

**From:** Cook, David  
**Sent:** Friday, July 10, 2009 6:08 PM  
**To:** Barofsky, Neil  
**Cc:** Morse, Duane; Patterson, Dawn A. (Office of Compliance); Bass, Matthew; Bartley, Aaron  
**Subject:** Suggestions on compliance contractor firms re: PPIP

Neil,

We are currently investigation whether to hire a compliance contractor to aid Treasury in vetting PPIFs' compliance with certain of the conflicts and ethics rules requirements. We would find it helpful to hear any suggestions you may have regarding firms you feel are well suited to this task.

Could we schedule a short chat about this with you and/or your team at your convenience?

Best Regards,

David M. Cook  
U.S. Department of Treasury  
Office of Financial Stability, #8010  
Risk and Compliance  
1500 Pennsylvania Avenue N.W.  
Washington, D.C.  
20220  
v: 202-927-9423  
f: 202-927-9225  
[david.cook@do.treas.gov](mailto:david.cook@do.treas.gov)

**From:** Barofsky, Neil  
**Sent:** Tuesday, June 23, 2009 9:32 AM  
**To:** Allison, Herbert  
**Subject:** Todays Meeting

Herb –First, congrats on the confirmation. Second, I was not sure what is on your agenda today. Ours is quite light, so was considering doing our meeting by conference call today. Of course, if you have substantive issues that you want to discuss in detail, we will come over. (And I am assuming that our comments were self-explanatory, but if you want to discuss specific term sheet issues, I will bring Rich Rosenfeld along as well). Thanks.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Barofsky, Neil  
**Sent:** Monday, July 20, 2009 2:32 PM  
**To:** Morse, Duane; Allison, Herbert  
**Cc:** Puvalowski, Kevin  
**Subject:** FW: Link to report

The embargo on our report was broken. Although we are officially releasing tomorrow, attached is a link with the full report.

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**From:** Belisle, Kris  
**Sent:** Monday, July 20, 2009 2:31 PM  
**To:** Barofsky, Neil  
**Subject:** Link to report

<http://www.sig tarp.gov>

Kristine Belisle  
Communications Director, SIGTARP  
[kris.belisle@do.treas.gov](mailto:kris.belisle@do.treas.gov)  
Office: 202-927-8940  
Blackberry: 202-368-9057

**From:** Williams, Jennifer  
**Sent:** Wednesday, July 15, 2009 7:22 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** RE: Treasury response to draft SIGTARP recommendations  
**Attachments:** Treasury Response to SIGTARP Outstanding Recommendations (FINAL\_07152009).pdf

Thank you again for the opportunity to review and comment on SIGTARP's quarterly report to Congress. Attached is Treasury's response to your quarterly report, which we understand will appear in the appendix of the report entitled "Correspondence Regarding SIGTARP Recommendations," along with our July 2, 2009 memorandum in response to the recommendations in your prior reports, and our July 2, 2009 letter in response to your June 10, 2009 and June 19, 2009 letters.

We look forward to continuing to work with you and your team as we move forward. Please contact Duane Morse or me if you have any questions.

Sincerely,

Jennifer Williams

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U.S. Department of the Treasury  
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[jennifer.williams@do.treas.gov](mailto:jennifer.williams@do.treas.gov)

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**From:** Barofsky, Neil  
**Sent:** Tuesday, July 14, 2009 1:46 PM  
**To:** Williams, Jennifer; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** RE: Treasury response to draft SIGTARP recommendations

Thanks for your comments, I think we will be able to incorporate many of them. I am assuming that feedback on the report from Treasury is now closed, other than the formal letter of response. When should we expect that? We need to finalize the appendix. Thanks.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program  
(202) 622-1419

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**From:** Williams, Jennifer  
**Sent:** Tuesday, July 14, 2009 12:24 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** Treasury response to draft SIGTARP recommendations

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Office of Financial Stability  
U.S. Department of the Treasury  
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[jennifer.williams@do.treas.gov](mailto:jennifer.williams@do.treas.gov)



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

July 15, 2009

Neil M. Barofsky, Esq.  
Special Inspector General  
for the Troubled Assets Relief Program  
United States Department of the Treasury  
1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220

Re: SIGTARP Quarterly Report

Dear Mr. Barofsky:

The Department of the Treasury (Treasury) appreciates the opportunity to review SIGTARP's quarterly report to Congress on Treasury's Troubled Asset Relief Program (TARP), to be issued July 21, 2009. There is important work ahead, and we welcome your comments and suggestions as Treasury moves forward to implement the President's Financial Stability Plan and our other programs.

Treasury has taken substantial actions during the period covered by your report to address extraordinary financial sector and economic challenges. To bolster the housing market, the Making Home Affordable program signed 27 mortgage servicers (through July 10, 2009), representing over 80 percent of eligible loans, to perform mortgage modifications, and began to offer trial period plans to borrowers on a large scale. In order to prevent collapse of the systemically significant automotive industry, Treasury financed the successful restructurings of General Motors and Chrysler, and provided support for their automotive suppliers, vehicle warranties and automotive finance companies. The Term Asset Backed Lending Facility (TALF), which has already stimulated increased securitization activity, was expanded to provide liquidity for commercial mortgage loans and insurance premium financing, and TALF loan terms were extended for certain other asset classes. Treasury finalized and completed transactions that improved the capital structures of AIG and Citigroup. Treasury also selected fund managers and finalized investment terms and conflict rules for the Public-Private Investment Program (PPIP), which are intended to catalyze markets for the legacy assets that currently clog bank balance sheets. In addition to launching these new programs, Treasury continued to make investments in financial institutions through the Capital Purchase Program, while extending the application deadline and increasing maximum funding levels for small banks and finalizing investment terms for mutual institutions.

In taking these actions to stabilize the financial system and restore the flow of credit, Treasury has given careful consideration to the recommendations in your prior reports. Treasury's policies and programs currently address many of the issues raised in your recommendations, and in other cases Treasury took specific action to implement your recommendations. Treasury also

has or will execute alternative approaches that we believe address some of the issues raised in your recommendations. The steps we have taken and the progress we have made in this regard are detailed in our July 2, 2009 memorandum in response to the recommendations in your prior reports, and in our July 2, 2009 letter in response to your June 10, 2009 and June 19, 2009 letters, both of which are attached in the Appendix entitled "Correspondence Regarding SIGTARP Recommendations."

In order to ensure that SIGTARP's recommendations were thoroughly understood and considered and that we took full advantage of SIGTARP's expertise in fraud prevention and other areas, Treasury staff went to substantial lengths to work with your team, particularly with respect to PPIP. In addition to the many meetings we held to brief you and your staff and receive your comments and suggestions as we designed the program, we invited a member of your staff to participate in our interviews with prospective fund managers, provided successive drafts of PPIP term sheets and conflict procedures for your review and comments during the drafting and negotiation process, and delayed final selection and announcement of the successful candidates in order to be certain we had received, thoroughly considered, and wherever possible acted upon your comments.

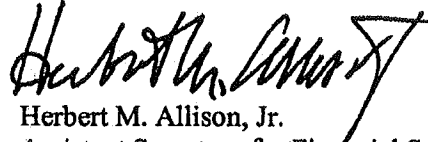
This interaction between Treasury staff and SIGTARP staff helped to improve PPIP. While many of your recommendations coincided with actions that had been under consideration for some time, some of your recommendations – particularly those related to fraud prevention – led us to address these concerns more effectively than we might have done otherwise. Both Treasury and the taxpayers have benefitted from your input.

Our primary differences with your team relate to your recommendation that we require each PPIF to be managed by a dedicated investment team separated by an informational wall from other employees of the fund manager. While we respect the concerns that underlie your recommendations, we believe they are better addressed through other requirements that we have incorporated in our PPIP conflict and compliance procedures. For example, our requirement that each fund manager report on a daily basis all transactions involving legacy securities across its entire fund complex gives us (and SIGTARP) the ability to spot and investigate unusual trading patterns, suspicious transactions and other indications of fraud, collusion or other bad behavior by the manager or its employees. Similarly, your concern that a fund manager might cause the PPIF to overpay for legacy securities in order to benefit investors in its other funds is addressed by our requirement that the manager maintain and adhere to an allocation policy that requires all transactions involving legacy securities to be allocated fairly among all of the manager's funds that invest in such securities. Our procedures also require fund managers to invest their own capital in the PPIF and to demonstrate that their compensation systems align the financial interests of the personnel who manage the PPIF with the interests of the PPIF investors, including Treasury. As we have outlined in our memorandum and letter to you, we believe these procedures, as well as the many other requirements set forth in the PPIP term sheets, effectively protect taxpayers without imposing the significant costs of requiring a segregated investment team.

We appreciate the open and collaborative relationship with you and your team, and have strived to achieve the highest standard for protecting taxpayers while carrying out our mandate of

promoting financial stability. We look forward to continuing to work with you and your team as we move forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert M. Allison, Jr.", written in a cursive style.

Herbert M. Allison, Jr.  
Assistant Secretary for Financial Stability

**From:** Morse, Duane  
**Sent:** Tuesday, July 14, 2009 1:49 PM  
**To:** Barofsky, Neil; Williams, Jennifer; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Duffy, Charles  
**Subject:** RE: Treasury response to draft SIGTARP recommendations

We will deliver the formal letter tomorrow.

Duane D. Morse  
Chief Risk and Compliance Officer - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

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**From:** Barofsky, Neil  
**Sent:** Tuesday, July 14, 2009 1:46 PM  
**To:** Williams, Jennifer; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** RE: Treasury response to draft SIGTARP recommendations

(b) (5)



Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program  
(202) 622-1419

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**From:** Williams, Jennifer  
**Sent:** Tuesday, July 14, 2009 12:24 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** Treasury response to draft SIGTARP recommendations

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(b) (5)



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Jennifer G. Williams  
Office of Financial Stability  
U.S. Department of the Treasury  
(202) 927-5821  
[jennifer.williams@do.treas.gov](mailto:jennifer.williams@do.treas.gov)

**From:** Barofsky, Neil  
**Sent:** Tuesday, July 14, 2009 1:46 PM  
**To:** Williams, Jennifer; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** RE: Treasury response to draft SIGTARP recommendations

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A large black rectangular redaction box covers the main body of the email, obscuring the content of the message.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program  
(202) 622-1419

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**From:** Williams, Jennifer  
**Sent:** Tuesday, July 14, 2009 12:24 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** Treasury response to draft SIGTARP recommendations

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Jennifer G. Williams  
Office of Financial Stability  
U.S. Department of the Treasury  
(202) 927-5821  
[jennifer.williams@do.treas.gov](mailto:jennifer.williams@do.treas.gov)

**From:** Williams, Jennifer  
**Sent:** Tuesday, July 14, 2009 12:24 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** Treasury response to draft SIGTARP recommendations  
**Attachments:** SIGTARP Report Section 5 (Treasury Comments\_07132009).pdf; Sigtarp Recommendations Tables (OFS comments\_07142009).pdf

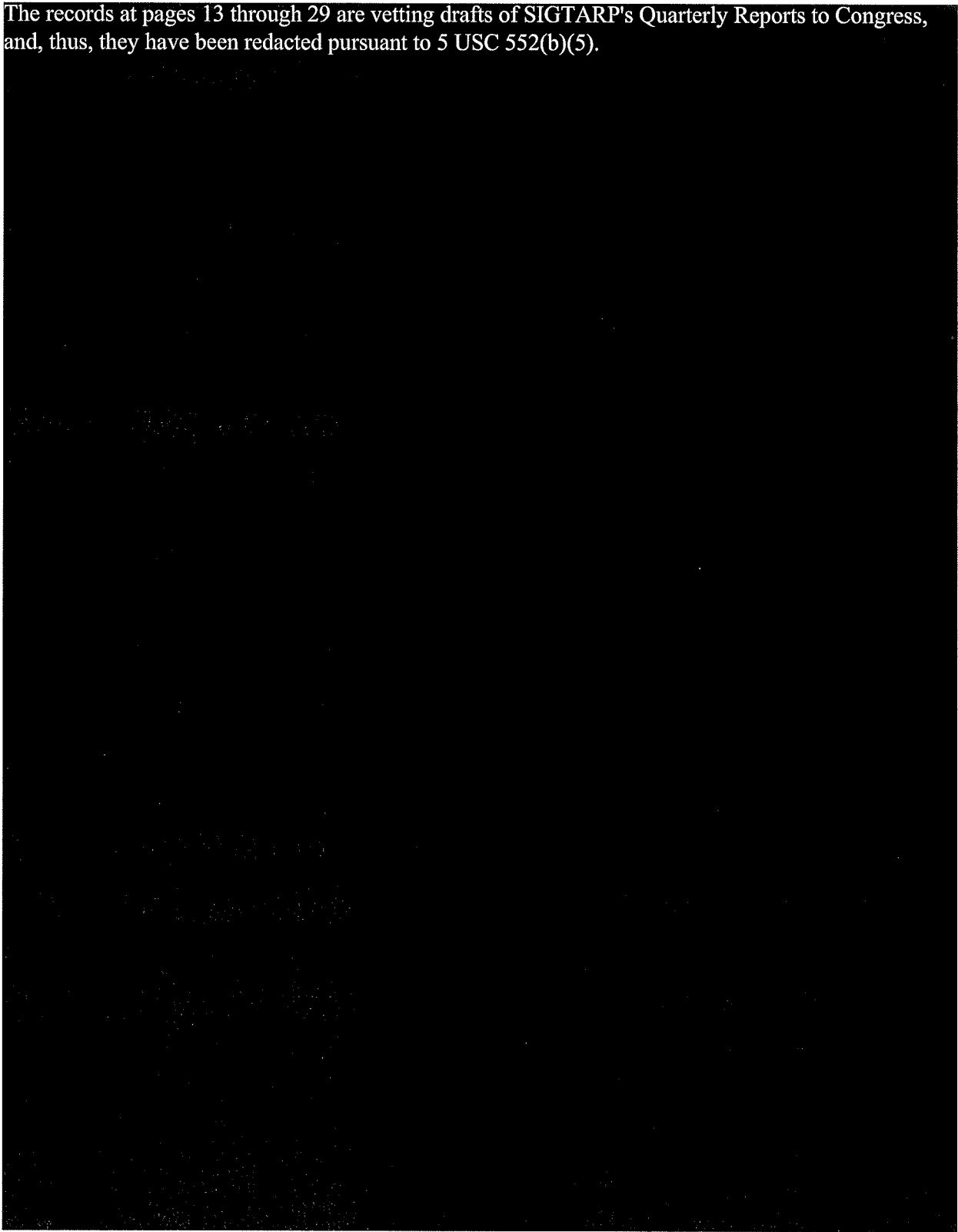
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The records at pages 13 through 29 are vetting drafts of SIGTARP's Quarterly Reports to Congress, and, thus, they have been redacted pursuant to 5 USC 552(b)(5).



**From:** Williams, Jennifer  
**Sent:** Monday, July 13, 2009 7:29 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Holman, Barry; Rosenfeld, Richard  
**Cc:** Morse, Duane; Duffy, Charles  
**Subject:** Suggested Comments on the SIGTARP Recommendations  
**Attachments:** Treasury Comments on SIGTARP Recommendation Chart (07132009).doc; Treasury Response to SIGTARP Recommendations (07132009).doc; SIGTARP PPIP recommendations (Comments on PPIP 7 13 09 ).pdf; SIGTARP Use of Funds recommendation (Comments by Auto 7 13 09).pdf

Thank you for your time to discuss the draft SIGTARP Recommendations. We appreciate your willingness to create the SIGTARP Recommendation Chart, and offering to vet the draft SIGTARP Recommendations with OFS.

