Division of Procurement psbl@bpd.treas.gov 200 Third Street, A5F Parkersburg WV 26101</p> <p>Payment: BUREAU OF THE PUBLIC DEBT ARC/ASD/SIG, AVERY 3G PO BOX 1328 SIG@BPD.TREAS.GOV PARKERSBURG WV 26106-1328</p> <p>Accounting Info: [REDACTED]</p> <p>FOB: Destination Period of Performance: 12/23/2009 to 12/24/2012</p>				
0001	<p>Legal Services Partner [REDACTED] Associate [REDACTED] Legal Assistant [REDACTED] NTE \$125,000</p> <p>Obligated Amount: \$125,000.00</p>				125,000.00
0002	<p>Legal Services Option Year 1 Partner [REDACTED] Associate [REDACTED] Legal Assistant [REDACTED] Continued ...</p>				0.00

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
 TPD-SIG-10-R-0001

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NAME OF OFFEROR OR CONTRACTOR
 KRANJAC MANUALI & VISKOVIC LLP

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
0003	Amount: \$125,000.00 (Option Line Item) 12/16/2010 Legal Services Option Year II Partner [REDACTED] Associate [REDACTED] Legal Assistant [REDACTED] Amount: \$125,000.00 (Option Line Item) 12/15/2010				0.00
The total amount of award: \$375,000.00. The obligation for this award is shown in box 20.					

SECTION B – SUPPLIES OR SERVICES PRICES

B.1. CONTRACT VALUE

The maximum contract value shall not exceed \$375,000.00.

B.2. PRICING SCHEDULE

The hourly rates set forth in this section for all line items are fixed for the duration of the contract. Hourly rates shall be fully loaded to include benefits, payroll taxes, vacation, sick leave, overhead and office expenses.

LABOR RATE TABLE PRICING MODEL – BASE YEAR

Labor Category	Hourly Labor Rate
Partner	[REDACTED]
Associate	[REDACTED]
Legal Assistant	[REDACTED]

LABOR RATE TABLE PRICING MODEL – OPTION YEAR I

Labor Category	Hourly Labor Rate
Partner	[REDACTED]
Associate	[REDACTED]
Legal Assistant	[REDACTED]

LABOR RATE TABLE PRICING MODEL – OPTION YEAR II

Labor Category	Hourly Labor Rate
Partner	[REDACTED]
Associate	[REDACTED]
Legal Assistant	[REDACTED]

B.3. TRAVEL

Local travel is not authorized for performance under this contract. However, the Government reserves the right to authorize travel, by modification, in the event travel is required outside the Washington D.C. Metro area it will be reimbursed in accordance with the provisions of the Federal Travel Regulations. The Federal Travel Regulations and current per diem rates can be accessed at: www.gsa.gov/ftt.

SECTION C – DESCRIPTION/SPECIFICATIONS

C.1. SCOPE OF WORK

BACKGROUND

The Emergency Economic Stability Act of 2009 (“EESA”), Pub. Law No. 110-343, EESA created the Troubled Asset Relief Program (“TARP”) and authorized the Department of the Treasury (“Treasury”) to purchase, manage, and sell troubled assets under section 101, and to guarantee such assets under section 102. Additionally, section 121 of EESA, as amended, which incorporated selected provisions of the Inspector General Act of 1978, 5 U.S.C. App. 3, created the Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) as an independent agency within Treasury responsible to conduct, supervise, and coordinate audits and investigations of any actions taken under EESA.

OBJECTIVE

The objective of this contract is to obtain supplemental legal services in order to provide SIGTARP with rapid expert advice on Corporate Law, Banking Law, and Securities Law.

SCOPE

SIGTARP has the need for legal advice to augment its existing capabilities. SIGTARP will draw upon the resources of outside counsel (“Contractor”) when needed, as issues arise. The Contractor selected shall have demonstrable qualifications to handle all of the following legal services:

(A) Analyzing and advising SIGTARP with respect to rights and obligations under various operating and other agreements entered into by or on behalf of TARP participants, vendors, Treasury or other agencies involved in TARP.

(B) Analyzing and advising SIGTARP with regard to corporate law issues, including but not limited to formation, acquisitions, sales, joint ventures, mergers, governance, conflicts of interest issues, public offerings, reorganization, and taxation.

(C) Analyzing and advising SIGTARP with respect to banking law issues, including but not limited to charters, holding companies, reporting requirements, fund transfers, credit facilities, structured derivative products, and capitalization.

(D) Analyzing and advising SIGTARP with regard to securities law issues, including but not limited to issuance, registration, purchase and sale, underwriting, proxies, and fiduciary duties.

SECTION D – PACKAGING & MARKING**D.1. PAYMENT OF POSTAGE AND FEES**

All postage and fees related to submitting information and materials to the Contracting Officer (CO) or the Contracting Officer's Technical Representative (COTR) shall be paid by the Contractor.

D.2. PACKAGING & MARKING

(a) All information submitted to the Contracting Officer or the COTR shall clearly indicate the contract number for which the information is being submitted.

SECTION E – INSPECTION & ACCEPTANCE**E.1. CONTRACTOR MONITORING RESPONSIBILITY**

Notwithstanding FAR 52.246-6 Inspection – Time-and-Material and Labor-Hour, the contractor is responsible for periodic and day-to-day inspection and monitoring of all work performed to ensure compliance with the contract requirements. The contractor shall note any deficiencies found and corrective action taken and document his corresponding file as to the outcome.

E.2. 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Office will make their full text available. Also, the full text of a clause may be accessed electronically at this address: www.arnet.gov/far/

The following clauses are incorporated by reference:

CLAUSE	TITLE AND DATE
52.246-6	INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001)

SECTION F – DELIVERIES OR PERFORMANCE**F.1. TERM OF CONTRACT**

The base contract period will be for one year, with two one year option periods.

F.2. DELIVERABLES

Rapid Response: The Contactor shall have the ability to meet at the SIGTARP office located at 1801 L Street, NW, Washington DC 20220, within 12 hours to be briefed and commence work on various legal questions provided by SIGTARP throughout the period of performance.

(a) The Contractor will provide oral advice and written memoranda. Documents shall only be delivered to the COTR, SIGTARP's Chief Counsel, unless otherwise directed in writing by the COTR. The Contractor will also provide, as requested, other professional services within the scope in section C.

(b) The Contractor shall provide a monthly status report, delivered to the COTR at the end of each month, documenting the following:

1. Hours and dollars spent, including cumulative totals of each and a forecast of future costs through the next month and total cost at completion;
2. Current Contractor personnel engaged;
3. Any contract issues;
4. Monthly accomplishments.
5. Subcontracts, including socioeconomic category of subcontractor and dollar value.

(c) The Contractor shall provide the status of the Conflicts Mitigation Plan to the COTR in accordance with H.2 as needed.

The following clause is incorporated by reference:

52.242-15 STOP-WORK ORDER (AUG 1989)

SECTION G – CONTRACT ADMINISTRATION DATA

G.1. CONTRACTOR'S PROPOSAL

The Contractor's proposal, or portions thereof, may be incorporated by reference into this contract.

