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reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determination. The Special Master must provide a final determination in writing within 30 days, setting forth the facts and analysis that formed the basis for the determination. If a TARP recipient does not request reconsideration within 30 days, the initial determination shall be treated as a final determination.

(2) *Final determinations.* In the case of any final determination that the TARP recipient is required to receive, the final determination of the Special Master shall be final and binding and treated as the determination of the Treasury.

(3) *Advisory Opinions.* An advisory opinion of the Special Master shall not be binding upon any TARP recipient or employee, but may be relied upon by a TARP recipient or employee if the advisory opinion applies to the TARP recipient and the employee and the TARP recipient and employee comply in all respects with the advisory opinion.

(d) *Submissions to the Special Master*—(1) *Submission procedures.* Submissions to the Special Master may be made under such procedures as the Special Master shall determine. The Special Master may reserve the right to request further information at any time and a submission shall not be treated as substantially complete unless the Special Master has so designated.

(2) *Disclosure procedures.* Materials submitted to the Special Master and the initial and final determinations of the Special Master are subject to disclosure under the standards provided in the Freedom of Information Act (FOIA, (5 U.S.C. 552 *et seq.*)). In addition, the final determinations of the Special Master shall be disclosed to the public. The Special Master shall promulgate procedures for ensuring that disclosed materials have been subject to appropriate redaction to protect personal privacy, privileged or confidential commercial or financial information or other appropriate redactions permissible under the FOIA, which may include a procedure for the person or entity making the submission to request redactions and to review and request reconsideration of any proposed redactions before such redacted materials are released.

§ 30.17 Q–17: How do the effective date provisions apply with respect to the requirements under section 111 of EESA?

(a) *General rule.* The requirements under this part with respect to sections 111(b), 111(c), 111(d) and 111(f) are effective upon June 15, 2009. The guidance under this part with respect to those sections supersedes any previous guidance applicable to a TARP recipient to the extent that guidance is inconsistent with those requirements, but supersedes that guidance only as of June 15, 2009. To the extent previous contractual provisions are not inconsistent with ARRA or the guidance under this part, those contractual provisions remain in effect and continue to apply in accordance with their terms.

(b) *Bonus payment limitation.* The bonus payment limitation provision under § 30.10 (Q–10) of this part does not apply to bonus payments paid or accrued by TARP recipients or their employees before June 15, 2009. Certain bonus payments may relate to a service period beginning before and ending after June 15, 2009. In these circumstances, the employee will not be treated as having accrued the bonus payment on or after June 15, 2009 if the bonus payment is at least reduced to reflect the portion of the service period that occurs after June 15, 2009. If the employee is an SEO or most highly compensated employee at the time the net bonus payment after such reduction would otherwise be paid, the amount still may not be paid until such time as bonus payments to that employee are permitted.

PART 31—TROUBLED ASSET RELIEF PROGRAM

Sec.
31.1 General.

Subpart A [Reserved]

Subpart B—Conflicts of Interest

31.200 Purpose and scope.
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AUTHORITY: 31 U.S.C. 321; Pub. L. 110–343; 122 Stat 3765.

SOURCE: 74 FR 3433, Jan. 21, 2009, unless otherwise noted.

§ 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 subcontractors 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 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 is 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 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 noncompetitive 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 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 certification, 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 statue, 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.

PART 32—PAYMENTS IN LIEU OF LOW INCOME HOUSING TAX CREDITS

AUTHORITY: Public Law 111–5.

§ 32.1 Timing of disbursements.

(a) State housing credit agencies that receive funds under section 1602 of Division B of the American Recovery and Reinvestment Tax Act of 2009 must make subawards to subawardees to finance the construction or acquisition and rehabilitation of low-income housing no later than December 31, 2010. Any funds that are not used to make subawards by December 31, 2010, must be returned to the Treasury by January 1, 2011.

(b) The requirement in subsection (a) above does not prevent State housing credit agencies from continuing to disburse funds to subawardees after December 31, 2010 provided:

(1) A subaward has been made to the subawardee on or before December 31, 2010;

(2) The subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project; and

(3) Any funds not disbursed to the subawardee by December 31, 2011, must be returned to the Treasury by January 1, 2012.

[74 FR 44752, Aug. 31, 2009]

PART 50—TERRORISM RISK INSURANCE PROGRAM

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