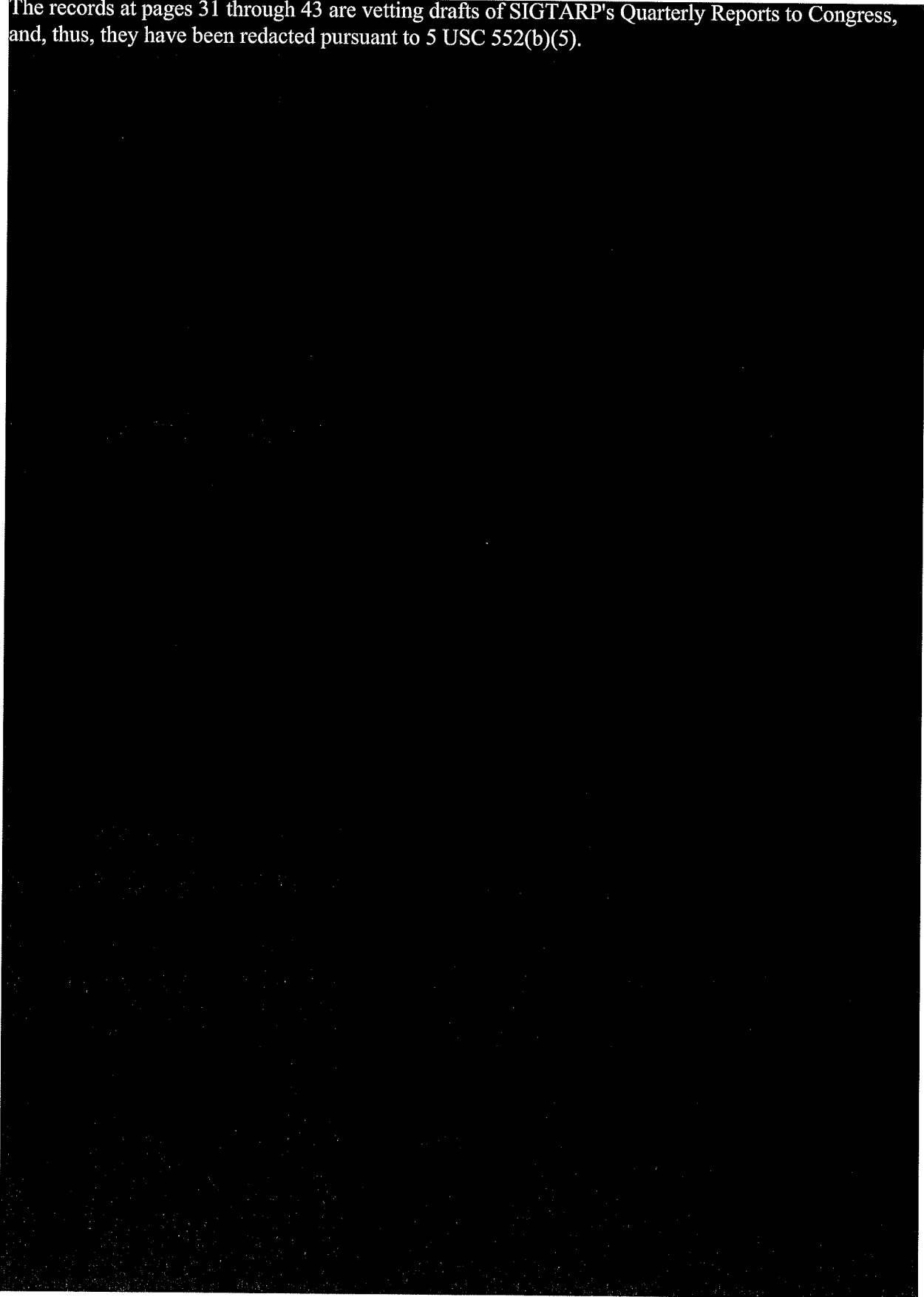
Attached are the bullet points that we discussed at the meeting today. The additional comments on the SIGTARP Recommendation (Section 5 section) are also attached for your review and consideration. We will provide additional comments on the tone of this SIGTARP Recommendation section tomorrow morning. We will also verify your response to SIGTARP Recommendation #3 in the chart, and provide any further comments.

Please feel free to contact Duane Morse or me if you have any questions.

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Jennifer G. Williams  
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The records at pages 31 through 43 are vetting drafts of SIGTARP's Quarterly Reports to Congress, and, thus, they have been redacted pursuant to 5 USC 552(b)(5).



**From:** Morse, Duane  
**Sent:** Thursday, July 09, 2009 7:18 PM  
**To:** Barofsky, Neil; Allison, Herbert  
**Cc:** Puvalowski, Kevin; Williams, Jennifer; Abdelrazek, Rawan  
**Subject:** RE: Report Recommendations

Thanks

Duane D. Morse  
Chief Risk and Compliance Officer  
Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

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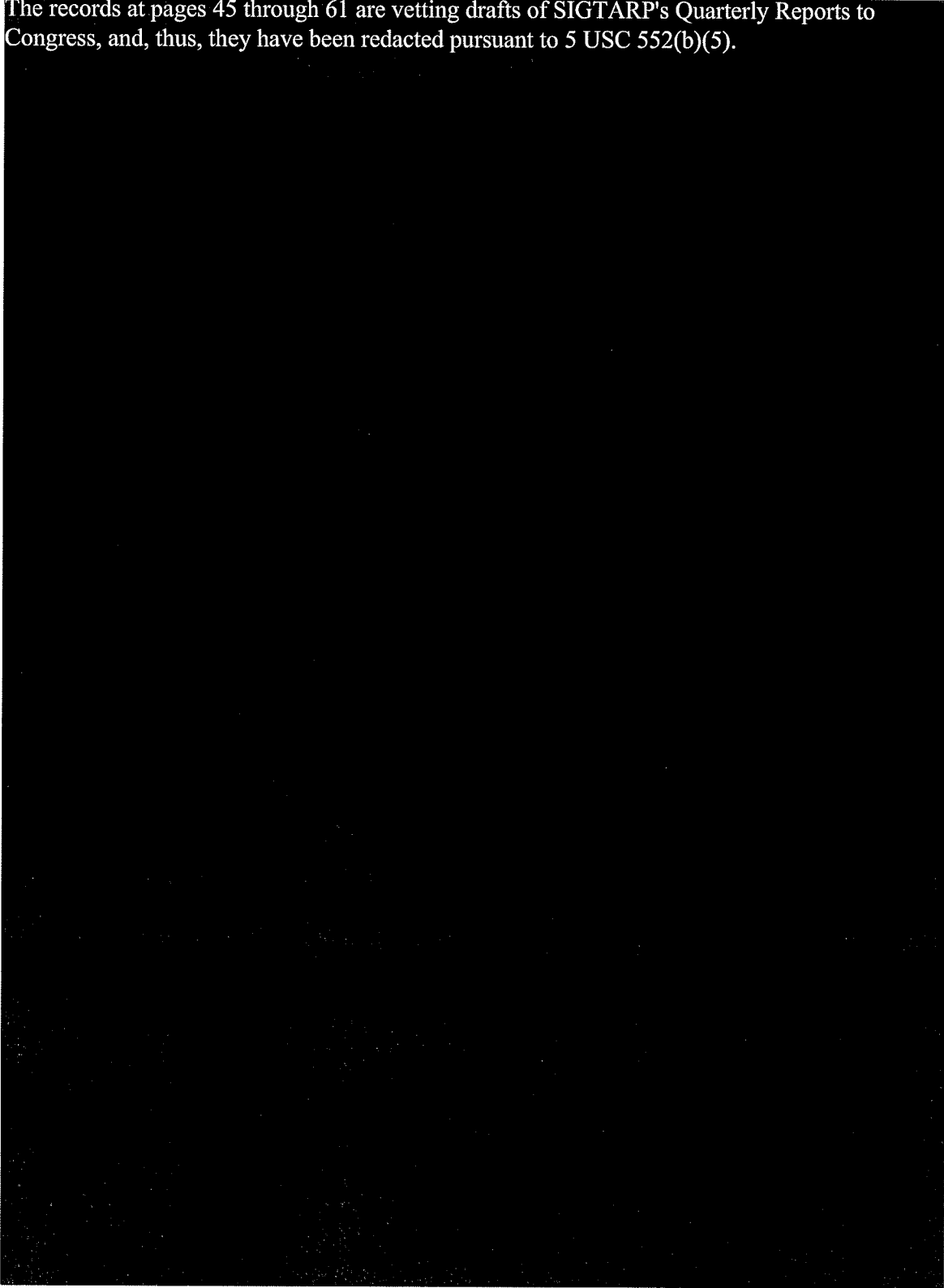
**From:** Barofsky, Neil  
**Sent:** Thursday, July 09, 2009 7:13 PM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin  
**Subject:** Report Recommendations

Herb and Duane – Attached is a draft copy of our new recommendations and a table regarding past recommendations. Instead of our weekly meeting on Monday at 3, I've carved out some time later in the day at 5pm to go over any comments that you may have. We can do it in our office or over the phone. Let me know if that works.

-Neil

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program  
(202) 622-1419

The records at pages 45 through 61 are vetting drafts of SIGTARP's Quarterly Reports to Congress, and, thus, they have been redacted pursuant to 5 USC 552(b)(5).



**From:** Puvalowski, Kevin  
**Sent:** Thursday, April 09, 2009 8:23 PM  
**To:** Patterson, Mark (DO); Kashkari, NeelDisabled ; Morse, Duane; Wolfteich, Paul; Knight, Bernard Jr.; 'William.Treacy@frb.gov'; 'Kieran.Fallon@frb.gov'; 'Andreas.Lehnert@frb.gov'; 'Martin.Grant@ny.frb.org'; 'thomas.baxter@ny.frb.org'  
**Cc:** Barofsky, Neil  
**Subject:** SIGTARP's Draft Recommendations

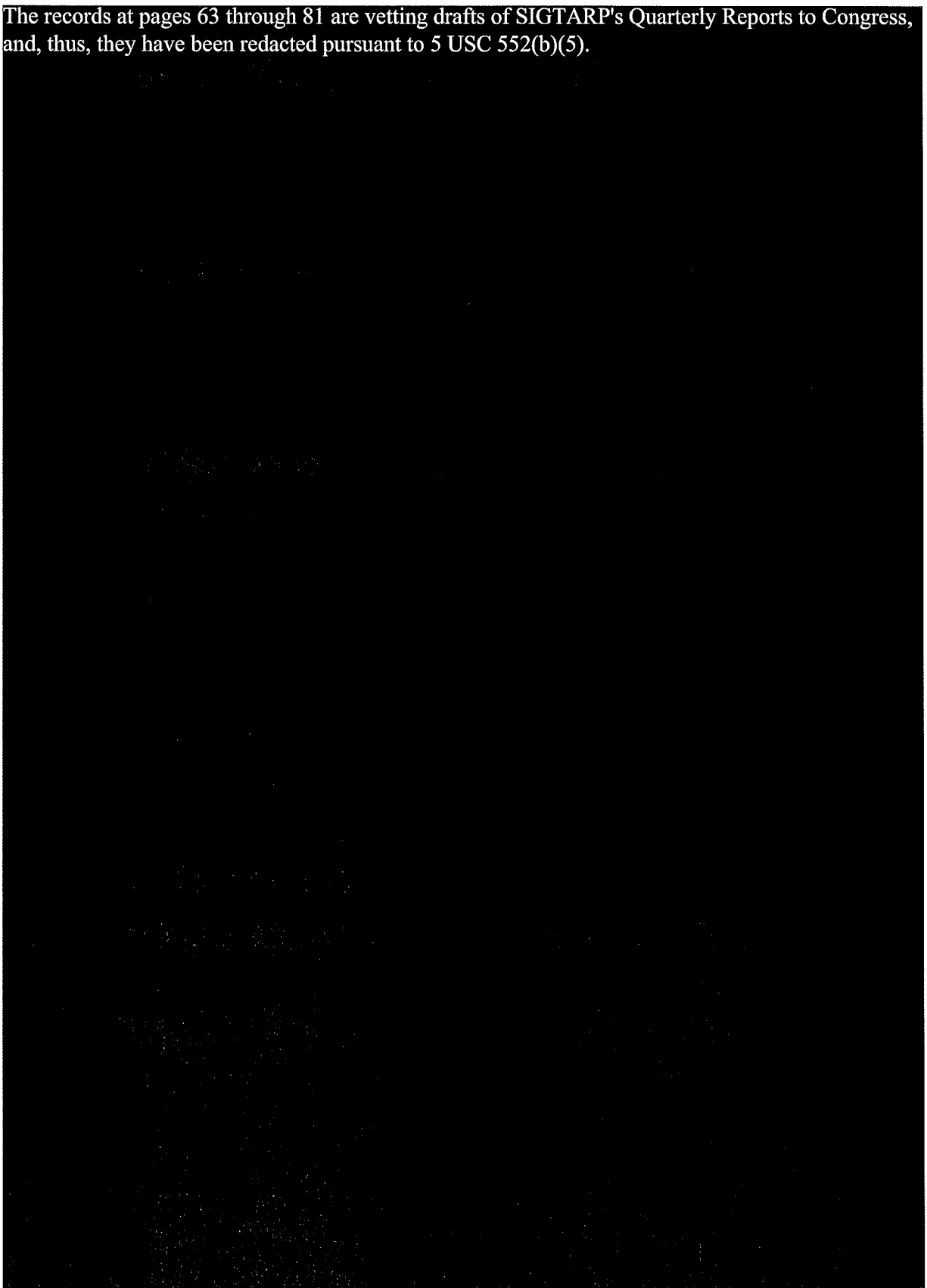
I have attached for your review and comments the draft of the recommendations that will be going into SIGTARP's quarterly report. As with the last report, we are happy to discuss any comments or concerns that you might have. To have an adequate opportunity to address any concerns, we need to have any comments by Monday morning. If anyone would like to meet in person with Neil to discuss the recommendations, please let me know; we have carved out time on Monday at 9:00 a.m. for that purpose, but will try to accommodate your schedules if we can.

You may share the draft with others within your respective agencies as you deem necessary, but please do not distribute it outside your agency.

Regards.

*Kevin R. Puvalowski*  
*Chief of Staff*  
*Office of the Special Inspector General*  
*For The Troubled Asset Relief Program*  
*(202) 622-1584*  
[kevin.puvalowski@do.treas.gov](mailto:kevin.puvalowski@do.treas.gov)

The records at pages 63 through 81 are vetting drafts of SIGTARP's Quarterly Reports to Congress, and, thus, they have been redacted pursuant to 5 USC 552(b)(5).



**From:** Williams, Jennifer  
**Sent:** Wednesday, July 08, 2009 11:30 AM  
**To:** Holman, Barry; Puvalowski, Kevin  
**Cc:** Morse, Duane  
**Subject:** Signed Treasury Response to SIGTARP Recommendations

Barry and Kevin,

Attached are the Treasury Responses to the outstanding SIGTARP Recommendations from the SIGTARP quarterly reports, and SIGTARP's subsequent recommendations on PPIP. Please let me know if you have any questions, or need further information.