G.2. KEY PERSONNEL

The Contractor shall list below the name(s) of the person(s) who will be assigned the responsibility for success of the work product(s). The individual(s) named shall be recommended by the Contractor in its proposal and subject to discussions and agreement by the Government prior to award. These individual(s) shall be in responsible positions as to allocate and control personnel. The below listed individual(s) are designated as "Key Personnel";

Employee Name

Position Title

[REDACTED]

[REDACTED]

G.3. SUBSTITUTION OF CONTRACTOR PERSONNEL

During the first 180 calendar days of performance, the contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The contractor shall notify the COTR within 5 calendar days after the occurrence of any of these events. The Contractor shall include the circumstances necessitating the proposed replacement of the key personnel and shall provide the name and resume of the proposed replacement. It can be assumed that the COTR would approve any personnel replacement that possesses equal or better experience and education of the person being replaced, but the COTR reserves the right in his/her discretion to refuse any substitution.

G.4. INVOICING

G.4.1. FIXED HOURLY RATE

The Contractor shall invoice for cumulative total hours provided in section F.2. monthly status report for the labor categories provided in their proposal as set forth in the Labor Rate Table. Labor rates billed by the Contractor under this contract shall not exceed those set forth in its Labor Rate Table.

G.4.2. OTHER DIRECT COSTS

The Contractor shall be reimbursed only for the types of disbursements, expenses and charges designated as reimbursable below. Moreover, any reimbursement will be limited to actual costs incurred by the Contractor that are necessary to effect the legal actions under this contract and that are not accounted for as overhead costs in the Contractor's fixed labor rates. All invoices shall be fully documented by

including receipts evidencing payment by the contractor and shall identify the action with which the expenditure is connected.

REIMBURSABLE:

- To the extent authorized in writing in advance by the COTR, charges associated with Certified, Express, and related mail costs customary to the nature of the action that are required for expedited processing or are required by law;
- Non-local travel provided it is in accordance with Clause B.3 of the contract and the Federal Travel Regulations;
- Long distance telephone charges and conference calls (for voice, fax or data);
- Photocopy, binding, and printing services;
- Outside messenger services; and
- Westlaw and Lexis charges that are customary to the nature of the action.

SIGTARP will not pay for markups or surcharges added by a law firm to the items listed above.

NOT REIMBURSABLE:

- Word processing charges;
- Overtime charges;
- Secretarial/clerical charges, except with regard to labor hour charges for hours performed under the Legal Assistant labor category in the contract;
- Fax communication charges (except long distance telephone charges);
- Local travel costs, including car service;
- Local telephone charges;
- Local meal costs;
- Entertainment expenses;
- Books or subscription charges;
- Membership fees;
- Costs of office supplies;
- Storage charges; or
- Costs associated with a lease or purchase of equipment or office space.

G.4.3. INVOICE REQUIREMENTS

- (a) Invoices shall be submitted on a monthly basis in arrears. The Contractor shall retain a copy of all invoices for inspection upon request by the Contracting Officer.
- (b) Invoices shall be submitted electronically to SIG@bpd.treas.gov. Protected Microsoft Excel files are the preferred format, but, Adobe Acrobat Portable Document Format (PDF) and Microsoft Word are also acceptable. A proper invoice must include the following information and/or attached documentation:
 - (1) Name of the business concern and date of invoice.
 - (2) Contract number or other authorization for delivery of property or services.
 - (3) Shipping and payment terms.
 - (4) Name, title, and phone number of responsible official preparing the invoice.
 - (5) Name and signature of Contractor's certifying official, title, phone number, and complete mailing address of responsible official to whom payment is to be sent.
 - (6) Subcontractor's invoices, or any other documentation supporting the invoice.

(d) Invoices shall be paid Net 30 upon receipt.

G.4.4. PAYMENT INFORMATION

Receive a free email notice of your electronic payment. Register at www.ipp.gov.

G.5. OVERPAYMENTS

Accounts Receivable Conversion of Check Payments to EFT: If the Contractor sends the Government a check to remedy duplicate contract financing or an overpayment by the government, it will be converted into an electronic funds transfer ("EFT"). This means the Government will copy the check and use the account information on it to electronically debit the Contractor's account for the amount of the check. The debit from the Contractor's account will usually occur within 24 hours and will be shown on the regular account statement.

The Contractor will not receive the original check back. The Government will destroy the Contractor's original check, but will keep a copy of it. If the EFT cannot be processed for technical reasons, the Contractor authorizes the Government to process the copy in place of the original check.

G.6. DTAR 1052.201-70 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) DESIGNATION AND AUTHORITY (MAR 2002)

(a) The COTR is Bryan Saddler. He may be reached at 202-927-8938 or bryan.saddler@do.treas.gov.

(b) Performance of work under this contract must be subject to the technical direction of the COTR identified above, or a representative designated in writing. The term "technical direction" includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the specification(s)/work statement. The COTR does not have authority to issue technical direction that:

- (1) constitutes a change of assignment or additional work outside the specification(s)/work statement;
- (2) constitutes a change as defined in the clause entitled "Changes";
- (3) in any manner causes an increase or decrease in the contract price, or the time required for contract performance;
- (4) changes any of the terms, conditions, or specification(s)/work statement of the contract;
- (5) interferes with the contractor's right to perform under the terms and conditions of the contract; or
- (6) directs, supervises or otherwise controls the actions of the contractor's employees.

(d) Technical direction may be oral or in writing. The COTR shall confirm oral direction in writing within five work days, with a copy to the contracting officer.

(e) The contractor shall proceed promptly with performance resulting from the technical direction issued by the COTR. If, in the opinion of the contractor, any direction of the COTR, or his/her designee, falls within the limitations in (c), above, the contractor shall immediately notify the contracting officer no later than the beginning of the next Government work day.

(f) Failure of the contractor and the contracting officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled "Disputes."

SECTION H – SPECIAL CONTRACT REQUIREMENTS

H.1. NON-DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

Each Contractor and Subcontractor employee performing work under this contract shall sign and submit a Non-Disclosure Agreement for Sensitive But Unclassified Information that complies with the Department of the Treasury Security Manual TD P 15-71 (Attachment 1), which identifies what is required of the Contractor with respect to non-disclosure of certain information and the penalties associated with noncompliance with those requirements. The Contractor and Subcontractor shall provide the signed Non-Disclosure Agreements to the COTR prior to commencing work. No Contractor and Subcontractor employee shall begin work under this contract until the COTR has accepted his/her Non-Disclosure Agreement. The Contractor and Subcontractor will report to the COTR any breach of confidence by any person as soon as the breach is known.

H.2. CONFLICT OF INTEREST

(a) SIGTARP HAS NOT WAIVED any potential conflicts of interest as defined by Rules 1.7-1.11 of the ABA's Model Rules of Professional Conduct, the Federal Acquisition Regulation ("FAR") or 31 C.F.R. Part 31. Further, Contractor agrees that its future relationship with SIGTARP will be governed by the FAR, 31 C.F.R. Part 31, and this contract. The Contractor agrees to negotiate in good faith concerning the inclusion of any different or additional conflict of interest policies and procedures that may be issued by Treasury pursuant to Section 108(b) of the EESA.

