

(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.

(6) The retained entity maintains a business or financial relationship with institutions that have received funds from Treasury pursuant to the EESA.

*Personal conflict of interest* means a personal, business, or financial interest of an individual, his or her spouse or any dependent child 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 an officer or employee serving the Treasury, serving 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*, for purposes of this rule, shall have the same meaning as set forth in 12 U.S.C. 5202(9).

**§31.211 Organizational conflicts of interest.**

(a) *Retained entity's responsibility.* A retained entity working under an arrangement shall not permit an actual or potential organizational conflict of interest (including 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), 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 reasonably 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, report, and mitigate any and all potential organizational conflicts of interest that have not already been disclosed to Treasury under a plan approved by Treasury or previously waived by Treasury. The retained entity shall search regularly for conflicts and shall, within five (5) business days after learning of a potential organizational conflict of interest, dis-

close 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 key individuals have no personal conflicts of interest (including a situation 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), unless mitigation measures have neutralized the conflict, or Treasury has waived the conflict.

(b) *Information required.* Before 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 and dependent children that would cause a reasonable person with knowledge of the relevant