Thanks,

Jennifer

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Jennifer G. Williams  
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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

July 2, 2009

Neil M. Barofsky  
Special Inspector General  
Office of the Special Inspector General for the Troubled Asset Relief Program  
1500 Pennsylvania Ave., NW, Suite 1064  
Washington, D.C. 20220

Dear Mr. Barofsky:

This letter and its attachments constitute the response of the Department of the Treasury to the recommendations contained in the Special Inspector General for the Troubled Asset Relief Program's (SIGTARP) *Quarterly Report to Congress*, dated April 21, 2009.

The attached memorandum, entitled *The U.S. Treasury Department Summary Response to SIGTARP Recommendations in the April 21, 2009 SIGTARP Report*, describes the actions Treasury has taken with respect to those recommendations and the recommendations in the SIGTARP's February 2009 quarterly report. The memorandum updates the information set forth in Appendix J of the April SIGTARP Report: *The U.S. Treasury Department Summary Response to SIGTARP Recommendations in the February 6, 2009 SIGTARP Report*.

Treasury welcomes these recommendations. They contain many good ideas and suggestions, and we have considered them carefully. As described in the memorandum, we agree with most of them. We have described how our policies and programs address the issues raised and have discussed, where applicable, additional actions we are taking to ensure that particular concerns are addressed. In a few areas, we believe the recommendation would not help carry out Treasury's statutory duties under EESA. However, in these cases we believe there are alternative ways to address the underlying concerns you have raised and we have explained the measures we are employing to do so.

We appreciate your thoughtful recommendations and look forward to continuing to work with you and your team as we pursue our common goal of carrying out the objectives of EESA, which are to promote financial stability and protect the interests of the taxpayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert M. Allison Jr.", written over a large, stylized flourish.

Herbert M. Allison Jr.  
Assistant Secretary  
Office of Financial Stability

Enclosure

**The U.S. Department of the Treasury  
Summary Response to SIGTARP Recommendations**

*July 2, 2009*

The Department of the Treasury (Treasury) welcomes the recommendations on the Troubled Assets Relief Program (TARP) made by the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) in its April 2009 Quarterly Report to Congress. Treasury's ability to achieve the objectives of the Emergency Economic Stabilization Act of 2008 (EESA) is enhanced by the role of the SIGTARP and its review of TARP programs. We have worked closely with SIGTARP and have benefitted from their involvement in the development of TARP programs and policies. The recommendations reviewed in this report contain many good ideas and suggestions, and we have considered them carefully.

In this report, we have addressed the April 2009 recommendations as well as certain of the recommendations in the February 2009 Initial Report to Congress. We have first repeated each SIGTARP recommendation and then set forth Treasury's views. In most cases, Treasury agrees with the suggestions made. We have explained how Treasury's policies and programs have addressed the issues raised in the recommendation, and discussed, where applicable, additional actions we are taking to insure that particular concerns are addressed. In a few areas, Treasury believes the specific recommendation would not help carry out Treasury's statutory duties under EESA. However, in these cases we believe there are alternative ways to address the underlying concern raised by the SIGTARP, and we have explained the measures Treasury is following to do so.

**SIGTARP Recommendation 1:**

*Treasury should require all TARP recipients to report on the actual use of TARP funds.*

Treasury's Response

Treasury always seeks to ensure accountability for TARP funds and includes measures in each of its programs to ensure such accountability. Reporting requirements necessarily differ depending on the use of funds or the program at issue. TARP programs can be divided for this purpose into two types: programs that are designed to bolster the capital of an institution and programs designed to provide targeted financing on a case-by-case basis. For example, the Capital Purchase Program (CPP), which represents over \$200 billion of TARP funds invested by Treasury, was designed to stabilize the financial system by providing capital to viable institutions of all sizes. TARP funds have been used to purchase preferred stock (or other securities) from over 600 financial institutions. The use of the TARP funds is to bolster the capital of the institution, which is a use that is evidenced in the legal documentation for the transaction.

Because of the fungible nature of money, it is not possible to say that funds invested as capital were used for a particular purpose. Therefore, we do not believe requiring reports as to how the specific funds were spent would be meaningful, since it could never be said with certainty that particular funds were used for a particular purpose. While Treasury could in theory mandate that the funds be used only for particular purposes, that was not the design of the CPP. The terms of the CPP do not require an institution to engage in a particular level of lending, nor do they mandate what an institution can or cannot do in its business generally or specifically with the proceeds of the TARP investment.

Treasury is, however, requiring reporting by CPP participants that is intended to measure the effects of the CPP on lending levels, which we believe is the underlying concern raised by the SIGTARP recommendation, and the concern of American taxpayers. Providing capital to banks helps ensure financial stability of the system as a whole and enables banks to continue to lend to creditworthy borrowers during a crisis. In order to help assess the impact of this program on lending, Treasury therefore requires reporting by banks on general lending and intermediation activities using Treasury's Monthly Lending and Intermediation Survey and Snapshot and Treasury's Lending Report. This reporting is described in more detail below.

Separate from the CPP, Treasury has also created more targeted programs under TARP and the Financial Stability Plan in which funds are used to finance particular purposes. These programs include the Making Home Affordable Program, in which funds are used to provide incentive payments to servicers and homeowners to modify mortgages, and the PPIP, in which funds are to be invested in newly created investment funds and used to purchase legacy securities. In those programs, the program documents impose restrictions on the use of funds and require appropriate reporting to show that the funds were in fact used for the specified purposes.

The following is a program by program description which explains the reporting requirements that are applicable:

**Automotive Industry Financing Program (AIFP):** Treasury through the TARP has purchased debt obligations and equity. The terms of the debt obligations include restrictions on use of funds and reporting requirements. All debt obligations with Chrysler and GM require the borrower to report on the use of proceeds either at the time of a draw or quarterly. For the Chrysler and GM DIP loans, the use of proceeds is dictated by an approved budget. After emergence from bankruptcy, there are, or are expected to be, additional requirements under TARP loans to the new Chrysler and GM entities to provide information on the use of loan proceeds. The loan agreements will also require the entities to establish internal controls to provide reasonable assurance of compliance with applicable requirements.

- **Capital Assistance Program (CAP):** The CAP is designed to ensure that banks have an adequate capital cushion so that they can withstand larger-than-expected losses and maintain lending to creditworthy borrowers in the event that economic conditions worsen. As with CPP, it is a program in which Treasury provides capital to financial institutions. Although Treasury has not yet finalized the definitive documentation for CAP, the CAP guidelines provide that the following types of reporting on lending activities will be required. First, as part of the application process, banks must submit a plan for how they intend to use this capital to preserve and strengthen their lending capacity – specifically, to increase lending above levels relative to what would have been possible without government support. Treasury will make these plans public when the bank receives the capital under the CAP. In addition, banks receiving capital will be required to submit to Treasury monthly reports on their lending broken out by category. This report will include a comparison to their most rigorous estimate of what their lending likely would have been in the absence of government support. These reports will be posted on Treasury’s *FinancialStability.gov* website so that they can be viewed by the public.
- **Capital Purchase Program (CPP):** As noted above, to measure the lending and intermediation activities of the 21 largest banks participating in the CPP, Treasury has launched the Monthly Lending and Intermediation Survey and Snapshot, which will help the public easily assess activities of these banks. The Snapshot contains quantitative information on three major categories of lending – consumer, commercial, and other activities – based on banks’ internal reporting, as well as commentary to explain changes in lending levels for each category. In addition, Treasury recently published an expanded CPP Lending Report, which reports on the monthly average outstanding balances of consumer loans, commercial loans, and total loans from all CPP participants.
- **Making Home Affordable Program (HAMP):** Consistent with the goal of reaching as many borrowers as possible, TARP funds are obligated to loan servicers based on the size of their estimated eligible HAMP portfolios. These obligations (the "servicer cap") represent the maximum amount to be paid for incentive payments to borrowers, servicers, and investors for qualifying loan modifications. Caps may be reset at the discretion of Treasury based on loan modification demand, servicer participation, or other qualified circumstances (sale of loan portfolio, for instance).

For an individual servicer, a cash payment is made to the servicer at the successful conclusion of the trial loan modification period (90-120 days). Payments represent (i) incentive payments to the servicer for completing the modification, (ii) payments to the servicer to be passed on to the investor as a partial offset to reduced interest income resulting from the loan modification, and (iii) payments to the servicer that would be applied to reduce the principal amount of the residential mortgage loan for the borrower. Servicer and investor payments continue for three and five years,

respectively, if the loan remains current and outstanding. While no payments have been made to date, the program administrator (Fannie Mae) will report (by servicer) payments made to servicers, borrowers, and investors relative to the servicer cap beginning in August. In addition, the HAMP compliance agent will verify that Treasury cash disbursements are applied to investors and borrowers, as appropriate.

- **Public Private Investment Partnership (PPIP):** TARP funds for the Legacy Securities Public Private Investment Program (S-PPIP) will be used to (i) make equity investments in investment funds (PPIFs) formed by the fund managers selected by Treasury to participate in S-PPIP and (ii) provide loans to the PPIFs. The funds received through the TARP's investment in the PPIFs are required to be used to purchase commercial mortgage backed securities and non-agency residential mortgage backed securities issued prior to 2009 that were originally rated AAA or an equivalent rating by two or more nationally recognized statistical rating organizations without ratings enhancement and that are secured directly by the actual mortgage loans, leases, or other assets and not other securities (Eligible Assets) (or in Treasury securities and other cash equivalents on a temporary basis (Temporary Investments)). In light of the single purpose nature of the PPIF, definitive documentation will also contain detailed provisions governing the application of all proceeds received by the funds from such investments in legacy securities. Fund managers will be required to provide monthly and periodic reports and financial information to Treasury so that Treasury can monitor compliance with such provisions.
- **Systemically Significant Failing Institution Program (SSFI):** This program is for systemically significant institutions that are in danger of failing. Treasury through TARP invested \$40 billion in AIG in November 2008 which was used to pay down debt provided to AIG by the Federal Reserve Bank of New York. In an April 2009 restructuring of the government's investments in AIG, Treasury committed to provide additional funds under certain circumstances. Because this program provides exceptional assistance to failing institutions, the transaction documents contain more extensive restrictions on the recipient than in the CPP or CAP, including with respect to dividends, corporate expenses, lobbying, executive compensation and risk management. The transaction documents require establishment of internal controls to ensure compliance with the restrictions and certified quarterly reports regarding such compliance and regarding use of the capital.
- **Targeted Investment Program/Asset Guarantee Program:** Treasury invested \$20 billion in each of Citigroup and Bank of America pursuant to the Targeted Investment Program. Because this program provides exceptional assistance to systematically significant institutions, the transaction documents contain more extensive restrictions on the recipient than in CPP or CAP, including with respect to dividends, corporate expenses, lobbying, executive compensation, and risk management. The transaction documents require establishment of internal controls to insure compliance with the restrictions and certified quarterly reports regarding such compliance and regarding

use of the capital. Under the Asset Guarantee Program, Treasury agreed to provide a guarantee with respect to a specified pool of assets. Funds are used for the specific purpose of covering losses with respect to such assets.

- **Term Asset-Backed Securities Loan Facility (TALF):** TALF provides loans to borrowers to purchase certain asset backed securities. The transaction documents provide that the loans can only be used for specific types of asset acquisitions and the funds are only advanced for such use.

**SIGTARP Recommendation 2:**

*Treasury should formalize its going-forward valuation methodology and begin providing values of the TARP investments to the public.*

Treasury's Response

Treasury develops asset valuation methodologies for financial statement and accounting purposes as well as for risk analysis and portfolio management purposes. For its financial statements, Treasury is required to follow the Federal Credit Reform Act of 1990. Treasury has created models consistent with OMB guidelines for credit reform cost estimation to derive and account for the values of the assets in the TARP portfolio. Treasury has engaged Ernst & Young to perform independent verification and validation of the models. In addition, GAO will also receive and review the credit reform models produced by Treasury as part of its oversight and financial statement audit responsibilities. The values of TARP assets derived by the validated credit reform models will be used to reflect the estimated costs to the government in the year-end financial statements of the Office for Financial Stability (OFS) and the President's annual budget, both of which are publicly available.

In addition to the credit reform asset valuation, Treasury tracks the fair market value of the assets in the TARP portfolio as part of its risk analysis and portfolio management functions. To this end, Treasury is developing internal market-based valuation models. It has also engaged external pricing vendors through its custodian bank, and selected three asset management firms as financial agents to provide asset management services, including valuation services.

The securities in Treasury's portfolio consist primarily of preferred stock and warrants for common stock. The external asset managers use a discounted cash model to estimate the value of the preferred securities. The two primary assumptions necessary for accurately estimating the value of the preferred securities in such a model are the maturity point (i.e., when a financial institution will choose to redeem the security) and the rate used for discounting the cash flows. The external asset managers analyze each institution's financial condition along with comparable market data to appropriately calibrate their valuation models for preferred securities.

The valuation of the warrants in Treasury's portfolio is directly relevant to the process for disposing of the warrants. That is, the contracts under which Treasury acquired the warrants provide that a financial institution that redeems the preferred securities has a right to repurchase the warrants at fair market value. The contract specifies an independent valuation process for determining fair market value. Treasury has recently posted a description of the internal procedures it will follow in valuing warrants for purposes of this process at [www.financialstability.gov](http://www.financialstability.gov). These procedures involve applying a robust valuation methodology developed by Treasury as well as relying on the advice of Treasury's external asset managers. Treasury will also publish valuation information on each warrant that is repurchased.

**SIGTARP Recommendation 3:**

*Treasury should develop an overall investment strategy to address the vast portfolio of securities that it holds; Treasury should decide whether it has any intention of exercising warrants in order to hold the common stock.*

Treasury's Response

Treasury's investment strategy, and in particular its asset management decisions with respect to the investments it has made, are determined by statutory requirements and the policy goals that have been developed in light of such statutory requirements. Treasury's responsibilities under EESA are to promote financial stability and prevent disruption to financial markets, while at the same time protecting the taxpayer. Treasury is given the authority to manage assets, including the discretion to hold assets to maturity or for resale for and until such time as the Secretary determines that the market is optimal for selling such assets, in order to maximize the value for taxpayers. EESA, as amended by the American Recovery and Reinvestment Act, also specifically provides that any financial institution that has received assistance may repay that assistance from any source of funds, and that when such assistance is repaid, the Secretary may liquidate the warrants at market price.

In light of these statutory mandates, Treasury's primary portfolio objective is to protect the principal of the portfolio and limit the risk of capital loss to the taxpayer while still insuring that it carries out its responsibility to promote financial stability. This objective is to be measured based on the portfolio as a whole, and not necessarily based on the performance of individual positions. A secondary portfolio objective is to implement a rigorous asset management framework that will identify and monitor risks with individual investments and across investment positions that may jeopardize the return of capital to Treasury, with the ultimate purpose of achieving positive returns to the taxpayer, if possible. An additional objective is to ensure that Treasury's external asset managers provide Treasury with stable, thoughtful, transparent, and impartial asset

management so as to preserve the integrity of the portfolio valuation process and certainty for market participants.

Treasury is currently in the process of developing its investment policy and asset management guidelines for financial institutions participating in the CPP program, which it will publish once such guidelines are completed. Treasury's investment policy with respect to the preferred stock investments under CPP can generally be described as a "buy and hold" strategy. Its strategy must also recognize the financial institution's right to redeem Treasury's investment under the ARRA as described above. Portfolio management is intended to be relatively passive, and Treasury will not initiate trading, hedging, or exiting of a position at this time. Treasury's general posture will be to collect dividend and interest income from the portfolio pending individual financial institution redemptions or until market conditions allow market participants to displace Treasury's investment in a particular financial institution.