(b) Prior to the execution of a contract and the issuance of any revision to this contract or any task order's statement of work, the Contractor shall prepare a detailed written explanation of all actual conflicts, potential conflicts, or matters that may present the appearance of a conflict under the ABA's Model Rules, the FAR, or 31 C.F.R. Part 31, and shall provide a detailed written plan explaining any and all steps the Contractor will undertake to avoid or mitigate such conflicts. The Contractor's disclosure submission shall include the information specified in 31 C.F.R. § 31.211(b)(1) – (b)(6), including:

1. The Contractor and any proposed or actual subcontractor's or consultant's relationship to any related entities as such term is defined in 31 C.F.R. § 31.201;
2. The categories of troubled assets owned or controlled by the Contractor including any proposed or actual subcontractor or consultant, or any related entity of the Contractor, if the arrangement relates to the acquisition, valuation, disposition, or management of troubled assets;
3. Information concerning all other business or financial interests of the Contractor including its proposed or actual subcontractors or consultants, or the related entities of the Contractor, which could conflict with the Contractor's obligations under the contract;
4. A description of all organizational conflicts of interest and potential conflicts of interest;
5. A written detailed plan to mitigate all organizational conflicts of interest, along with supporting documents; and
6. A certification that the information provided to the Treasury in response to the above items is complete and accurate in all material respects. Only after receiving this information will

Treasury determine whether organizational conflicts of interest prevent the Contractor from consulting for Treasury in that specific matter.

(c) Failure to make full and timely disclosure of actual or potential conflicts of interest, or matters that may present the appearance of a conflict, as well as failure to comply with 31 C.F.R. Part 31 or Treasury conflicts of interest policies and procedures are extremely serious matters. Such failures may subject the Contractor to corrective action including but not limited to: (i) refusal to waive a conflict; (ii) termination of this contract for default; (iii) debarment of the contractor from federal contracting; (iv) referral to the appropriate state licensing authorities; and/or, in appropriate cases (v) civil or criminal actions.

(d) It is solely within the discretion of the SIGTARP to determine whether or not a conflict of interest exists and whether any mitigation plan submitted by the Contractor avoids or mitigates a conflict. Even the appearance of a conflict may result in the denial of a waiver or other appropriate actions. In the event that matters are transferred to another contractor or entity pursuant to the corrective actions listed above, the Contractor is expected to follow Treasury policies and procedures and to cooperate fully in the orderly transfer of such matters.

(e) In addition to complying with 31 C.F.R. Part 31 and any other applicable restrictions, the Contractor will: (1) not represent and/or advise any party other than the United States in any matter that is the subject of a task order during the term of the contract and after the end of the contract; (2) not represent and/or advise any other parties with respect to matters directly related to, or matters that may have a direct effect on, a specific transaction that is the subject of a task order during the term of the contract; and (3) have all attorneys/professional staff assigned to work under this contract receive conflicts training in consultation with the COTR. It is, however, understood that the Contractor may represent clients who seek to engage in a transaction with Treasury under other programs in support of the EESA pursuant to the disclosure and approval procedures at H.2.(f) below. Further, the Contractor shall enter into and enforce agreements with all attorneys/professional staff assigned to work under this contract or task order prohibiting such attorneys/professional staff from representing and/or advising any other party regarding a specific matter that is the subject of a task order under this contract during the term of this contract and for six months thereafter.

(f) No later than 10 business days after the effective date of the contract, or any new task order under the contract or any revision to this contract's or any task order's statement of work, the Contractor shall (i) obtain and review the submissions required by 31 C.F.R. § 31.212 for personal conflicts of interest, and (ii) certify in writing to SIGTARP that all such individuals have no personal conflicts of interest, or are subject to a mitigation plan or waiver approved by SIGTARP. Contractor agrees not to permit any such individual to perform work under this contract or task order with respect to any institution or related entities of such institution with which such individual has disclosed a personal conflict of interest pursuant to 31 C.F.R. § 31.212, absent obtaining SIGTARP's prior consent. In making this determination, the Contractor may rely on the information obtained pursuant to 31 C.F.R. § 31.212(b), unless the Contractor knows or should have known that the information provided is false or inaccurate.

(g) Pursuant to 31 C.F.R. §31.216(b), before the Contractor accepts a contract, task order, or a modification to this contract, the Contractor shall certify to the following:

- (1) The Contractor is aware of the prohibitions of paragraph (a) of 31 C.F.R. § 31.216 and, to the best of its knowledge after making reasonable inquiry, the retained entity has no information concerning a violation or possible violation of paragraph (a) of 31 C.F.R. §31.216.
- (2) Each officer, employee, and representative of the Contractor who participated personally and substantially in preparing a bid, offer, proposal, or request for modification of this contract after the date hereof has certified that he or she:
 - (a) Is familiar with and will comply with the requirements of paragraph (a) of 31 C.F.R. § 31.216; and
 - (b) Has no information of any violations or possible violations of paragraph (a) of 31 C.F.R. § 31.216, and will report immediately to the Contractor any subsequently gained information concerning a violation or possible violation of paragraph (a) of 31 C.F.R. § 31.216.

(h) The Contractor shall include this clause in all subcontracts, consultant agreements, and lower tier subcontracts entered into after the date hereof unless a waiver is requested from, and granted by, the Contracting Officer.

H.3. PUBLIC RELEASE CONTRACT VERSION REQUIREMENT

The contractor agrees to submit, within ten business (10) days from the date the contract is awarded (exclusive of Saturdays, Sundays, and federal holidays), a .pdf file of the fully executed contract or task order with all proposed necessary redactions, including redactions of any trade secrets or any commercial or financial information that it believes to be privileged or confidential business information, for the purpose of public disclosure at the sole discretion of the SIGTARP. The contractor agrees to provide a detailed written statement specifying the basis for each of its proposed redactions, including the applicable exemption under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and, in the case of FOIA Exemption 4, 5 U.S.C. § 552(b)(4), shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by the contractor in response to this contract requirement may itself be subject to disclosure under the FOIA.

SIGTARP will carefully consider all of the Contractor's proposed redactions and associated grounds for nondisclosure prior to making a final determination as to what information the fully executed contract may be properly withheld.

H.4 PERFORMANCE EVALUATION

This contract is subject to a performance evaluation. Following the end of each contract period and at contract completion, a completed Government evaluation shall be forwarded to the Contractor. The Contractor may submit written comments, if any, within the time period specified in the evaluation transmittal. The Contractor's comments shall be considered in the issuance of the final evaluation document. Any disagreement between the parties regarding the evaluation shall be forwarded to the Bureau Chief Procurement Officer (BCPO). The final evaluation of the Contractor's performance is the

decision of the BCPO. A copy of the final performance evaluation report will be sent to the Contractor and to the Government's past performance database at www.ppirs.gov.

