

White Collar Criminal Defense, Regulatory Compliance and Special Investigations Update

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Feds Heat Up Investigations and Enforcement For Entities With TARP Funds

As was widely reported in the press several months ago, the federal government hired a former federal prosecutor to act as the Deputy Special Inspector General for monies given out under the Troubled Asset Relief Program ("TARP"). The Inspector General was given a staff to assist in this process, and all these folks work for the newly-minted federal agency called The Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP").

Agency alphabet soup aside, this agency has come roaring out of the gates with aggressive programs to monitor TARP funds. The agency's avowed mission is to: a) promote transparency, b) coordinate efficient oversight of the TARP funds, and c) spearhead a "robust" enforcement program that is designed to "prevent, detect and investigate cases of fraud, waste and abuse of TARP funds and programs ... " (See <http://www.sig tarp.gov/about.shtml>.) This agency works with a myriad of other federal agencies (the FBI, the SEC, the U.S. Treasury), and it has full authority to refer matters to the Department of Justice for civil and criminal charges.

SIGTARP just released its quarterly report to Congress on October 28. The report states, in part:

"SIGTARP's Investigations Division has developed into a sophisticated whitecollar investigative agency. Through September 30, 2009, SIGTARP has opened 61 and has 54 ongoing criminal and civil investigations. These investigations include complex issues concerning suspected TARP fraud, accounting fraud, securities fraud, insider trading, bank fraud, mortgage fraud, mortgage servicer misconduct, fraudulent advance-fee schemes, public corruption, false statements, obstruction of justice, money laundering, and tax-related investigations. While the vast majority of SIGTARP's investigative activity remains confidential, developments in several of SIGTARP's investigations have become public over the past quarter ... "

This is an ominous sign for financial institutions that have received TARP funds. This agency is well-funded, highly-motivated, and under intense public and Congressional scrutiny to show results (which in law enforcement is measured by number of investigations and prosecutions).

Moreover, the scope of businesses affected by this agency is huge thanks to recent legislation enacted by Congress. The Fraud Enforcement and Recovery Act of 2009 ("FERA"), was enacted to target any fraud or waste in the use of TARP funds and stimulus money. Significantly, that law also expanded the federal False Claim Act ("FCA") to include prosecutions when any federal funds are involved in any transaction even if the transaction was purely a private

transaction where the government was not a party. Previously, the law would only allow a prosecution under the FCA if there was any fraud connected to the "primary" transaction where the federal government gives the funds to the private entity (*i.e.*, when the federal government gave a bank a sum of grant money to distribute under a Small Business Administration program). Under FERA, there also is "downstream" liability if there is any fraud in the later transfer of the funds, too.

Bottom Line: If you are a financial institution or the recipient of any federal funds connected with TARP or the stimulus program, proceed with extreme caution if contacted by SIGTARP.

For more information, please contact the White Collar Criminal Defense, Regulatory Compliance and Special Investigations Practice Group at Lane Powell:

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