Treasury also holds warrants for common stock of CPP recipients. When an institution redeems its preferred stock, it has a contractual right to repurchase the warrants at fair market value. The contractual right provides for an independent valuation process. Treasury has recently published its policy in regard to how it will determine fair market value in connection with such process. The policy also sets forth that Treasury intends to sell the warrants in an auction process if the institution does not elect to repurchase. This policy can be found at [www.financialstability.gov](http://www.financialstability.gov). Treasury does not, at this time, intend to exercise the warrants except under certain circumstances related to mergers and acquisitions activity, although Treasury could consider exercising the warrants in the future. Treasury will review its policies from time to time to ensure they serve the goals of promoting financial stability and protecting the taxpayer.

**SIGTARP Recommendation 4:**

*Treasury should consider requiring that beneficiaries (i.e., the TALF borrowers, the originators/sponsors, and the primary dealers) sign an agreement that includes oversight-enabling provisions.*

Treasury's Response

Treasury has worked with the Federal Reserve Bank of New York (FRBNY) to implement TALF, which is designed to improve credit conditions for consumer, small business, and commercial mortgage loans by facilitating purchases of a variety of asset-backed securities by investors. TALF is run principally by the FRBNY; Treasury's role is to provide debt to an asset disposition vehicle owned and managed by FRBNY which would use such funds in the event TALF borrowers default on the TALF loan or surrender their asset-backed securities. Treasury is not a party to the contracts with TALF borrowers, primary dealers and originators/sponsors and does not provide funds

directly to TALF borrowers. However, Treasury has worked closely with the FRBNY in the development of controls and procedures for the program.

Treasury shares the FRBNY's view that granting the oversight agencies access to the books and records of beneficiaries would discourage participation in the TALF program and is therefore not the best way to address the underlying concerns raised by this recommendation. Treasury has instead worked with the FRBNY to develop appropriate controls in light of the nature of the program. In this regard, the FRBNY has included a number of oversight-related provisions in the TALF transaction agreements that apply to TALF borrowers, including the following:

- A borrower acceptance standard and an assurance program related to borrower eligibility requirements.
- On-site inspection rights over borrowers and the right to reject a borrower for any reason.
- The right to review all loan files held by the custodian pertaining to each borrower.
- If a borrower who has participated in the program is found to be ineligible or is found to have knowingly breached a representation related to the eligibility of the collateral, the non-recourse feature of the loan becomes inapplicable and the borrower must repay the loan.
- To assist FRBNY in screening borrowers, primary dealers are required to apply their internal customer identification program and due diligence procedures to each borrower and escalate information relating to those borrowers assessed as high risk to FRBNY.

In addition to these fraud prevention requirements, FRBNY is establishing an inspection program in order to ensure that the primary dealers are faithfully carrying out their responsibilities under TALF.

**SIGTARP Recommendation 5:**

*Treasury and the Federal Reserve should provide to SIGTARP, for public disclosure in SIGTARP's quarterly reports, the identities of the borrowers who surrender collateral in TALF.*

Treasury's Response

As noted in the response to recommendation 4, while Treasury has worked with the FRBNY to develop TALF and to develop appropriate controls and oversight measures,

the FRBNY administers TALF. The FRBNY, after conducting extensive research, specifically designed TALF to be a limited recourse lending facility with anonymity for public participants. Treasury agreed with the FRBNY that the identities of the TALF borrowers would not be disclosed to Treasury or the public, because such disclosure is unnecessary given the other controls in place and because such disclosure would have a chilling effect on participation in the program. Implementing this recommendation would significantly alter that design.

**SIGTARP Recommendation 6:**

*Treasury should design a robust compliance protocol, with complete access rights for itself, SIGTARP, and other relevant oversight bodies, to all TALF transaction participants.*

Treasury's Response

As noted in the response to recommendation 4, while the TALF program was developed by the FRBNY and Treasury, the FRBNY administers the TALF lending facility and enters into contracts with participants. It therefore has the primary responsibility for TALF compliance and has a risk and compliance protocol for TALF. Treasury's role in TALF is limited as described above. However, Treasury is very concerned with the compliance protocol. The FRBNY provides regular updates to Treasury on the program, and works with Treasury on major design aspects of the compliance program. Treasury has the right to monitor the FRBNY's internal controls and compliance measures for the TALF facility. As such, Treasury continues to have a dialogue with the FRBNY and meets with FRBNY's Risk Management and Compliance Office on a regular basis to ensure that the compliance protocol is robust.

**SIGTARP Recommendation 7:**

*Treasury should dispense with rating agency determinations in connection with TALF and require a security-by-security screening for each legacy RMBS. Treasury should refuse to participate if the program is not designed so that RMBS, whether new or legacy, will be rejected as collateral if the loans backing particular RMBS do not meet certain baseline underwriting criteria or are in categories that have been proven to be riddled with fraud, including certain undocumented subprime residential mortgages (i.e., "liar loans").*

Treasury's Response

A decision has not been reached on whether to include RMBS as eligible collateral in TALF. To the extent the Federal Reserve decides to move forward with the proposed expansion, Treasury will work closely with the FRBNY to ensure risk management

measures are in place, including requiring a security-by-security screening of each legacy RMBS.

Treasury, in collaboration with the FRBNY and the Federal Reserve, has developed a number of provisions for the CMBS program that will help protect the government against loss or fraud. Specifically, Federal Reserve economists have conducted due diligence on rating agency methodologies for eligible CMBS. In addition to agency ratings, the TALF program employs other safeguards to protect taxpayer interests, including interest rate premiums and risk-based collateral haircuts. Other fraud prevention measures include the use of a collateral monitor who will independently verify whether transactions are conducted at arm's-length and whether the transactions are occurring at market prices.

**SIGTARP Recommendation 8:**

*Treasury should require additional anti-fraud and credit protection provisions, specific to all MBS before participating in an expanded TALF, including minimum underwriting standards and other fraud prevention measures.*

Treasury's Response

A decision has not been reached on whether to include RMBS as eligible collateral in TALF. To the extent the Federal Reserve expands TALF to include RMBS, Treasury will work closely with the FRBNY to ensure appropriate anti-fraud and credit protection provisions are in place.

Treasury continues to collaborate with the FRBNY on anti-fraud and credit protection provisions for each new eligible asset class under TALF, including provisions for the expansion of TALF to AAA-rated legacy CMBS. For example, only fixed-rate CMBS that has substantial credit support is eligible for TALF. Additionally, FRBNY has hired a collateral monitor to review each CMBS proposed as collateral. Treasury and the Federal Reserve designed the criteria that the collateral monitor will use in its evaluations.

Other anti-fraud and credit protection provisions for the CMBS program under TALF include the following areas:

Fraud Prevention Requirements

- The CMBS issuer must provide a certification in connection with the prospectus that the CMBS is TALF eligible, that a nationally recognized certified independent accounting firm has certified that the CMBS is TALF eligible, and that the issuer has not made any untrue statements of material fact to an NRSRO to obtain the credit rating of the ABS.

- The CMBS issuer and CMBS sponsor must provide an indemnity certification, which protects FRBNY and Treasury from any losses resulting from a contractual breach of representations and warranties specified in the transaction document.

#### Credit Loss Protection Requirements

- TALF borrowers are required to supply risk capital in the form of haircuts that will provide the first loss protection before usage of U.S. Government funds. TALF borrowers therefore have significant incentives to investigate the quality of the underlying securities and underwriting standards.
- TALF haircut methodology is risk sensitive across asset classes and maturities. Rigorous analytical studies (by both FRBNY and Treasury's outside advisor) project minimal credit loss even under stressed scenarios.

#### Fraud Prevention and Credit Loss Protection at the TALF LLC Level

With respect to the TALF LLC, to which Treasury will provide a \$20 billion subordinated loan, additional credit loss protection, fraud prevention, and compliance mechanisms have been put in place which govern Treasury's relationship with TALF and TALF LLC, including:

- A portion of the excess loan spread paid by TALF borrowers will pass to the SPV and accumulate to provide the first loss cushion to any potential losses that may occur if collateral is put to TALF LLC and subsequently sold for a loss.
- Treasury has the right to approve or disapprove any modifications to the TALF loan haircuts or loan fee charged to TALF borrowers.
- Treasury has access to information and reports regarding TALF loans outstanding and underlying collateral in addition to TALF LLC financial reporting and notices.
- Treasury has the right to monitor the FRBNY's internal controls and compliance measures for TALF.

#### **SIGTARP Recommendation 9:**

*Treasury should require significantly higher haircuts for all MBS, with particularly high haircuts for legacy RMBS, or other equally effective mitigation efforts.*

### Treasury's Response

A decision has not been reached on whether to include RMBS as eligible collateral in TALF. To the extent any future expansion of TALF includes RMBS, Treasury will work with the FRBNY to develop and enhance risk management protocols for haircuts.

As with previous asset classes, the CMBS program under TALF employs conservative haircuts to address the risk that the collateral may decline in value and ensure that investors have an equity stake in the transaction. CMBS haircuts will be calculated against par, but the FRBNY applies that haircut to the current discount price of legacy CMBS securities, thus resulting in a larger percentage haircut and greater protection against credit loss for the more discounted securities.

### **SIGTARP Recommendation 10:**

*Treasury should address the confusion and uncertainty on executive compensation by immediately issuing the required regulations.*

### Treasury's Response

Treasury published an Interim Final Rule on executive compensation which can be found in the June 15, 2009 edition of the Federal Register. The Department of Treasury issued a press release, conducted a press conference regarding the announcement of the Special Master for Executive Compensation, and the newly appointed Special Master has begun to communicate with TARP participants to implement the rule.

### **SIGTARP Recommendation 11:**

*Treasury should significantly increase the staffing levels of OFS-Compliance and ensure the timely development and implementation of an integrated risk management and compliance program.*

### Treasury's Response

OFS has made significant progress in staffing its compliance functions, although there are still a number of compliance positions to be filled. OFS has posted job descriptions and is reviewing resumes and conducting interviews to fill compliance positions at all levels in the organization. When fully staffed, the compliance department will have senior compliance professionals and supporting teams overseeing each TARP program, a team of executive compensation professionals to handle compensation and related compliance issues across all programs, and a team overseeing conflicts issues involving contractors and financial agents.

In the meantime, the compliance staff is receiving assistance from other OFS personnel, including those in the risk management, financial management, home ownership preservation and investment areas, to ensure that TARP participants are meeting their responsibilities under the statutes, rules and investment agreements. In addition, OFS is using financial agents and contractors to provide substantive expertise and program monitoring services under the direction of the compliance staff.

### **SIGTARP Recommendation 12:**

*Treasury should require CAP participants to (i) establish an internal control to monitor their actual use of TARP funds, (ii) provide periodic reporting on their actual use of TARP funds, and (iii) certify to OFS-Compliance, under the penalty of criminal sanction, that the report is accurate; the same criteria of internal controls and regular certified reports should be applied to all conditions imposed on CAP participants; Treasury should require CAP participants to acknowledge explicitly the jurisdiction and authority of SIGTARP and other oversight bodies, as appropriate, to oversee conditions contained in the agreement.*

### Treasury's Response

Treasury is in the process of finalizing the CAP documents, the drafts of which incorporate most of the suggestions made by SIGTARP. With respect to the reporting of the use of TARP funds, as discussed above, this program is designed to increase the capital cushion of banks so that they are in a position to continue lending to creditworthy borrowers. Toward that end, CAP participants will be required to provide certified monthly lending reports to Treasury. The reports will break loans out by category, show how many new loans are provided to businesses and consumers, and show how many asset-backed and mortgage-backed securities are purchased on a monthly basis. To provide context for the raw data, institutions will be required to include a narrative description of the lending environment, including loan demand, in the communities and markets they serve. In addition, they will be required to compare lending activity each month to a rigorous estimate of what their lending would have been in the absence of

- For those applicants selected as finalists, Treasury developed extensive legal and compliance diligence questionnaires that addressed detailed questions regarding governance and conflicts of interest issues, including:
  - Internal audit methodology, accounting policies/procedures and internal controls;
  - Mechanisms in place to identify, track, eliminate, mitigate, and monitor organizational and personal conflicts of interest;
  - Policies and procedures regarding affiliates, “round tripping,” valuation, trade allocations and handling material non-public/sensitive information;
  - Responsibilities, authorities and independence of the Chief Compliance Officer; and
  - Other governance and management policies and procedures.
- Treasury evaluated each finalist’s responses for thoughtfulness, feasibility, and completeness and benchmarked these responses across several key compliance and conflicts related metrics;
- Treasury then compiled subsequent legal, governance and conflicts of interest questions for each finalist, as necessary; and,
- Treasury discussed several key questions with finalists during in-person presentations made to Treasury at Treasury’s offices. A representative from SIGTARP was invited to attend and observe and was present at most of these meetings.

After completion of the evaluation process, Treasury held numerous discussions focused specifically on conflict of interest issues with representatives from potential PPIP fund managers, the SIGTARP staff, and the FRBNY, including FRBNY’s Chief Compliance Officer, several professionals in compliance and risk departments, and several individuals responsible for administering various governance-related portions of FRBNY’s recovery related programs. As part of this process,

- Treasury also had a comprehensive, multi-hour, in-person discussion with FRBNY personnel at its New York headquarters to address governance issues. The meeting was attended by OFS compliance and risk personnel along with the Acting Chief Investment Officer of OFS. A representative from the SIGTARP also attended these meetings;

government assistance. CAP participants will also be required to acknowledge the jurisdiction of the oversight bodies, including SIGTARP.

**SIGTARP Recommendation 13:**

*Treasury should impose strict conflict-of-interest rules upon PPIF managers across all programs that specifically address whether and to what extent the managers can (i) invest PPIF funds in legacy assets that they hold or manage on behalf of themselves or their clients or (ii) conduct PPIF transactions with entities in which they have invested on behalf of themselves or others. SIGTARP recognizes that there is a trade-off between hiring managers with significant experience in the marketplace (who have the expertise to make them effective asset managers but who have complex conflict-of-interest issues as a result) and hiring managers who are not in the market at all (who have less expertise but also no conflicts); however, Treasury should at least consider whether its fund manager requirements address the serious conflict issues. It may very well be that some of the conflicts cannot be mitigated under the current structure of the programs unless the fund managers have no interests (and have no clients who have interests) in the kinds of legacy assets that the PPIFs are purchasing. This may, in turn, significantly limit what entities should be making PPIF investment decisions.*

Treasury's Response

Treasury agrees with SIGTARP on the importance of strict conflict of interest rules and protections in the PPIP program and has worked closely with the SIGTARP to achieve this objective. From the outset of the development of the PPIP, Treasury has focused on the need for a strong set of conflict of interest rules and ethical guidelines. Treasury's conflict of interest rules and ethical guidelines are the product of a rigorous and thorough development process that included extensive interaction with the SIGTARP staff, as well as with prospective PPIP fund managers and the compliance professionals at the Federal Reserve Bank of New York (FRBNY).

It may be helpful to summarize the process Treasury followed to investigate and mitigate actual and potential conflicts of interest that could affect a PPIF. This process was conducted in connection with the evaluation of PPIP fund manager applicants. Treasury worked closely with the SIGTARP in this process, which included the following steps:

- Treasury required applicants to identify all conflicts of interest and how they would adopt to avoid or mitigate those conflicts in its publicly-released application for prospective PPIP fund managers;
- Treasury assessed each potential PPIP fund manager's response for thoroughness (noting any deficiencies) and identified best practices with respect to governance and conflicts mitigation controls;

- Treasury took into consideration information obtained from all of these discussions in developing the conflict rules and ethical guidelines. Throughout this process, Treasury communicated closely with the SIGTARP. Drafts of the term sheets and rules were shared and discussed with SIGTARP, and Treasury benefitted from SIGTARP's involvement and suggestions.