SECTION I – CONTRACT CLAUSES**52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Office will make their full text available. Also, the full text of a clause may be accessed electronically at this address: www.arnet.gov/far/

The following clauses are incorporated by reference:

- 52.202-1 DEFINITIONS (JUL 2004)
- 52.203-3 GRATUITIES (APR 1984)
- 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)
- 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
(SEP 2006)
- 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)
- 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR
IMPROPER ACTIVITY (JAN 1997)
- 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
(JAN 1997)
- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL
TRANSACTIONS (SEP 2007)
- 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)
- 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)
- 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
- 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008)
- 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL
(SEPT 2007)
- 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING
WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR
DEBARMENT (SEP 2006)

- 52.215-2 **AUDIT AND RECORDS - NEGOTIATION (JUNE 1999)**
- 52.215-8 **ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)**
- 52.219-6 **NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUNE 2003)**
- 52.219-14 **LIMITATIONS ON SUBCONTRACTING (DEC 1996)**
- 52.222-3 **CONVICT LABOR (JUNE 2003)**
- 52.222-21 **PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**
- 52.222-26 **EQUAL OPPORTUNITY (MAR 2007)**
- 52.222-35 **EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**
- 52.222-36 **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**
- 52.222-37 **EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**
- 52.222-39 **NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**
- 52.222-50 **COMBATING TRAFFICKING IN PERSONS (AUG 2007)**
- 52.223-6 **DRUG-FREE WORKPLACE (MAY 2001)**
- 52.224-14 **PRIVACY ACT NOTIFICATION (APR 1984)**
- 52.224-2 **PRIVACY ACT (APR 1984)**
- 52.225-13 **RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)**
- 52.227-17 **RIGHTS IN DATA – SPECIAL WORKS (DEC 2007)**
- 52.232-7 **PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007)**
- 52.237-8 **DISCOUNTS FOR PROMPT PAYMENT (FEB 2002)**
- 52.232-17 **INTEREST (OCT 2008)**
- 52.232-18 **AVAILABILITY OF FUNDS (APR 1984)**

- 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)
- 52.232-25 PROMPT PAYMENT (OCT 2008)
- 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
- 52.233-1 DISPUTES (JUL 2002) – ALTERNATE I (DEC 1991)
- 52.233-3 PROTEST AFTER AWARD (AUG 1996)
- 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
- 52.242-13 BANKRUPTCY (JUL 1995)
- 52.243-3 CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (SEP 2000)
- 52.244-2 SUBCONTRACTS (JUN 2007)
- 52.249-14 EXCUSABLE DELAYS (APR 1984)
- 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

The clauses, which follow, are in full text:

FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days of the contract expiration.

FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days after contract expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 42 months.

SECTION J – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

ATTACHMENT 1 – Department of the Treasury Security Manual TD P 15-71

ATTACHMENT 2 – 31 CFR Part 31, RIN 1505-AC05, TARP Conflicts of Interest

ATTACHMENT 3 - Declaration of Independence and Conflict of Interest Statement

**LEGAL SERVICES CONTRACT
CONDITIONAL ACCESS TO SENSITIVE BUT UNCLASSIFIED INFORMATION
NON-DISCLOSURE AGREEMENT**

I, [REDACTED], hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain United States Government documents or material containing sensitive but unclassified information. I understand and agree to the following terms and conditions:

1. By being granted conditional access to sensitive but unclassified information, the Office of Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") has placed special confidence and trust in me and I am obligated to protect this information from unauthorized disclosure, in accordance with the terms of this Agreement.
2. As used in the Agreement, sensitive but unclassified information is any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under Title 5 USC 522a, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.
3. I am being granted conditional access contingent upon my execution of this Agreement for the sole purpose of performing the SIGTARP Legal Services Contract. This approval will permit me conditional access to certain information, and/or to attend meetings in which such information is discussed or otherwise made available to me. This Agreement will not allow me access to materials which SIGTARP has predetermined, in its sole discretion, are inappropriate for disclosure pursuant to this Agreement. This may include sensitive but unclassified information provided to SIGTARP by other agencies of the United States Government.
4. I will never divulge any sensitive but unclassified information that is provided to me pursuant to this Agreement to anyone, unless I have been advised in writing by SIGTARP that the individual is authorized to receive it. Should I desire to make use of any sensitive but unclassified information, I will do so in accordance with paragraph 6 of this Agreement. I will submit to SIGTARP for security review, prior to any submissions for publication, any book, article, column or other written work for general publication that is based upon any knowledge I obtained during the course of my work on the SIGTARP Legal Services Contract in order for SIGTARP to ensure that no sensitive but unclassified information is disclosed.
5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of sensitive but unclassified information not consistent with the terms of this Agreement.
6. If I am permitted, at the sole discretion of SIGTARP, to review any official documents containing sensitive but unclassified information, such review will be conducted at a secure facility or under circumstances that will maintain the security protection of such materials. I will not be permitted to and will not make any copies of documents or parts of documents to which conditional access is granted to me. Any notes taken during the course of such access will remain at SIGTARP, to be placed in secure storage unless it is determined by SIGTARP officials that the notes contain no sensitive but unclassified information. If I wish to have the notes released to me, SIGTARP officials will review the notes for the purposes of deleting any sensitive but unclassified information to create a redacted copy of the notes. If I do not wish a review of any notes that I make, those notes will remain in secure storage at SIGTARP.
7. If I violate the terms and conditions of this Agreement, I understand that the unauthorized disclosure of sensitive but unclassified information could compromise the security of SIGTARP.
8. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to sensitive but unclassified information. This may serve as a basis for denying me conditional access to SIGTARP information, both classified and sensitive but unclassified information in the future. If I violate the terms and conditions of this Agreement, the United States may institute a civil action for damages or any other

NON-DISCLOSURE AGREEMENT (Continued)

appropriate relief. The willful disclosure of information to which I have agreed herein not to divulge may constitute a criminal offence.

9. Unless and until I am provided a written release by SIGTARP from this Agreement or any portions of it, all conditions and obligations contained in this Agreement apply both during my period of conditional access, which shall terminate at the conclusion of my work on the SIGTARP Legal Services Contract, and at all times thereafter.

10. Each provision of this Agreement is severable. If a court should find any provisions of this Agreement unenforceable, all other provisions shall remain in full force and effect.

11. I understand that the United States Government may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

12. By granting me conditional access to information in this context, the United States Government does not waive any statutory or common law evidentiary privileges or protections that it may assert in any administrative or court proceeding to protect any sensitive but unclassified information to which I have been given conditional access under the terms of this Agreement.

13. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes that protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 USC Section 783 (b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

14. My execution of this Agreement shall not nullify or effect in any manner any other secrecy or nondisclosure Agreement which I have executed or may execute with the United States Government.

15. I make this Agreement in good faith, without mental reservation or purpose of evasion.


Name

12/22/09
Date


Signature

This Agreement was accepted by the undersigned on behalf of SIGTARP as a prior condition on conditional access to sensitive but unclassified information.

Office of the Special Inspector General
For the Troubled Asset Relief Program

Date

FEDERAL REGISTER

Vol. 74, No. 012

Rules and Regulations

DEPARTMENT OF THE TREASURY

Departmental Offices (DEPO)

31 CFR Part 31

RIN 1505-AC05

TARP Conflicts of Interest

74 FR 3431

DATE: Wednesday, January 21, 2009

ACTION: Interim rule.

SUMMARY: This interim rule provides guidance on conflicts of interest pursuant to section 108 of the Emergency Economic Stabilization Act of 2008 (EESA), which was enacted on October 3, 2008.

DATES: *Effective Date:* January 21, 2009. *Comment due date:* March 23, 2009.

ADDRESSES: Interested members of the public are invited to submit comments on this interim rule. Comments may be submitted to Treasury by either of the following methods: Submit electronic comments through the federal government e-rulemaking portal, <http://www.regulations.gov>, or send comments in hard copy to the Executive Secretariat, Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, Treasury will post all comments to <http://www.regulations.gov> without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Treasury will also make such comments available for public inspection and copying in the Treasury's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. Members of the public can make an appointment to inspect comments by telephoning (202) 622-0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim rule contact the Troubled Asset Relief Program Chief Compliance Officer, Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue, Washington, DC, 20220, (202) 622-2000, or TARP.Compliance@do.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a) of EESA requires the Secretary of the Treasury to establish a Troubled Asset Relief Program (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 this Act and policies and procedures developed and published by the Secretary." Section 120 of EESA provides that the TARP authorities generally

terminate on December 31, 2009, unless extended upon certification by the Secretary of the Treasury to Congress, but no later than two years from the date of enactment (October 3, 2008).

Section 108 of EESA authorizes the Secretary to issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the EESA authorities. On October 6, 2008, Treasury issued interim guidelines for potential conflicts of interest related to the authorities granted under EESA. This interim rule implements the guidelines by addressing conflicts that may arise during the selection of individuals or entities seeking a contract or financial agency agreement with the Treasury (retained entities), particularly those involved in the acquisition, valuation, management, and disposition of troubled assets. The interim rule also addresses conflicts and other matters that may arise in the course of those services. The interim rule does not address post-employment restrictions on Treasury employees, which we believe are already adequately covered by existing law.

II. This Interim Rule

The Department is promulgating this interim rule in order to implement the interim guidance released on October 6, 2008. The procedures in this rule outline the process for reviewing and addressing actual or potential conflicts of interest among retained entities performing services in conjunction with EESA. The procedures set forth in this interim rule are effective immediately. Upon careful consideration of public comments, a final rule will be issued.

Conflicts of interest may arise under EESA in a variety of situations, such as when retained entities perform similar work for Treasury and private clients. In these situations, retained entities may find that their duty to private clients impairs their objectivity when advising Treasury, or their judgment about the proper use of nonpublic information. Conflicts may also arise from the personal interests of individuals employed by retained entities. To address the potential for organizational and personal conflicts of interest, it may be necessary to restrict the activities of retained entities and key employees, to limit the dissemination of information, and to impose monitoring and reporting requirements. Treasury imposes these measures through its contracts and financial agent agreements, as well as through this interim rule. This interim rule does not substitute any provisions of the Federal Acquisition Regulation and, to the extent the Federal Acquisition Regulation applies to any contracts Treasury has with a retained [*3432] entity, this interim rule is in addition to the Federal Acquisition Regulation.

The interim rule addresses conflicts that may arise in connection with contracts and financial agency agreements for services under the TARP, other than administrative services identified by the TARP Chief Compliance Officer. Because some administrative services do not have substantial decision-making authority, they are unlikely to present conflicts of interest and would not warrant the burden imposed by these regulations.

The interim rule addresses organizational conflicts of interest in section 31.211. Before entering an arrangement for services, prospective contractors and financial agents must provide Treasury with sufficient information to evaluate the potential for organizational conflicts of interest and plans to mitigate them. Because the potential for conflicts is greatest when the arrangement relates to the acquisition, valuation, disposition, or management of assets, private entities seeking to perform these services must take special care when disclosing conflicts and designing mitigation plans. Once approved, a conflicts mitigation plan becomes a binding term of the arrangement.

Personal conflicts of interest are covered in section 31.212. The provisions here recognize that, in some cases, managers and employees of retained entities may have personal interests that could impair their objectivity. Conflicts may arise from their financial holdings and those of close family members, as well as from other personal interests. The regulation requires retained entities to obtain information from their managers and key employees and evaluate the potential for conflicts, and to implement monitoring and reporting requirements designed to detect conflicts that might arise during the arrangement. Treasury expects retained entities who assist Treasury with the acquisition, valuation, management, and disposition of troubled assets to have the most stringent programs for detecting and preventing conflicts of interest.

Other provisions in the regulations notify retained entities of restrictions on their conduct while working for Treasury. These provisions are not designed to be comprehensive; they supplement other requirements that may be imposed by contract, financial agency agreement, and other federal laws. Section 31.213 includes restrictions on giving and accepting gifts, making unauthorized promises, and improper uses of government property. Section 31.214 describes general prohibitions applying to retained entities who provide services for the acquisition, valuation, disposition, and management of troubled assets. Section 31.216 prohibits certain communications with Treasury employees that might improperly influence the process of selecting contractors and financial agents. Section 31.217 describes retained entities'

duty to keep nonpublic information confidential and requires a certification of compliance in the form of a nondisclosure agreement. A sample nondisclosure agreement is available at www.treas.gov.

In the course of implementing EESA, Treasury may permit its retained entities to use subcontractors (including consultants) to assist them in completing the work. Because subcontractors may have the same potential for conflicts of interest as those entities having a direct relationship with Treasury, these regulations impose requirements on "retained entities," which are defined to include contractors, financial agents, and their subcontractors. We specifically request comments on the practicality of this approach.

Overall, the regulations recognize that the potential for conflicts and measures for mitigating them depend on many factors, such as the type of services, a contractor's or financial agent's size and business structure, and length of the arrangement. Treasury will take these factors into account when reviewing conflict mitigation plans. In rare cases, Treasury may need to waive a potential conflict that cannot be adequately mitigated. Waiver requests will be considered on a case-by-case basis, and granted in writing only when Treasury determines, in its sole discretion, that stronger measures are unnecessary to protect the interests of the Treasury. The standard for considering waivers appears in section 31.215. This section does not affect the rules for waiving contract provisions in the Federal Acquisition Regulations.

Section 31.218 describes some of the measures available to Treasury to enforce these interim regulations. Measures include rejecting work that is tainted by a conflict of interest, terminating the arrangement for default, and in serious cases, referring violations to the United States Department of Justice for criminal prosecution. When Treasury has discretion in selecting or imposing a remedy, it will take into account whether the contractor or financial agent promptly disclosed the problem.

III. Procedural Requirements

Justification for Interim Rulemaking

Under the Office of Federal Procurement Policy Act, *41 U.S.C. 418b*, and Federal Acquisition Regulation (FAR) 48 CFR 1.501-3(b), a procurement regulation may take effect prior to notice and comment when there are urgent and compelling circumstances that make prior notice and comment impracticable. Such a procurement regulation must be published in the *Federal Register* and must include a statement that the regulation is temporary pending completion of a minimum 30-day public comment period. Under the Administrative Procedure Act, *5 U.S.C. 553(b)(B)*, an agency may dispense with notice and comment procedures when the agency finds that good cause exists that prior notice and comment are unnecessary, impracticable, or contrary to the public interest. For the reasons set forth below, a determination has been made that urgent and compelling circumstances and good cause exist that justify the promulgation of this interim rule without prior opportunity for public comment.