This process resulted in the development of conflicts standards and procedures that we believe will ensure that the PPIP can attract private capital and investment expertise to markets that have been substantially frozen for many months and protect taxpayers' interests at the same time. We also believe these standards and procedures incorporate almost all of the SIGTARP's suggestions. All PPIP fund managers will be required to adopt these standards and procedures – known as “Ethical Standards and Conflicts of Interest Rules” (the “Rules”). These measures include, but are not limited to:

- Adoption of the following policies and associated compliance procedures which must be approved by Treasury and any identified violations reported to Treasury and SIGTARP:
  - Allocation and valuation/pricing policy which must comply with the Investment Advisers Act of 1940, as amended, in all material respects;
  - “Arm’s length” transactions with affiliates policy;
  - Prohibition of use of affiliated broker-dealers to execute transactions; and,
  - Code of ethics and associated personal trading policy;
- Investment of a minimum of 20 million of the General Partner’s own capital in the PPIF;
- Establishment of “watch lists” and associated compliance procedures;
- Reporting to Treasury of any information in the PPIP fund manager’s possession regarding the beneficial owners in equity of a PPIF in their capacity as beneficial owners;
- Reporting to Treasury of 10 largest positions of the PPIF within 15 days after the end of each calendar quarter (and public disclosure of such positions at such time as Treasury determines that such disclosure will not harm the ongoing operations of the PPIF); and,
- Retention of an independent annual internal controls and financial audit.

To address the proprietary interests and/or interests potential PPIP fund managers hold for other clients in Eligible Assets, Treasury will require PPIP fund managers to:

- Be SEC-registered as an Investment Advisor (all recommended pre-qualified PPIP fund managers are);
- Have a trade allocation policy approved by Treasury and report all positions in Eligible Assets (PPIF, non-PPIF funds) to Treasury on an on-going basis;
- Require a PPIP fund manager to invest a minimum of \$20 million in the PPIF fund and allow co-investment by PPIP fund manager staff and employees in the PPIF they manage to better align incentives;
- Require a PPIP fund manager to demonstrate that its compensation system aligns the economic interests of Key Persons with the interests of investors in the PPIF;
- Permit Treasury and SIGTARP to conduct annual and ad hoc audits of compliance with all policies;
- Maintain an independent Compliance Department that keeps an Eligible Assets Watch List that includes information on Eligible Assets held across a PPIP fund manager's funds in addition to the PPIF;
- Disclose to Treasury and SIGTARP actual and potential conflicts of interest; and
- Obtain a Type II SAS 70 report and ensure independent third-party verification of its valuations, returns calculations, and internal controls.

With respect to conflicts with PPIP fund manager affiliates holding or servicing Eligible Assets, Treasury will require PPIP fund managers to:

- Not acquire Eligible Assets from or sell Eligible Assets to: (i) its affiliates; (ii) any other PPIF managed by a different PPIP fund manager (as defined in the definitive documentation); or (iii) any investor that has invested 10% or more of the aggregate private capital raised by the PPIF; and
- Ensure all PPIF transactions must be at arm's length, commercially reasonable, and on terms no less favorable to the PPIF than in transactions with unrelated parties.

With respect to conflicts with PPIP fund manager placement agents and broker-dealer relationships, Treasury will require that:

- A PPIF may not execute trades through a broker-dealer affiliated with the PPIF fund manager; and
- PPIF fund managers may not have “pay-to-play” arrangements with placement agents, underwriters, and other service providers in which money or other forms of direct or indirect compensation are exchanged for services for the privilege to engage (i.e. play) in such activities.

With respect to personal conflicts of interest of PPIF fund manager employees, Treasury will require that:

- All PPIF fund manager key individuals must be subject to a Code of Ethics and associated Personal Trading Policy; and
- PPIF fund managers must maintain policies that cover handling of material non-public information, personal trading, outside business affiliations, and giving and accepting gifts and entertainment.

Treasury will also require that PPIF fund managers certify on a quarterly basis to Treasury their compliance with their internal policies, and that they negotiate with Treasury in good faith over material proposed changes to their policies. Moreover, PPIF fund managers may be removed for material non-compliance with the Rules.

As noted, Treasury’s policies incorporate practically all of SIGTARP’s recommendations. The only substantial recommendation that Treasury has declined to accept is to require that PPIF fund managers provide an investment team that is exclusively devoted to the PPIF and that the team be walled off from other employees of the fund manager, a procedure that the FRBNY has required in certain of its programs. After careful review of this possibility and extensive consultations with SIGTARP, the FRBNY and potential PPIF fund managers, as well as review of the use of information barriers or walls generally, Treasury decided not to impose such a requirement.

While using a segregated team to manage the PPIF might reduce the possibility that non-PPIF investors could benefit at the expense of taxpayers, Treasury concluded that such an arrangement is simply not practicable in the context of S-PPIF. The goal of the PPIF is to restart legacy securities markets by providing capital for investment and promoting price discovery. The PPIF is meant to be a catalyst to stimulate activity by other investors. In order to serve that purpose, the fund managers who are selected for the PPIF must have the experience and expertise to attract private capital and make investment decisions about legacy assets based on limited market information. The managers selected by Treasury already advise funds that have investments in these markets. Indeed, that is one of the primary reasons they have been selected. For the reasons discussed below, it is not practicable or necessary to insist that they assign a segregated investment team to manage PPIF assets. Instead, conflicts of interest can be adequately addressed through the alternative procedures that Treasury has developed.

- a. Requiring a segregated investment team would be likely to reduce investment performance of the PPIF. Any potential benefits associated with walling off the PPIF investment team from the rest of their firm would be far outweighed by a multitude of very significant drawbacks, including the following:
- Requiring a segregated team would significantly diminish or eliminate the program's access to a PPIF fund manager's "A Team" of investment professionals. It is usual and customary for investment professionals to work across multiple funds that invest in similar assets. Fund managers told us they owe a fiduciary duty to all investors and Treasury should not expect to be treated differently. Were Treasury to require that PPIF fund managers provide a segregated investment team, either the fund manager would not participate at all or Treasury's investment would be managed by a junior team that would not be able to consult with the PPIF fund manager's most experienced decision makers. The likely results would be lower returns to taxpayers as well as diminished ability for PPIF fund managers to raise private capital because private investors would be less likely to want to co-invest with Treasury in PPIFs if junior teams of investment professionals would be managing those PPIFs.
  - Walling off a few professionals to make all investment decisions would run contrary to the team-oriented investment process that all PPIF fund managers employ. PPIF fund managers have been selected based on their experience and firm resources. This investment process allows the investment professionals working on the PPIFs to leverage the firm's collective experience and pooled resources across all investment areas and provides significant synergy to the investment process. Implementing a wall would significantly reduce performance and thereby potentially harm the taxpayer.
- b. Requiring segregated investment teams for PPIF would increase risk by limiting fund manager participation in the PPIF and forcing Treasury to invest through a smaller number of funds and investment strategies. In addition to reducing returns to taxpayers, requiring segregated investment teams would increase risks.
- Many PPIF fund managers have indicated that they would withdraw themselves from consideration as potential PPIF fund managers should Treasury require a segregated investment team. This would require Treasury to concentrate its investment into the hands of a few PPIF fund managers, which runs contrary to Treasury's goals of establishing a broad and deep market for Eligible Assets as well as diffusing the influence of any particular PPIF fund manager.

- Requiring a segregated investment team would undermine protections against fund manager misconduct. The team approach to investment decisions provides checks and balances within the organization. PPIP fund managers indicated that the transparent nature of their investment approach within the firm draws on senior professionals across business units and inclusive of senior management. This provides enhanced supervision and balances any one individual PPIP fund manager from acting in his/her own interests or other potential conflicts of interest.
  - “Walling off” personnel and establishing separate software/systems would be time-consuming, costly and not feasible for many firms (especially smaller firms).
- c. Requiring segregated investment teams for PPIP is not necessary to mitigate the risks that are presented by this program.
- The PPIP does not present the same kinds of risks as those that led FRBNY to require segregated teams for some of its programs. Treasury has spent considerable time discussing conflicts concerns and mitigation strategies with FRBNY compliance personnel in order to understand why they elected to require segregated managerial teams for certain of their programs. We learned that FRBNY requires such segregation for its MBS, commercial paper funding facility, and Maiden Lane programs because those teams are in possession of material, non-public information of FRBNY, which could be leaked to the rest of the asset manager’s organization. PPIP fund managers will not have material non-public information from Treasury. Instead, they will make their own investment decisions and Treasury will be a passive investor. Although Treasury has broadly defined the criteria for Eligible Assets for the PPIP, Treasury will not be involved in the PPIP fund manager’s investment decision making and analysis process, nor will it provide feedback or guidance on what a PPIP fund manager should be purchasing. To the extent there is a parallel to any of FRBNY’s programs, the analogous program is TALF, in which FRBNY does not require a segregated team because it does not pass any non-public information to TALF recipients or any related agents.
  - Treasury’s Rules contain key mitigation controls and procedures that provide much stronger protections for taxpayers interests without the drawbacks of “walling off” investment professionals.
    - The Rules require each fund manager to adopt and follow a fair and equitable trade allocation policy. Treasury will approve that policy and Treasury and the oversight bodies will be able to review compliance with that policy.
    - The PPIP term sheets give Treasury and SIGTARP access to data outside of the books and records of the PPIF. Treasury and

SIGTARP will be able to review all trades in Eligible Assets by the PPIF and any other fund managed by the PPIF fund manager no less frequently than on a monthly basis (although some fund managers have stated that they can provide daily access to this information should Treasury or SIGTARP require it). This allows monitoring and auditing of all funds in the PPIF fund manager's firm that trade in Eligible Assets and allows Treasury and SIGTARP to see the flow of Eligible Assets throughout the firm. Treasury will hire a consultant with robust trading analysis systems to review such data. Thus, Treasury will be able to evaluate whether the PPIF fund manager is purposely disadvantaging the PPIF relative to non-PPIF funds.

- The PPIF term sheets strictly prohibit a PPIF fund manager from trading with affiliate funds.
  - Treasury will have the unilateral right to remove the PPIF fund manager for cause and has certain rights to remove the PPIF fund manager without cause with the consent of 51% of the private investors.
  - PPIF fund managers have internal/external audit and corporate governance processes. The PPIF fund managers have impressive track records and reputations and all maintain strict internal policies regarding ethics and compliance. Each maintains internal and external auditors and corporate governance processes.
- While “walling off” investment professionals could further limit the risk that bad actors could inappropriately share material non-public information, doing so would not eliminate such risks. Walls are permeable and can be evaded by individuals determined to do so. Only through the development of a fair trade allocation policy and robust reporting/ monitoring of the PPIF fund manager's compliance regime can we protect the interests of taxpayers. Specifically, Treasury believes the best control over the risk of inappropriate activities like front-running and improper affiliate transactions is to monitor and analyze actual trading data on a frequent basis.

In summary, Treasury believes the rules and procedures outlined above constitute a comprehensive and robust regime for preventing or mitigating manager conflicts of interest. These rules and procedures will further the purposes of the PPIF and provide better protection for taxpayers without imposing the risks of requiring a segregated PPIF investment team.

Finally, Treasury's Office of Financial Stability has strong compliance and risk capabilities to ensure that recipients of TARP funding comply with their obligations under EESA, the transaction documents related to the TARP funding and applicable rules and regulations. Treasury is in the process of expanding the compliance and risk department in connection with the launch of the PPIP program. Treasury will devote whatever resources are necessary to ensure that the compliance and risk regime it has developed for PPIP is fully implemented. The compliance function as it pertains to PPIP will include not only Treasury employees but third party professional advisors, including advisors to monitor trading and allocation activity in legacy assets across each fund complex. Treasury staffing levels will be sufficient to oversee the independent compliance function within each PPIF as well as the ongoing independent audit function that is required to be performed on all PPIP fund managers. Treasury compliance staff will also maintain regular dialogue with each PPIF fund manager's compliance department. It is only through such robust compliance efforts that we can ensure that American taxpayers' interests are protected. We look forward to receiving continued input from SIGTARP with respect to the design, staffing, and operation of this function.

**SIGTARP Recommendation 14:**

*Treasury should mandate transparency with respect to the participation and management of PPIFs. This should include disclosure of the beneficial owners of all of the private equity stakes in the PPIFs and of all transactions undertaken in them. In addition to the reporting requirements contained in the PPIP term sheets, Treasury should obtain and publicly disclose certified reports from all PPIFs across all programs that include all transactions and the current valuation of all assets. To the extent that PPIF managers are permitted to hold or engage in transactions in the same securities that they are buying and selling in the PPIFs, Treasury should require PPIF managers to report to Treasury on any and all holdings and transactions in the same types of legacy assets on their own behalf or on behalf of their clients. Moreover, in addition to the requirement that SIGTARP will have access to all of the PPIF's books and records, as set forth in the term sheets, Treasury should impose a requirement that PPIF managers retain all books and records pertaining in any way to the PPIF (including all e-mails, instant messages, and all other documents), and permit SIGTARP and other oversight entities access to the fund manager's books and records and employees, upon request.*

Treasury's Response

Treasury agrees with the need for transparency with respect to the participation in and management of PPIFs and has worked with the SIGTARP to ensure this. Treasury has sought to develop measures that achieve this goal while still ensuring that the program succeeds in attracting wide participation from private investors. As required under Section 402 of the Helping Families Save Their Homes Act of 2009 ("Ensign"), each PPIF fund manager will be required to disclose to Treasury each beneficial owner of 10% or more of the total equity in the PPIF. Under the requirements of Treasury's term sheets

and “Ethical Standards and Conflicts of Interest for Public-Private Investment Fund Managers,” Treasury has further required each PPIF fund manager to disclose to Treasury any information in the PPIF fund manager’s possession regarding the beneficial owners in equity of a PPIF in their capacity as beneficial owners.

Treasury will not require public disclosure of all transactions undertaken in the PPIF. However, as required under Ensign, each PPIF fund manager will be required to make a quarterly report to the Secretary of the Treasury that discloses the ten largest positions of such PPIF and these reports will be publicly disclosed at such time as Treasury determines that such disclosure will not harm the ongoing business operations of the PPIF.

Treasury and SIGTARP will be able to review all trades in Eligible Assets by the PPIF and any other fund managed by the PPIF fund manager on a no less frequently than monthly basis (although some fund managers have stated that they can provide daily access to this information should Treasury or SIGTARP require it).

Treasury agrees with SIGTARP with respect to access to records and will impose a requirement that PPIF fund managers retain all books and records pertaining to the PPIF. PPIF fund managers will also be required to provide access to such books and records to Treasury and the oversight bodies (including SIGTARP) and be available to discuss the PPIF and its activities at the request of Treasury.

**SIGTARP Recommendation 15:**

*Treasury should require PPIF managers to provide PPIF equity stakeholders (including TARP) “most-favored nations clauses,” requiring that the fund managers treat the PPIFs (and the taxpayers backing the PPIFs) on at least as favorable terms as given to all other parties with whom they deal. In that same vein, PPIF managers should be required to acknowledge that they owe the PPIF investors – both the private investors and TARP – a fiduciary duty with respect to the management of the PPIFs. Treasury should also require that each PPIF fund manager have a robust ethics policy in place and a compliance apparatus to ensure adherence to such code.*

Treasury’s Response

Treasury has included a “most-favored nations” clause in the PPIF term sheets in which other PPIF investors will not be treated “in a manner more favorable than the rights and benefits established in favor of UST by the Partnership Agreement, other than any rights or benefits established in favor of any investor in the Private Vehicles by reason of the fact that such investor is subject to any laws, rules or regulations to which UST is not also subject.”

Treasury will also require PPIF fund managers to:

- Acknowledge their fiduciary duty to Treasury in addition to private investors; and
- Adhere to rigorous code of ethics policies both prior to closing and thereafter, which will be reviewed by the Office of Financial Stability's risk, compliance and legal departments.

Treasury will also require PPIF fund managers to establish and abide by a code of ethics policy that will address, but not be limited to:

- Handling of material nonpublic information;
- Personal trading;
- Outside business affiliations; and
- Giving and accepting gifts and entertainment.

**SIGTARP Recommendation 16:**

*In order to prevent money laundering and the participation of actors prone to abusing the system, Treasury should require that all PPIF fund managers have stringent investor-screening procedures, including comprehensive "Know Your Customer" requirements at least as rigorous as that of a commercial bank or retail brokerage operation. Fund managers should be required to provide Treasury with the identities of all of the beneficial owners of the private interests in the fund so that Treasury can do appropriate diligence to ensure that investors in the funds are legitimate.*

Treasury's Response

To prevent money laundering and the participation of actors prone to abusing the system, Treasury will require that all PPIF fund managers have stringent investor-screening procedures, including comprehensive "Know Your Customer" regulations, OFAC statutes and regulations and all relevant federal securities screening laws and anti-money laundering obligations. In addition, PPIF fund managers will be required to provide Treasury any information in the PPIF fund manager's possession regarding the beneficial owners in equity of a PPIF in their capacity as beneficial owners.

**SIGTARP Recommendation 17:**

*Treasury should not allow Legacy Securities PPIFs to invest in TALF, unless significant mitigating measures are included to address these dangers. These might include prohibiting the use of TARP leverage if the PPIF invests through TALF, or proportionately increasing haircuts for PPIFs that do so.*

Treasury's Response

Treasury and the Federal Reserve have spent considerable time analyzing these concerns and believe that, subject to implementing appropriate controls, allowing PPIFs to invest in TALF is appropriate. Treasury also agrees that the additional leverage TALF offers to a PPIF creates the need to consider additional controls. While the Federal Reserve and Treasury are currently working on details of program interaction, the FRBNY and Treasury have agreed that the FRBNY will allow PPIFs to access TALF subject to the TALF haircuts being adjusted upward to take into account Treasury debt. In particular, the haircuts will be increased so that the combination of Treasury- and TALF-supplied debt will not exceed the total amount of TALF debt that would be available leveraging the PPIF equity alone. In addition, there will be a total leverage cap of 5.0x to ensure that all PPIFs have adequate equity capital at risk. It is expected that, at closing, all PPIF fund managers will utilize debt capital from Treasury, which would be a maximum of 100% of the aggregate equity capital commitments in the PPIF. PPIF fund managers are prohibited from utilizing TALF or third party debt financing if Treasury debt capital comprises more than 50% of the aggregate equity capital commitments of the PPIF. Moreover, Treasury's debt investment would be priced to reflect the additional risk associated with higher leverage.

In addition, as noted earlier, a decision has not been reached on whether to include RMBS as eligible collateral for TALF.

**SIGTARP Recommendation 18:**

*All TALF modeling and decisions, whether on haircuts or any other credit or fraud loss mechanisms, should account for potential losses to Government interests broadly, including TARP funds, and not just potential losses to the Federal Reserve.*

Treasury's Response

Treasury, the Federal Reserve and FRBNY have spent considerable time modeling and analyzing the haircuts and credit exposure for TALF collateral (both current and proposed classes of assets). In order to protect the taxpayer, those models and analyses take into account the potential exposure to the Government broadly. Treasury, the Federal Reserve, and FRBNY believe

the current haircut levels and other modeling decisions are appropriate for the risk involved. Treasury, the Federal Reserve and FRBNY will continue to use the entire Government exposure methodology for additional classes of assets for TALF.

**SIGTARP Recommendation 19:**

*Before funding a mortgage modification, Treasury should require the servicer to submit third-party verified evidence that the applicant is residing in the subject property.*

Treasury's Response

The published servicer guidelines of the HAMP program address this concern. Servicers are required to verify owner occupancy of a borrower using a variety of third-party sources including: matching addresses to printed checks received from borrowers, noting when mail sent to the property address is returned as undeliverable, and checking against tax returns, credit reports, paystubs, and utility bills. This third-party verification must be retained by the servicer in the case file and submitted to Treasury or its agent upon request or during a mandatory compliance audit.

Freddie Mac will review documents received by the servicers for compliance with program guidelines. In addition, Freddie Mac is in the process of investigating the use of third party data sources to validate occupancy during loan file reviews as well as part of data analysis of servicer data.

**SIGTARP Recommendation 20:**

*Additional anti-fraud protections should be adopted to verify the identity of the participants in the transaction and to address the potential for servicers to steal from individuals by receiving Government subsidies without applying them for the benefit of the homeowner. Closing-like procedure conducted would include (1) a closing warning sheet that would warn the applicant of the consequences of fraud; (2) the notarized signature and thumbprint of each participant; (3) mandatory collection, copying, and retention of copies of identification documents of all participants in the transaction; (4) verbal and written warnings regarding hidden fees and payments so that applicants are made fully aware of; (5) the benefits to which they are entitled under the program (to prevent a corrupt servicer from collecting payments from the Government and not passing the full amount of the subsidies to the homeowners); and (6) the fact that no fee should be charged for the modification.*

### Treasury's Response

Treasury has implemented standard guidelines for the HAMP program to ensure the program achieves its goals of stemming foreclosures without causing undue burden to borrowers or excessive costs to servicers. The program provides awareness, information, and education to borrowers regarding, for instance:

- Warnings of hidden fees,
- Reduction of monthly payments, and
- Principal reduction incentive.

Borrower education is provided both verbally and in written form through:

- Published marketing materials and program guidelines on MakingHomeAffordable.gov website,
- Call center counselors, and
- Outreach programs.

Treasury is currently drafting standard language that highlights these warnings and borrower incentives that will be used as part of the application process. One such standard employed presently to borrowers in the hardship affidavit is the disclosure of the penalties associated with fraud.

In addition, Treasury will implement additional anti-fraud protections to verify that borrower incentives are appropriately paid. Freddie Mac will verify that incentives are applied to borrowers and investors, as appropriate, as part of the compliance reviews of servicers. Freddie Mac will also employ testing procedures and data mining techniques, including the use of third-party anti-fraud tools, to help identify and report non-compliance as well as potential fraudulent practices by services.

Other procedures recommended by SIGTARP, such as obtaining notarized signatures and thumbprints, are not part of the current standard practice for mortgage modifications, and would cause undue burdens on borrowers and servicers, thereby defeating the objectives of the program.

#### **SIGTARP Recommendation 21:**

*Treasury should require that verifiable, third-party information be obtained to confirm an applicant's income before any modification payments are made. Treasury should require servicers to (1) compare the income reported on their initial mortgage application with the income reported on the modification application, and, if they differ significantly, require an*

*explanation and verifiable documentation of the change in income; and (2) require third-party verification of employment.*

Treasury's Response

Servicers are required to verify borrower income using tax returns, credit reports and other third party data sources. This verification must be retained by the servicer in the case file and provided to Treasury or its agent upon request or during a compliance audit. In many cases, the initial loan applications will not be in the servicer's files, particularly if servicing was transferred. The post-modification compliance procedures developed by Treasury and Freddie Mac also include validation of applicant's income using third-party sources where available.

**SIGTARP Recommendation 22:**

*Treasury should defer payment of the \$1,000 incentive to the servicer until after the homeowner has verifiably made a minimum number of payments under the mortgage modification program.*

Treasury's Response

This is consistent with how Treasury has designed the HAMP program. Under the HAMP program, servicers are not eligible to receive the \$1,000 upfront incentive until the borrower has made three full payments under the modification. Freddie Mac will include, in servicer compliance reviews, procedures to verify that borrowers have made the required number of payments under the trial modification.

**SIGTARP Recommendation 23:**

*Treasury should proactively educate homeowners about the nature of the program, warn them about these predators, and publicize that no fee is necessary to participate in the program.*

Treasury's Response

Treasury is taking important actions to educate homeowners about the Making Home Affordable (MHA) Program. First, the MHA website prominently features a 'Beware of Foreclosure Rescue Scams' warning on its homepage which highlights that there is no fee associated with getting help through MHA and includes a link to more in-depth guidance for homeowners to avoid scams. In addition, the website is updated frequently with new marketing materials, guidelines, FAQs, events and resources for those seeking 24/7 help.

On June 25, 2009, a press conference in Miami kicked off a nationwide campaign promoting the MHA Program to borrowers seeking eligibility information and empowering local partners to connect with these borrowers to prepare them for the interaction with their servicer. The Treasury Secretary and the Secretary of the Department of Housing and Urban Development were quoted in the press release on the need for the outreach effort to educate homeowners on foreclosure prevention and the importance of the trusted advisors in the communities. The outreach plan focuses on 40 markets hardest hit by foreclosure in large metropolitan areas across the country using national and local partners to launch several days of activities in each market geared to circulate foreclosure prevention messaging. Typically, each market will hold a series of events, with varying degrees of intensity, such as: 1) national partners and local officials to kick off the events with a press release and organize neighborhood canvassing to promote the HOPE hotline, MHA and consumer outreach events; 2) partners to facilitate round-table discussions with local officials, borrowers and media; 3) partners and Treasury to hold "Train-the-Trainer" events for servicers, counselors and local officials; and 4) partners to use MHA materials and "Take Action" folders to drive borrowers to consumer outreach events. The success of each market campaign will be measured by the number of borrowers who attended the outreach event and the number of borrowers who eventually entered into a modification. Measurements will also include exit surveys about how borrowers learned of the event, increased calls to the hotline, and increased hits to the MHA website from that particular market.

Homeownership Preservation Office's (HPO) goal is to ensure a consistent, repetitive message from trusted sources to build and strengthen awareness among homeowners on how to prevent foreclosure or to transition to an alternate solution if they are not eligible for modification. Treasury's HPO is the liaison for all of Treasury to all outreach partners such as: Fannie Mae, Freddie Mac, White House Office of Public Engagement, HUD, Federal Trade Commission, Department of Justice, Federal Housing Finance Agency, NeighborWorks America, HOPE Now Alliance, Homeownership Preservation Foundation, and local partners, e.g. Neighborhood Assistance Corporation of America, National Urban League, National Council of La Raza. HPO is partnering with NeighborWorks and Fannie Mae to complete an AdCouncil campaign in September.

**SIGTARP Recommendation 24:**

*Treasury should require its agents to keep track of the names and identifying information for each participant in each mortgage modification transaction and to maintain a database of such information. Not only would such a database assist law enforcement in the detection and apprehension of fraudsters, but it could also assist in fraud prevention.*

### Treasury's Response

Treasury requires the names and identifying information of borrowers, co-borrowers, servicers, and investors who participate in each mortgage modification transaction. Treasury does not, however, obtain the names of individual employees involved in each mortgage modification transaction because of feasibility, costs, and privacy issues. The names and identifying information of appraisers, mortgage brokers, and attorneys are not collected because these entities do not play a significant role in the mortgage modification process.

The information collected will be retained in a repository that facilitates analysis and allows for customized searches. Treasury and Freddie Mac are developing trending and risk analyses as well as protocols to notify appropriate parties when suspicious activity is identified.

As program enhancements are implemented, Treasury will consider expanding the scope to ensure all relevant program participants are included.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

July 2, 2009

Neil M. Barofsky  
Special Inspector General for the Troubled Asset Relief Program ("SIGTARP")  
1801 L Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20220

Re: June 10, 2009 letter regarding Additional SIGTARP PPIP Recommendations ("June 10 Letter"); and June 19, 2009 letter regarding Additional SIGTARP PPIP Recommendations ("June 19 Letter").

Dear Mr. Barofsky,

The U.S. Department of the Treasury ("Treasury" or "UST") welcomes the recommendations made by the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") made in the June 10 Letter and the June 19 Letter. Treasury's ability to achieve the objectives of the Legacy Securities Public Private Investment Program ("PPIP") is enhanced by the role of the SIGTARP and its review of the PPIP. We have worked closely with SIGTARP and have benefitted from your involvement in the development of the PPIP. The June 10 Letter and the June 19 Letter contain many good ideas and suggestions, and we have considered them carefully.

This letter addresses the recommendations set forth in your June 10 Letter and June 19 Letter. We first explain the process we followed in designing the PPIP. We then review each of your recommendations and set forth Treasury's views on those recommendations. In most cases, Treasury agrees with the suggestions made. We have explained how Treasury has addressed the issues raised in the recommendation and discussed, where applicable, additional actions we are taking to insure that particular concerns are addressed. In the few areas where Treasury believes that the specific recommendation would not help carry out Treasury's statutory duties under the Emergency Economic Stabilization Act of 2008 ("EESA"), Treasury outlines the reasons for not adopting certain of the recommendations in whole or in part and, in certain cases, the alternate ways available to address the underlying concern raised by the SIGTARP and the measures we are taking to do so. The attachments to the letter consist of Ethical Standards and Conflicts of Interest Rules Recommendations (the "Rules") as well as the term sheets for UST's Equity and Debt investments in the S-PPIP, all of which are referenced in this letter.

**How Treasury Developed Conflict-of-Interest Rules for S-PPIP**

Treasury's conflict of interest Rules are the product of a rigorous and thorough development process that included extensive interaction with the SIGTARP staff, as well as with prospective PPIP fund managers and the compliance professionals at the Federal Reserve Bank of New York ("FRBNY").

It may be helpful to summarize the process Treasury followed to investigate and mitigate actual and potential conflicts of interests that could affect a Public-Private Investment Fund ("PPIF"). This process was conducted in connection with the evaluation of PPIF fund manager applicants. Treasury worked closely with the SIGTARP in this process, which included the following steps:

- Treasury required applicants to identify all conflicts of interest and how they would adopt to avoid or mitigate those conflicts in its publicly-released application for prospective PPIF fund managers;
- Treasury assessed each potential PPIF fund manager's response for thoroughness (noting any deficiencies) and identified best practices with respect to governance and conflicts mitigation controls;
- For those applicants selected as finalists, Treasury developed extensive legal and compliance diligence questionnaires that addressed detailed questions regarding governance and conflicts of interest issues, including:
  - Internal audit methodology, accounting policies/procedures and internal controls;
  - Mechanisms in place to identify, track, eliminate, mitigate, and monitor organizational and personal conflicts of interest;
  - Policies and procedures regarding affiliates, "roundtripping," valuation, trade allocations and handling material non-public/sensitive information;
  - Responsibilities, authorities and independence of the Chief Compliance Officer; and
  - Other governance and management policies and procedures.
- Treasury evaluated each finalist's responses for thoughtfulness, feasibility and completeness and benchmarked these responses across several key compliance and conflicts related metrics;
- Treasury then compiled subsequent legal, governance and conflicts of interest questions for each finalist, as necessary; and
- Treasury discussed several key questions with finalists during in-person presentations made to Treasury at Treasury's offices. A representative from SIGTARP was invited to attend and observe and was present at most of these meetings.