This rule is promulgated pursuant to EESA, the purpose of which is to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States. Specifically, this rule implements section 108, which requires the Secretary to develop regulations or guidelines for addressing conflicts of interest that may arise in connection with the administration and execution of the authorities provided under EESA. Because EESA provides such immediate authority to the Secretary to restore liquidity and stability to the financial system, it is essential that the conflicts of interest regulations be issued without delay so that anyone participating in the TARP program will have clear conflicts of interest information as soon as possible. Pursuant to *5 U.S.C. 553(b)(B)*, the Treasury finds that it would be unnecessary and contrary to the public interest to delay the issuance of this rule pending an opportunity for public comment and good cause exists to dispense with this requirement. For the same reasons, pursuant to *5 U.S.C. 553(d)(3)*, the Treasury has determined that there is good cause for the interim rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule. [*3433]

Regulatory Planning and Review

This regulation is a significant regulatory action as defined in 3(f)(4) of Executive Order 12866, as amended. Accordingly this interim final rule has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, this rule is not subject to the provisions of the Regulatory Flexibility Act (*5 U.S.C chapter 6*).

Paperwork Reduction Act

The information collections contained in the rule have been reviewed and approved by OMB under the Paperwork Reduction Act (*44 U.S.C. chapter 35*) and assigned OMB control number 1505-0209. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 31

Conflicts of interest, Contracts, Executive compensation, Troubled assets.

For the reasons set out in the preamble, Title 31 of the Code of Federal Regulations is amended as follows:

1. Add part 31 to read as follows:

PART 31--TROUBLED ASSET RELIEF PROGRAM

Sec.

31.1 General.

Subpart A--[Reserved]

Subpart B--Conflicts of Interest

31.200 Purpose and scope.

31.201 Definitions.

31.211 Organizational conflicts of interest.

31.212 Personal conflicts of interest.

31.213 General standards.

31.214 Limitations on concurrent activities.

31.215 Grant of Waivers.

31.216 Communications with Treasury employees.

31.217 Confidentiality of information.

31.218 Enforcement.

Authority: 31 U.S.C. 321; Pub. L. 110-343; 122 Stat 3765.

§ 31.1 General.

This Part sets forth regulations to implement and administer the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343; *122 Stat 3765*).

Subpart A--[Reserved]

Subpart B--Conflicts of Interest

§ 31.200 Purpose and scope.

(a) *Purpose.* This regulation sets forth standards to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities under the Troubled Asset Relief Program (TARP), established under sections 101 and 102 of the Emergency Economic Stabilization Act of 2008 (EESA).

(b) *Scope.* This regulation addresses actual and potential conflicts of interest that may arise from contracts and financial agency agreements between private sector entities and the Treasury for services under the TARP, other than administrative services identified by TARP Chief Compliance Officer.

§ 31.201 Definitions.

As used in this part:

Arrangement means a contract or financial agency agreement between a private sector entity and the Treasury for services under the TARP, other than administrative services identified by the TARP Chief Compliance Officer.

EESA means the Emergency Economic Stabilization Act of 2008.

Key individual means an individual providing services to a private sector entity who participates personally and substantially, through decision, approval, disapproval, recommendation, or the rendering of advice, in the negotiation or performance of, or monitoring for compliance under, the arrangement with the Treasury. For purposes of the definition of key individual, the words "personally and substantially" shall have the same meaning and interpretation as such words have in 5 CFR 2635.402(b)(4).

Management official means an individual within a retained entity's organization who has substantial responsibility for the direction and control of the retained entity's policies and operations. With respect to organizations that have a management committee or executive committee that has been given such responsibilities, this means the members of those committees and, if no such committee exists, this means each of the general partners.

Organizational conflict of interest means a situation in which the retained entity has an interest or relationship that could cause a reasonable person with knowledge of the relevant facts to question the retained entity's objectivity or judgment to perform under the arrangement, or its ability to represent the Treasury. Without limiting the scope of this definition, organizational conflicts of interest may include the following situations:

- (1) A prior or current arrangement between the Treasury and the retained entity that may give the retained entity an unfair competitive advantage in obtaining a new arrangement with Treasury.
- (2) The retained entity is, or represents, a party in litigation against the Treasury relating to activities under the EESA.
- (3) The retained entity provides services for Treasury relating to the acquisition, valuation, disposition, or management of troubled assets at the same time it provides those services for itself or others.
- (4) The retained entity gains, or stands to gain, an unfair competitive advantage in private business arrangements or investments by using information provided under an arrangement or obtained or developed pursuant to an arrangement with Treasury.
- (5) The retained entity is a potential candidate for relief under EESA, is currently participating in an EESA program, or has a financial interest that could be affected by its performance of the arrangement.

Personal conflict of interest means a personal, business, or financial interest of an individual, his or her spouse, minor child, or other family member with whom the individual has a close personal relationship, that could adversely affect the individual's ability to perform under the arrangement, his or her objectivity or judgment in such performance, or his or her ability to represent the interests of the Treasury;

Related entity means the parent company and subsidiaries of a retained entity, any entity holding a controlling interest in the retained entity, and any entity in which the retained entity holds a controlling interest.

Retained entity means the individual or entity seeking an arrangement with the Treasury or having such an arrangement with the Treasury, but does not include special government employees. A "retained entity" includes the sub-contractors and consultants it hires to perform services under the arrangement.

Special government employee means any employee serving the Treasury with or without compensation for a period not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

Treasury means the United States Department of the Treasury.

Treasury employee means an officer or employee of the Treasury, including [*3434] a special government employee, or an employee of any other government agency who is properly acting on behalf of the Treasury.

Troubled assets means residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case originated or was issued on or before March 14, 2008; and any other financial instrument that the Secretary of the Treasury has determined, upon transmittal in writing to the appropriate committees of Congress, the purchase of which is necessary to promote financial market stability.

§ 31.211 Organizational conflicts of interest.

(a) *Retained entity's responsibility.* A retained entity working under an arrangement shall not permit an organizational conflict of interest unless the conflict has been disclosed to Treasury under this Section and mitigated under a plan approved by Treasury, or Treasury has waived the conflict. With respect to arrangements for the acquisition, valuation, management, or disposition of troubled assets, the retained entity shall maintain a compliance program designed to detect and prevent violations of federal securities laws and organizational conflicts of interest.

(b) *Information required about the retained entity.* As early as possible before entering an arrangement to perform services for Treasury under the EESA, a retained entity shall provide Treasury with sufficient information to evaluate any organizational conflicts of interest. The information shall include the following:

- (1) The retained entity's relationship to any related entities.
- (2) The categories of troubled assets owned or controlled by the retained entity and its related entities, if the arrangement relates to the acquisition, valuation, disposition, or management of troubled assets.
- (3) Information concerning all other business or financial interests of the retained entity, its proposed subcontractors, or its related entities, which could conflict with the retained entity's obligations under the arrangement with Treasury.
- (4) A description of all organizational conflicts of interest and potential conflicts of interest.
- (5) A written detailed plan to mitigate all organizational conflicts of interest, along with supporting documents.
- (6) Any other information or documentation about the retained entity, its proposed subcontractors, or its related entities that Treasury may request.