After completion of the evaluation process, Treasury held numerous discussions focused specifically on conflict of interest issues with representatives from potential PPIF fund managers; the SIGTARP team; and FRBNY staff, including FRBNY's Chief Compliance Officer, several professionals in its compliance and risk departments, and several individuals responsible for administering various governance-related portions of FRBNY's recovery programs. As part of this process,

- Treasury also had a comprehensive, multi-hour, in-person discussion with FRBNY personnel at its New York headquarters to address conflicts and governance issues. The

meeting was attended by OFS compliance and risk personnel along with the Acting Chief Investment Officer of OFS. A representative from the SIGTARP also attended these meetings.

- Treasury took into consideration information obtained from all of these discussions in developing the Rules. Throughout this process, Treasury communicated closely with the SIGTARP. Drafts of the term sheets and Rules were shared and discussed with SIGTARP, and Treasury benefitted from SIGTARP's involvement and suggestions.

This process resulted in the development of conflicts standards and procedures that we believe will ensure that the PPIP can attract private capital and investment expertise to markets that have been substantially frozen for many months and protect taxpayers' interests at the same time. As discussed below, Treasury has incorporated almost all of the comments and suggestions made by the SIGTARP team. Where we have declined to follow a recommendation, we have done so because we concluded, after full consideration and extensive discussions with your team and FRBNY staff, that it was incompatible with the goals of the S-PPIP and would not help carry out Treasury's statutory duties under the EESA. Our reasons for these decisions are explained fully below.

### **Responses to Recommendations in the June 10 Letter**

#### **1. Registration of Fund Managers, Conflicts of Interest – Implementation of a “Wall”, Other Conflict Rules**

Treasury agrees with SIGTARP on the importance of strict conflict of interest rules and protections in the PPIP and has worked closely with the SIGTARP to achieve this objective. From the outset of the development of the PPIP, Treasury has focused on the need for a strong set of conflict of interest rules and ethical guidelines. Treasury's conflict of interest rules and ethical guidelines are the product of a rigorous and thorough development process that included extensive interaction with the SIGTARP staff, as well as with prospective PPIP fund managers and the compliance professionals at the FRBNY.

This process resulted in the development of conflicts standards and procedures that we believe will ensure that the PPIP can attract private capital and investment expertise to markets that have been substantially frozen for many months and protect taxpayers' interests at the same time. We also believe these standards and procedures incorporate almost all of the SIGTARP's suggestions. All PPIP fund managers will be required to adopt these standards and procedures – known as the Rules. These measures include, but are not limited to:

- Adoption of the following policies and associated compliance procedures which must be approved by Treasury and any identified violations reported to Treasury and SIGTARP:
  - Allocation & Valuation/Pricing Policy which must comply with the Investment Advisers Act of 1940, as amended, in all material respects;
  - “Arm's Length” Transaction Policy;

- Prohibition of use of Affiliated Broker-Dealers to execute transactions; and
- Code of Ethics and associated Personal Trading Policy.
- Investment of a minimum of \$20 million of the General Partner's own capital in the PPIF;
- Establishment of "Watch Lists" and associated compliance procedures;
- Reporting to Treasury of any information in the PPIF fund manager's possession regarding the beneficial owners in equity of a PPIF in their capacity as beneficial owners;
- Reporting to Treasury of 10 largest positions of the PPIF within 15 days after the end of each calendar quarter (and public disclosure of such positions at such time as Treasury determines that such disclosure will not harm the ongoing operations of the PPIF); and
- Retention of an independent annual internal controls and financial audit.

To address the proprietary interests and/or interests potential PPIF fund managers hold for other clients in Eligible Assets, Treasury will require PPIF fund managers to:

- Be SEC-registered as an Investment Advisor (all recommended pre-qualified PPIF fund managers are);
- Have a trade allocation policy approved by Treasury and report all positions in Eligible Assets (PPIF, non-PPIF funds) to Treasury on an on-going basis;
- Require each PPIF fund manager to invest a minimum of \$20 million in the PPIF they manage and allow co-investment by PPIF fund manager staff and employees in the PPIF they manage to better align incentives;
- Require a PPIF fund manager to demonstrate that its compensation system aligns the economic interests of Key Persons with the interests of investors in the PPIF;
- Permit Treasury and SIGTARP to conduct annual and ad hoc audits of compliance with all policies;
- Maintain an independent Compliance Department that keeps an Eligible Assets Watch List that includes information on Eligible Assets held across a PPIF fund manager's funds in addition to the PPIF;
- Disclose to Treasury and SIGTARP actual and potential conflicts of interest; and
- Obtain a Type II SAS 70 report and ensure independent third-party verification of its valuations, returns calculations and internal controls.

With respect to conflicts with PPIP fund manager affiliates holding or servicing Eligible Assets, Treasury will require PPIP fund managers to:

- Not acquire Eligible Assets from or sell Eligible Assets to: (i) its affiliates; (ii) any other PPIF managed by a different PPIP fund manager (as defined in the definitive documentation); or (iii) any investor that has invested 10% or more of the aggregate private capital raised by the PPIF; and
- Ensure all PPIF transactions must be at arm's length, commercially reasonable, and on terms no less favorable to the PPIF than in transactions with unrelated parties.

With respect to conflicts with PPIP fund manager placement agents and broker-dealer relationships, Treasury will require that:

- A PPIF may not execute trades through an broker-dealer affiliated with the PPIF fund manager; and
- PPIP fund managers may not have "pay-to-play" arrangements with placement agents, underwriters, and other service providers in which money or other forms of direct or indirect compensation are exchanged for services for the privilege to engage (i.e. play) in such activities.

With respect to personal conflicts of interest of PPIP fund manager employees, Treasury will require that:

- All PPIP fund manager key individuals must be subject to a Code of Ethics and associated Personal Trading Policy; and
- PPIP fund managers must maintain policies that cover handling of material non-public information, personal trading, outside business affiliations, and giving and accepting gifts and entertainment.

Treasury will also require that PPIP fund managers certify on a quarterly basis to Treasury their compliance with their internal policies, and that they negotiate with Treasury in good faith over material proposed changes to their policies. Moreover, PPIP fund managers may be removed for material non-compliance with the Rules.

As noted, Treasury's policies and procedures incorporate practically all of SIGTARP's recommendations. The only substantial recommendation that Treasury has declined to accept is to require that PPIP fund managers provide an investment team that is exclusively devoted to the PPIF and that the team be walled off from other employees of the fund manager, a procedure that the FRBNY has required in certain of its programs. After careful review of this possibility and extensive consultations with SIGTARP, the FRBNY and potential PPIP fund managers, as well as review of the use of information barriers or walls generally, Treasury decided not to impose such a requirement.

While using a segregated team to manage the PPIF might reduce the possibility that non-PPIF investors could benefit at the expense of taxpayers, Treasury concluded that such an arrangement is simply not practicable in the context of PPIF. The goal of the PPIF is to restart legacy securities markets by providing capital for investment and promoting price discovery. The PPIF is meant to be a catalyst and to stimulate activity by other investors. In order to serve that purpose, the fund managers who are selected for the PPIF must have the experience and expertise to attract private capital and make investment decisions about legacy assets based on limited market information. The managers selected by Treasury already advise funds that have investments in these markets. Indeed, that is one of the primary reasons they have been selected. For the reasons discussed below, it is not practicable or necessary to insist that they assign a segregated investment team to manage PPIF assets. Instead, conflicts of interest can be adequately addressed through the alternative procedures that Treasury has developed.

- Requiring a segregated investment team would be likely to reduce investment performance of the PPIF. Any potential benefits associated with walling off the PPIF investment team from the rest of their firm would be outweighed by a multitude of very significant drawbacks, including the following:
  - Requiring a segregated team would significantly diminish or eliminate the program's access to a PPIF fund manager's "A Team" of investment professionals. It is usual and customary for investment professionals to work across multiple funds that invest in similar assets. Fund managers told us they owe a fiduciary duty to all investors and Treasury should not expect to be treated differently. Were Treasury to require that PPIF fund managers provide a segregated investment team, either the fund manager would not participate at all or Treasury's investment would be managed by a junior team that would not be able to consult with the PPIF fund manager's most experienced decision makers. The likely results would be lower returns to taxpayers as well as diminished ability for PPIF fund managers to raise private capital, because private investors would be less likely to want to co-invest with Treasury in PPIFs if junior teams of investment professionals would be managing those PPIFs.
  - Walling off a few professionals to make all investment decisions would run contrary to the team-oriented investment process that all PPIF fund managers employ. PPIF fund managers have been selected based on their experience and firm resources. This investment process allows the investment professionals working on the PPIFs to leverage the firm's collective experience and pooled resources across all investment areas and provides significant synergy to the investment process. Implementing a wall would significantly reduce performance and thereby potentially harm the taxpayer.
- Requiring segregated investment teams for PPIF would increase risk by limiting fund manager participation in the PPIF and forcing Treasury to invest through a smaller number of funds and investment strategies. In addition to reducing returns to taxpayers, requiring segregated investment teams would increase risks.

- Many PPIP fund managers have indicated that they would withdraw themselves from consideration as potential PPIP fund managers should Treasury require a segregated investment team. This would require Treasury to concentrate its investment into the hands of a few PPIP fund managers, which runs contrary to Treasury's goals of establishing a broad and deep market for Eligible Assets as well as diffusing the influence of any particular PPIP fund manager.
- Requiring a segregated investment team would undermine protections against fund manager misconduct. The team approach to investment decisions provides checks and balances within the organization. PPIP fund managers indicated that the transparent nature of their investment approach within the firm draws on senior professionals across business units and inclusive of senior management. This provides enhanced supervision and balances any one individual PPIP fund manager from acting in his/her own interests or other potential conflicts of interest.
- "Walling off" personnel and establishing separate software/systems would be time-consuming, costly and not feasible for many firms (especially smaller firms).
- Requiring segregated investment teams for PPIP is not necessary to mitigate the risks that are presented by this program.
  - The PPIP does not present the same kinds of risks as those that led FRBNY to require segregated teams for some of its programs. Treasury has spent considerable time discussing conflicts concerns and mitigation strategies with FRBNY compliance personnel in order to understand why they elected to require segregated managerial teams for certain of their programs. We learned that FRBNY requires such segregation for its MBS, commercial paper funding facility, and Maiden Lane programs because those teams are in possession of material, non-public information of FRBNY, which could be leaked to the rest of the asset manager's organization. PPIP fund managers will not have material non-public information from Treasury. Instead, they will make their own investment decisions and Treasury will be a passive investor. Although Treasury has broadly defined the criteria for Eligible Assets for the PPIP, Treasury will not be involved in the PPIP fund manager's investment decision making and analysis process, nor will it provide feedback or guidance on what a PPIP fund manager should be purchasing. To the extent there is a parallel to any of FRBNY's programs, the analogous program is TALF, in which FRBNY does not require a segregated team because it does not pass any non-public information to TALF recipients or any related agents.
  - Treasury's Rules contain key mitigation controls and procedures that provide much stronger protections for taxpayers interests without the drawbacks of "walling off" investment professionals.

- The Rules require each PPIP fund manager to adopt and follow a fair and equitable trade allocation policy. Treasury will approve that policy and Treasury and the oversight bodies will be able to review compliance with that policy.
- The PPIP term sheets give Treasury and SIGTARP access to data outside of the books and records of the PPIF. Treasury and SIGTARP will be able to review all trades in Eligible Assets by the PPIF and any other fund managed by the PPIF manager no less frequently than on a monthly basis (although some fund managers have stated that they can provide daily access to this information should Treasury or SIGTARP require it). This allows monitoring and auditing of all funds managed by the PPIP fund manager's firm that trade in Eligible Assets and allows Treasury and SIGTARP to see the flow of Eligible Assets throughout the firm. Treasury will hire a consultant with robust trading analysis systems to review such data. Thus, Treasury will be able to evaluate whether the PPIP fund manager is purposely disadvantaging the PPIF relative to non-PPIF funds.
- The PPIP term sheets strictly prohibit a PPIP fund manager from trading with affiliate funds.
- Treasury will have the unilateral right to remove the PPIP fund manager for cause and has certain rights to remove the PPIP fund manager without cause with the consent of 51% of the private investors.
- PPIP fund managers have internal/external audit and corporate governance processes. The PPIP fund managers have impressive track records and reputations and all maintain strict internal policies regarding ethics and compliance. Each maintains internal and external auditors and corporate governance processes.
- While "walling off" investment professionals could further limit the risk that bad actors could inappropriately share information, doing so will not eliminate these risks. Walls are permeable and can be evaded by individuals determined to do so. Only through the development of a fair trade allocation policy and robust reporting/ monitoring of the PPIP fund manager's compliance regime can we protect the interests of taxpayers. Specifically, Treasury believes the best control over the risk of inappropriate activities like front-running and improper affiliate transactions is to monitor and analyze actual trading data on a frequent basis.

In summary, Treasury believes the rules and procedures outlined above constitute a comprehensive and robust regime for preventing or mitigating manager conflicts of interest. These rules and procedures will further the purposes of the PPIP and provide

better protection for taxpayers without imposing the risks of requiring a segregated PPIF investment team.

Treasury is in the process of expanding this department in connection with the launch of the PPIP program. Treasury will devote whatever resources are necessary to ensure that the compliance and risk regime it has developed for PPIP is fully implemented. The compliance function as it pertains to PPIP will include not only Treasury employees but third party professional advisors, including advisors to monitor trading and allocation activity in legacy assets across each fund complex. Treasury staffing levels will be sufficient to oversee the independent compliance function within each PPIF as well as the ongoing independent audit function that is required to be performed on all PPIP fund managers. Treasury compliance staff will also maintain regular dialogue with each PPIF fund manager's compliance department.

## **2. Public disclosure of all transactions in the PPIF**

Treasury agrees with the need for transparency with respect to the management of PPIFs and has worked with the SIGTARP to ensure this. Treasury has sought to develop measures that achieve this goal while still ensuring that the program succeeds in attracting wide participation from private investors. Treasury will not require public disclosure of all transactions undertaken in Eligible Assets in the PPIF or in non-PPIF funds as this would harm to the fund's operations by revealing competitive and proprietary information regarding the fund's investment positions and strategy. However, as required under Section 402 of the Helping Families Save Their Homes Act of 2009 ("Ensign"), each PPIP fund manager will be required to make a quarterly report to the Secretary of the Treasury that discloses the 10 largest positions of such PPIF and these reports will be publicly disclosed at such time as Treasury determines that such disclosure will not harm the ongoing business operations of the PPIF. Treasury and SIGTARP will be able to review all trades in Eligible Assets by the PPIF and any other fund managed by the PPIF fund manager on a no less frequently than monthly basis (although some fund managers have stated that they can provide daily access to this information should Treasury or SIGTARP require it).

## **3. Other Provisions**

### **A. Treasury should prohibit the fund manager from engaging in marketing related to Treasury's relationship to the manager.**

PPIP fund managers will be prohibited from engaging in marketing related to UST's relationship to the PPIP fund manager, other than with respect to appropriate and customary disclosures related to marketing the PPIF itself.