(c) *Plans to mitigate organizational conflicts of interest.* The steps necessary to mitigate a conflict may depend on a variety of factors, including the type of conflict, the scope of work under the arrangement, and the organizational structure of the retained entity. Some conflicts may be so substantial and pervasive that they cannot be mitigated. Retained entities should consider the following measures when designing a mitigation plan:

- (1) Adopting, implementing, and enforcing appropriate information barriers to prevent unauthorized people from learning nonpublic information relating to the arrangement and isolate key individuals from learning how their performance under the arrangement could affect the financial interests of the retained entity, its clients, and related entities.
- (2) Divesting assets that give rise to conflicts of interest.
- (3) Terminating or refraining from business relationships that give rise to conflicts of interest.
- (4) If consistent with the terms of the arrangement and permitted by Treasury, refraining from performing specific types of work under the arrangement.
- (5) Any other steps appropriate under the circumstances.

(d) *Certification required.* When the retained entity provides the information required by paragraph (b) of this section, the retained entity shall certify that the information is complete and accurate in all material respects.

(e) *Determination required.* Prior to entering into any arrangement, the Treasury must conclude that no organizational conflict of interest exists that has not been adequately mitigated, or if a conflict cannot be adequately mitigated,

that Treasury has expressly waived it. Once Treasury has approved a conflicts mitigation plan, the plan becomes an enforceable term under the arrangement.

(f) *Subsequent notification.* The retained entity has a continuing obligation to search for and to report any potential organizational conflict of interest. Within five (5) business days after learning of a potential organizational conflict of interest, the retained entity shall disclose the potential conflict of interest in writing to the TARP Chief Compliance Officer. The disclosure shall describe the steps it has taken or proposes to take to mitigate the potential conflict or request a waiver from Treasury.

(g) *Periodic Certification.* No later than one year after the arrangement's effective date, and at least annually thereafter, the retained entity shall certify in writing that it has no organizational conflicts of interest, or explain in detail the extent to which it can certify, and describe the actions it has taken and plans to take to mitigate any conflicts. Treasury may require more frequent certifications, depending on the arrangement.

(h) *Retention of information.* A retained entity shall retain the information needed to comply with this section and to support the certifications required by this section for three (3) years following termination or expiration of the arrangement, and shall make that information available to Treasury upon request. Such retained information shall include, but is not limited to, written documentation regarding the factors the retained entity considered in its mitigation plan as well as written documentation addressing the results of the retained entities' periodic review of the mitigation plan.

§ 31.212 Personal conflicts of interest.

(a) *Retained entity's responsibility.* A retained entity shall ensure that all management officials performing work under the arrangement and key individuals have no personal conflicts of interest unless mitigation measures have neutralized the conflict, or Treasury has waived the conflict.

(b) *Information required.* Before management officials and key individuals begin work under an arrangement, a retained entity shall obtain information from each of them in writing about their personal, business, and financial relationships, as well as those of their spouses, minor children, and other family members with whom the individuals have a close personal relationship that would cause a reasonable person with knowledge of the relevant facts to question the individual's ability to perform, his or her objectivity or judgment in such performance, or his or her ability to represent the interests of the Treasury. When the arrangement concerns the acquisition, valuation, management, or disposition of troubled assets, the information shall be no less extensive than that required of certain new federal employees under Office of Government Ethics Form 278. Treasury may extend the time necessary to meet these requirements in urgent and compelling circumstances.

(c) *Disqualification.* The retained entity shall disqualify persons with personal conflicts of interests from performing work pursuant to the arrangement unless mitigation measures have neutralized the conflict to the satisfaction of the TARP Chief [*3435] Compliance Officer. The retained entity may seek a waiver from the TARP Chief Compliance Officer to allow an individual with a personal conflict of interest to work under the arrangement.

(d) *Initial Certification.* No later than ten business days after the effective date of the arrangement, the retained entity shall certify to the Treasury that all management officials and key individuals performing services under the arrangement have no personal conflicts of interest, or are subject to a mitigation plan or waiver approved by Treasury. In making this certification, the retained entity may rely on the information obtained pursuant to paragraph (b) of this section, unless the retained entity knows or should have known that the information provided is false or inaccurate. Treasury may extend the certification deadline in urgent and compelling circumstances.

(e) *Periodic Certification.* No later than one year after the arrangement's effective date, and at least annually thereafter, the retained entity shall renew the certification required by paragraph (d) of this section. The retained entity shall provide more frequent certifications to Treasury when requested.

(f) *Retained Entities' Responsibilities.* The retained entity shall adopt and implement procedures designed to discover, monitor, and report personal conflicts of interest on a continuous basis.

(g) *Subsequent notification.* Within five business days after learning of a personal conflict of interest, the retained entity shall notify Treasury of the conflict and describe the steps it has taken and will take in the future to neutralize the conflict.

(h) *Retention of information.* A retained entity shall retain the information needed to comply with this section and to support the certifications required by this section for three years following termination or expiration of the arrangement, and shall make that information available to Treasury upon request.

§ 31.213 General standards.

(a) During the time period in which a retained entity is seeking an arrangement and during the term of any arrangement, a retained entity, its officers and partners, and its employees shall not:

(1) Accept or solicit favors, gifts, or other items of monetary value from any individual or entity whom the retained entity, officer, partner, or employee knows is seeking official action from the Treasury in connection with the arrangement or has interests which may be substantially affected by the performance or nonperformance of duties to the Treasury under the arrangement.

(2) Improperly use or allow the improper use of Treasury property for the personal benefit of any individual or entity other than the Treasury.

(3) Make any unauthorized promise or commitment on behalf of the Treasury.

(b) Any individual who acts for or on behalf of the Treasury pursuant to an arrangement shall comply with *18 U.S.C. 201*, which generally prohibits the direct or indirect acceptance by a public official of anything of value in return for being influenced in, or because of, an official act. Violators are subject to criminal penalties.

(c) Any individual or entity who provides information or makes a certification to the Treasury that is relating to services under EESA or required pursuant to 31 CFR Part 31 is subject to *18 U.S.C. 1001*, which generally prohibits the making of any false or fraudulent statement to a federal officer. Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of criminal law, Treasury shall refer such information to the Department of Justice and the Special Inspector General provided for under EESA.

(d) A retained entity shall disclose to the Special Inspector General provided for the TARP, or the Treasury Office of the Inspector General, any credible evidence, in connection with the designation, services, or closeout of the arrangement, that a management official, employee, or contractor of the retained entity has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or a violation of the civil False Claims Act (*31 U.S.C. 3729-3733*).

§ 31.214 Limitations on concurrent activities.

Treasury has determined that certain market activities by a retained entity during the arrangement are likely to cause impermissible conflicts of interest. Accordingly, the following restrictions shall apply unless waived pursuant to § 31.215, or Treasury agrees in writing to specific mitigation measures.

(a) If the retained entity assists Treasury in the acquisition, valuation, management, or disposition of specific troubled assets, the retained entity, management officials performing work under the arrangement, and key individuals shall not purchase or offer to purchase such assets from Treasury, or assist anyone else in purchasing or offering to purchase such troubled assets from the Treasury, during the term of its arrangement.

(b) If the retained entity advises Treasury with respect to a program for the purchase of troubled assets, the retained entity, management officials performing work under the arrangement, and key individuals shall not, during the term of the arrangement, sell or offer to sell, or act on behalf of anyone with respect to a sale or offer to sell, any asset to Treasury under the terms of that program.

§ 31.215 Grant of waivers.

The TARP Chief Compliance Officer may waive a requirement under this Part that is not otherwise imposed by law when it is clear from the totality of the circumstances that a waiver is in the government's interest.

§ 31.216 Communications with Treasury employees.

(a) *Prohibitions.* During the course of any process for selecting a retained entity (including any process using non-competitive procedures), a retained entity participating in the process and its representatives shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any Treasury employee with personal or direct responsibility for that procurement.

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any Treasury employee, except as permitted by Government-Wide Ethics Rules, 5 CFR part 2635.

(3) Solicit or obtain from any Treasury employee, directly or indirectly, any information that is not public and was prepared for use by Treasury for the purpose of evaluating an offer, quotation, or response to enter into an arrangement.

(b) *Certification.* Before a retained entity enters a new arrangement, or accepts a modification to an existing arrangement, the retained entity must certify to the following:

(1) The retained entity is aware of the prohibitions of paragraph (a) of this section and, to the best of its knowledge after making reasonable inquiry, the retained entity has no information concerning a violation or possible violation of paragraph (a) of this section.

(2) Each officer, employee, and representative of the retained entity who participated personally and [*3436] substantially in preparing and submitting a bid, offer, proposal, or request for modification of the arrangement has certified that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section, and will report immediately to the retained entity any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

§ 31.217 Confidentiality of information.

(a) *Nonpublic information defined.* Any information that Treasury provides to a retained entity under an arrangement, or that the retained entity obtains or develops pursuant to the arrangement, shall be deemed nonpublic until the Treasury determines otherwise in writing, or the information becomes part of the body of public information from a source other than the retained entity.

(b) *Prohibitions.* The retained entity shall not:

(1) Disclose nonpublic information to anyone except as required to perform the retained entity's obligations pursuant to the arrangement, or pursuant to a lawful court order or valid subpoena after giving prior notice to Treasury.

(2) Use or allow the use of any nonpublic information to further any private interest other than as contemplated by the arrangement.

(c) *Retained entity's responsibility.* A retained entity shall take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use. The retained entity shall document these measures in sufficient detail to demonstrate compliance, and shall maintain this documentation for three years after the arrangement has terminated. The retained entity shall notify the TARP Chief Compliance Officer in writing within five business days of detecting a violation of the prohibitions in paragraph (b), above. The security measures required by this paragraph shall include:

(1) Security measures to prevent unauthorized access to facilities and storage containers where nonpublic information is stored.

(2) Security measures to detect and prevent unauthorized access to computer equipment and data storage devices that store or transmit nonpublic information.

(3) Periodic training to ensure that persons receiving nonpublic information know their obligation to maintain its confidentiality and to use it only for purposes contemplated by the arrangement.

(4) Programs to ensure compliance with federal securities laws, including laws relating to insider trading, when the arrangement relates to the acquisition, valuation, management, or disposition of troubled assets.

(5) A certification from each management official performing work under the arrangement and each key individual stating that he or she will comply with the requirements in section 31.217(b). The retained entity shall obtain this certi-

fication, in the form of a nondisclosure agreement, before a management official or key individual performs work under the arrangement, and then annually thereafter.

§ 31.218 Enforcement.

(a) Compliance with these rules concerning conflicts of interest is of the utmost importance. In the event a retained entity or any individual or entity providing information pursuant to 31 U.S.C. Part 31 violates any of these rules, Treasury may impose or pursue one or more of the following sanctions:

(1) Rejection of work tainted by an organizational conflict of interest or a personal conflict of interest and denial of payment for that work.

(2) Termination of the arrangement for default.

(3) Debarment of the retained entity for Federal government contracting and/or disqualification of the retained entity from future financial agency agreements.

(4) Imposition of any other remedy available under the terms of the arrangement or at law.

(5) In the event of violation of a criminal statute, referral to the Department of Justice for prosecution of the retained entity and/or its officers or employees. In such cases, the Department of Justice may make direct and derivative use of any statements and information provided by any entity, its representatives and employees or any individual, to the extent permitted by law.

(b) To the extent Treasury has discretion in selecting or imposing a remedy, it will give significant consideration to a retained entity's prompt disclosure of any violation of these rules.

Dated: January 14, 2009.

Neel Kashkari,

Interim Assistant Secretary for Financial Stability.

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DECLARATION OF INDEPENDENCE AND CONFLICT OF INTEREST STATEMENT

**Office of Special Inspector General
For the Troubled Asset Relief Program**

General Provision

To provide legal services to the Office of Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), the Contractor must be independent and objective with respect to the SIGTARP. The Contractor must certify that it is not aware of any conflict of interest situations at the time the contract is awarded. To maintain independence and objectivity with respect to SIGTARP, the Contractor shall also agree not to enter into any contract that will create or appear to create a conflict of interest, impair independence or objectivity, or create the appearance that independence or objectivity has been impaired.

Requirements

The Contractor shall comply with the following requirements:

- a. The Contractor shall notify SIGTARP of the identity of all contracts, current and completed during the past three years, with Treasury or any Treasury bureau or component, and provide information concerning specific work performed. This information shall be submitted with the contractor's proposal and updated prior to the award of any option year.
- b. The Contractor shall notify SIGTARP of any potential new contract with Treasury or with any Treasury bureau or component.
- c. The Contractor shall comply with all contract conflict of interest and independence clauses contained in the Performance Work Statement.
- d. The Contractor shall comply with the American Bar Association Model Rules of Professional Conduct and the New York State Bar Association Rules of Professional Conduct.
- e. The Contractor shall sign this Declaration of Independence and Conflict of Interest Statement and submit with its proposal.
- f. The Contractor shall sign an updated Declaration of Independence and Conflict of Interest Statement (same form), prior to the award of the option years of this contract.

Examples

The following examples illustrate situations in which questions concerning conflict of interest may arise. These examples are not inclusive.

Employing a former employee of SIGTARP or any Treasury bureau or component, who has information that enables the Contractor to gain an unfair competitive advantage.

Providing legal advice about a program or procedure that the Contractor or an employee of the Contractor developed for any Treasury bureau or component.

Penalties

If the Contractor fails to comply with the above requirements, it may be considered a material breach of contract subject to monetary penalty, termination for default, and other legal action, such as debarment from future Federal contracts.

Certification

The Contractor certifies and represents the following:

- a. The Contractor has read and fully understood the above information and what is required concerning conflict of interest, independence and objectivity.
- b. The Contractor represents that it is independent and objective with respect to SIGTARP.
- c. The Contractor is in compliance with the requirements set forth above.
- d. The Contractor shall not enter into any contract that will create or appear to create a conflict of interest, impair independence or objectivity, or create the appearance that independence or objectivity has been impaired.



Signature of Engagement Partner, Shareholder or Proprietor

Date

12/22/09