### **B. Treasury should require so-called "Key Man" provisions mandating that the PPIF obtain the services of the personnel who were promised during the application process.**

Robust "Key Man" protections are something Treasury intendeds to require from PPIP fund managers. During its ongoing due diligence, UST has met with the key investment professionals who will be responsible for managing each PPIF. For each

PPIF, Treasury has included “Key Man” provisions that are designed to protect taxpayers’ interests by requiring these critical investment professionals to be involved with the PPIF. These provisions were custom tailored with respect to each PPIF fund manager taking into consideration the specific individuals that UST expects to be involved.

- C. Treasury should institute a comprehensive ban on all insider, cross, or affiliated transactions with provisions at least as strict as those required by the FRBNY in its programs.**

In the Rules, insider, cross and affiliated transactions are prohibited. Throughout the S-PPIF process, Treasury has engaged numerous stakeholders in determining best practices to employ for the Rules, including FRBNY professionals.

- D. Treasury should require the recording of all telephone calls of the PPIF fund manager and employees.**

Treasury evaluated this issue carefully and determined that the considerable cost and efforts of requiring all telephone calls of the PPIF fund manager to be recorded is not justified by the minimal benefit that this might garner in discouraging a few potential bad actors from sharing material non-public information. The pervasive use of cell-phones and inability to monitor all activities of bad actors would render this protection easy to evade. Treasury believes that the risk of inappropriate collusion is better mitigated by careful screening of PPIF fund manager employees, applying a personal code of ethics to each PPIF fund manager employee, which Treasury requires in its Rules and applying the Rules, generally to review PPIF and non-PPIF transactions to make sure that the fair trade allocation policy is being followed.

- E. “[It is essential that] appropriate metrics be defined and an evaluation system be in place to monitor the effectiveness of the PPIF managers, both to ensure that they are fulfilling the terms of their agreements and to measure their performance against pre-established benchmarks and against each other. To that end, there must be mechanisms in place to deal with any failings on the part of PPIF managers to satisfy their contractual terms or with managers who are performing poorly.”**

Treasury is in the process of developing appropriate metrics to monitor the effectiveness of the PPIF fund managers as well as the S-PPIF in general. Performance metrics will be evaluated across three principal areas:

- Effectiveness of achieving policy goals for programs for Legacy Assets -- Metrics to measure price discovery and restarting the markets for Eligible Assets are expected to include trading volume, bid-ask spreads and pricing for Eligible Assets.
- Financial performance of a PPIF -- Metrics are expected to include PPIF returns relative to appropriate benchmarks. Given the heterogeneous pool of pre-qualified PPIF fund managers (e.g. CMBS vs. RMBS, participation in

different levels of the capital structure, etc.), it is difficult to compare PPIP fund managers' returns directly.

- Adherence to compliance regime – Metrics are expected to include timeliness of delivery of reports and compliance with the Rules, etc.

Treasury has the ability to end the investment period after 12 months in its sole discretion, and to the extent a certain PPIP fund manager is underperforming, UST and the private investors will have the ability to replace the General Partner of the PPIF. In addition, material violations of the Rules will be included as Events of Cause in the Partnership Agreements governing each PPIF.

### Response to June 19 Letter

#### *Equity Term Sheet Recommendations*

1. **“Generally, where the UST has consent rights, the standard for withholding consent should be ‘for any reason or no reason’ or ‘in the sole and absolute discretion’ instead of the lower standard of ‘reasonable’.”**

The S-PPIP contemplates a partnership with private investors; PPIFs are not formed or controlled by Treasury. Treasury believes that the consent rights contained in the term sheets strike the appropriate balance between adequately protecting the taxpayers' interests and creating a program in which private investors will be willing to participate. There are only two circumstances in the equity term sheet where Treasury's consent is subjected to a reasonableness standard.

First, Treasury may not unreasonably withhold its consent to the approval of the offering materials and governing documents of the Private Vehicles, together with any side letters entered into with private investors. Treasury will carefully review these materials, but expects that these agreements will not impact Treasury (the terms of Treasury's investment will be separately documented) and taxpayers, and that the ability to reasonably object to them provides sufficient protection.

Second, Treasury may not unreasonably withhold its consent to the approval of additional indebtedness to be incurred by the PPIFs. Treasury believes that its debt term sheet already adequately protects the taxpayers' interest on this point because: (i) any additional indebtedness is subject to an Asset Coverage Test, which ensures that the loans are sufficiently collateralized, and a Leverage Ratio Test, which ensures that the overall size of the debt does not get too large; and (ii) the pricing of Treasury's debt is given a “most favored nation” status and will be based on the weighted average applicable margin applicable to all third-party debt held by a particular PPIF.

2. **Conversely, all fees and distributions should be, at minimum, “reasonable.”**

Treasury agrees with SIGTARP that PPIP expenses borne by private investors and Treasury should be “reasonable” in nature. The equity term sheet was drafted to reflect this standard:

“...the Partnership will pay all reasonable expenses related to the operation of the Partnership...”

Distributions, however, represent cash proceeds to equity holders (Treasury and private investors) after payment of expenses and debt principal subject to the priority of payments waterfall (“Waterfall”) as set forth in the debt term sheet. Treasury has structured the Waterfall to protect its debt investment in the PPIFs by requiring any distributions to equity holders (Treasury and private investors) to be made pro rata with the repayment of Treasury’s debt investment. Additionally, the debt term sheet contains a trigger that results in diversion of all cash flows to pay down Treasury debt if Asset Coverage Test is not met.

- 3. Participation in the Private Vehicles: This section should delete the following language, “that would adversely affect UST, the Partnership or the Partnership’s investment activities” and the language to implement it that follows beginning with “which notice will be accompanied...” through the end of that sentence.**

This comment would require Treasury consent for every amendment to the governing documents of the private vehicles, which are the other investors in the PPIF, instead of just the amendments that are adverse to Treasury. Treasury believes that the current language in the equity term sheet is appropriate and adequately protects the taxpayers’ interests. It is not necessary or appropriate for Treasury to approve every amendment to private investor documents because: (i) Treasury will have a most favored nation clause, which will allow it to elect the benefit of any provision of the governing documents of the private vehicles that is more favorable than the rights that Treasury has in the PPIF; (ii) many such amendments will have no impact on Treasury (e.g. ministerial changes); and (iii) such a standard would be inconsistent with the fundamental design of the program. In addition, in connection with every proposed amendment, Treasury will receive an officer’s certificate stating whether the PPIF fund manager believes that the proposed amendment adversely affects Treasury, and will have ten (10) business days to review such proposed amendment.

- 4. Distributions: In the “tax payments” paragraph, if any tax payments are contemplated for the LP’s, the deemed distribution should be pro rata as to actual tax payments made since UST is a non-tax entity.**

Treasury will clarify the “tax payments” paragraph by adding the following language to the end of the paragraph:

“to whom such taxes are attributable.”

The purpose of the tax payments and withholding language in the equity term sheet is to make clear that if the PPIF makes a tax payment on behalf of a partner or is required by law to withhold an amount from a distribution made to a partner, then the amounts paid or withheld will have been treated as having been actually distributed to that partner (notwithstanding the fact such partner did not actually receive these amounts). The additional language is intended to further clarify that the amount paid or withheld is treated as having been distributed to the particular partner or partners that are liable for such taxes. For instance, if the PPIF was required by law to pay a tax on behalf of the private sponsor that is a partner, then the amount paid by the PPIF would be treated as having been distributed solely to that private sponsor. Treasury would not be treated as having received a

distribution as a result of the tax payment made on behalf of the private sponsor that is a partner.

- 5. Partnership Expenses: These should be capped and reasonable. The reasonableness standard should be informed by the required annual budget.**

As discussed in #2 above, Treasury agrees that PPIP expenses should be "reasonable." However, Treasury believes that an annual cap on partnership expenses is highly unusual for partnerships of this type. The lack of a cap is driven by the inherent inequity of requiring the PPIP fund manager, which (although it has a meaningful financial investment of at least \$20 million) has a smaller relative percentage of the equity in the fund, to bear 100% of any excess expenses above a cap. Treasury will receive and review an annual expense budget from each PPIP fund manager. Treasury believes that the annual budget process and the prohibition on expenses for advisory and monitoring services will act as effective constraints on expenses and will adequately protect taxpayers. Additionally, the incentive fee a PPIP fund manager will earn on the private investor capital will be subject to – in many cases – a hurdle rate (or preferred return to private investors before the PPIP fund manager earns an incentive fee) which will be negatively affected by expenses. This will create a financial incentive for PPIP fund managers to minimize PPIP expenses.

- 6. Exclusivity: As drafted, there is little exclusivity. Without a wall, written consent should be required for any trades in Eligible Assets not made in the PPIF by PPIF fund managers, and there should be a blanket prohibition against forming, closing on or accepting commitments in any vehicle dealing in any Eligible Assets without UST's written consent. Further, as currently written, the exception permitting actions where the General Partner, in its own discretion, can make investments to maintain diversification in non PPIF funds could swallow the rule.**

Treasury will not implement this recommendation. Because demonstrated experience in investing in Eligible Assets was an important criterion in selecting PPIP fund managers, nearly all of the PPIP fund managers with which Treasury is negotiating have existing accounts and vehicles that invest in Eligible Assets. Given the short time frame in which investment decisions are made, requiring Treasury's written consent for allocations away from the PPIF would, as a practical matter, preclude PPIP fund managers from allocating investment opportunities to their other products. Treasury has been told by PPIP fund managers, and believes, that such a result is commercially impracticable for the PPIP fund managers. Were Treasury to require this, a number of the best PPIP fund manager candidates would likely choose not to participate in S-PPIP. Accordingly, a provision like this is not in the best interests of the taxpayers.

In addition, one of the policy objectives of S-PPIP is to increase the flow of private capital into the market for Eligible Assets. As such, and in light of the significant size of the investment opportunity, Treasury has determined to allow PPIP fund managers to continue to manage existing funds investing in Eligible Assets (as discussed in the previous paragraph) as well as form certain new managed accounts and funds to invest in Eligible Assets. These new funds will of course be subject to investment allocation policies set forth in the Rules. Finally, Treasury notes that the exception for diversification only applies with respect to vehicles formed to co-invest alongside the PPIF in specifically identified Eligible Assets. These co-investment vehicles are contemplated to be used only when an asset cannot be

purchased by the PPIF in accordance with its diversification requirements. Treasury believes that the creation of these vehicles both protects the taxpayer in allowing PPIFs to access all sizes of transactions while remaining diversified and promotes the policy objective of increasing the flow of capital into the market for Eligible Assets. As SIGTARP correctly points out, the PPIF fund managers already have the ability to allocate investment opportunities between the PPIF and other funds investing in Eligible Assets subject to a fair and equitable allocation policy.

7. **Restrictions on Hedging Products, Restrictions on Certain Transactions, and Restrictions on Affiliates:** You should consider prohibiting all of these.

These are all prohibited unless consented to in writing by Treasury. This achieves the same outcome as a straight prohibition.

8. **Allocation of Business Time:** Consistent with comments above, those making investment decisions for the PPIF should be exclusive to the PPIF.

As discussed above, Treasury will not implement this recommendation because it is inconsistent with one of the basic premises of S-PPIF: to partner with the best and most experienced PPIF fund managers to manage Treasury's investment.

PPIF fund managers have been selected based on the experience of the individuals managing the PPIF as well as the firm resources that are available. Our documents already provide that certain key individuals will focus a significant portion of their business time on the PPIFs. Walling off a few individuals to make investment decisions for the PPIF would run contrary to the team-oriented investment process that is crucial in ensuring that taxpayers are adequately protected. A team approach allows firm employees to leverage the entirety of the firm's experience and resources across all investment areas and provides significant synergy to the investment process. Requiring manager segregation would force PPIF fund managers to allocate their top talent between their existing clients, which form the basis of the firm's long-term business, and the government, which offers a limited opportunity that is not likely to generate follow-on assignments or additional investments. Faced with that choice, no PPIF fund manager is likely to dedicate its top talent to the PPIF. Thus, requiring a wall could significantly reduce performance and thereby harm taxpayers.

9. **Removal of the General Partner:** Treasury should have greater removal rights. Standardized language for both cause and with cause terminations should be used. For cause should be at the initial stages of adverse proceedings (such as Indictment), keyed to notice of the institution of proceedings against the manager or a key person. It should be in UST's discretion at that point to terminate.

Treasury already has very favorable removal rights relative to those of private investors due to the size of its investment in a PPIF. However, in partnering with fund managers, Treasury needs to balance having unilateral rights with the goal of attracting participation by private investors, who may be hesitant to invest in a program that can be terminated at any time in Treasury's sole discretion. Treasury retains the right to dissolve the investment period after one year in its sole discretion, thereby limiting any potential harm that might result from adverse proceedings against the PPIF fund manager.

Treasury does not believe that “initial stages of adverse proceedings (such as Indictment)” should be an event of Cause. This is severely off-market and would chill fund manager and investor participation. Treasury believes that its existing removal rights adequately protect taxpayers.

- 10. Reports and Financial Information: Monthly reports should be delivered within 7 calendar days of the end of each quarter so information may be included in SIGTARP’s quarterly report. As we have explained, it will be impossible for us to meet our reporting obligations under the current proposed schedule. As noted above, information on Eligible Assets should include Date, CUSIP, position, size, pricing, dates and any other relevant valuation information to be reported monthly to Treasury so that it can be analyzed. The document retention policy should be “acceptable” to Treasury.**

Treasury believes that delivery of reports within 15 calendar days after the end of each month is reasonable and is consistent with industry practices for investment funds. This timing should not prevent SIGTARP from including the data in its quarterly reports, which are not issued until several weeks after the conclusion of the quarter in any event.

Treasury agrees with SIGTARP that the information on Eligible Assets should be delivered in the monthly reports (including CUSIP or ISIN, date of purchase, security description, par value, cost, fair market value and accrued income) and has updated the equity term sheet accordingly.

Pursuant to the Rules, documents will be retained for as long as the PPIF is in existence and three (3) years beyond the termination of the PPIF.

- 11. Notice: Although this is not a section, standard notice provisions should apply. At a minimum, Treasury should receive notice of the commencement of any action (regulatory, criminal, civil or otherwise), and any material event of default occurring against the manager.**

This issue is dealt with in the “Notice” section of the equity term sheet and already substantially addresses SIGTARPS concerns. However, in response to SIGTARP’s comments, it now reads as follows:

“Notice. The General Partner will provide UST and SIGTARP notice of Events of Default (as defined in the Debt Term Sheet), material litigation, material regulatory investigations and other material events (including defaults or other adverse events in respect of Third Party Debt (as defined in the Debt Term Sheet)).”

#### *Ethical Standards and Conflicts of Interest Rules (the “Rules”) Recommendations*

- 1. Please include SIGTARP anywhere that UST has a disclosure or review right. For example, while SIGTARP has access to the fund’s books and records, under the document, only UST has access to key persons and other personnel.**

Treasury will provide SIGTARP a disclosure or review right in cases where Treasury has a disclosure or review right with respect to Reports and Financial Information.

- 2. Remedies and Penalties: Treasury should have the ability to change behavior and alter unwanted action. There should be strict penalty provisions, including termination, for violations of terms and conditions, beyond merely requiring the fund to undo the bad act.**

Treasury will have remedies and be able to impose penalties with respect to a material violation of the Rules. Such violations will be included as Events of Cause in the Partnership Agreements governing each PPIF.

- 3. Proprietary Interests and Interests of Other Clients: All interests in any vehicle should be disclosed as to all changes in those interests. UST and SIGTARP should have access to all information for all managed assets across all funds.**

Treasury will not require information beyond the transactions / positions with respect to *Eligible Assets*. Treasury believes that requiring disclosure of "all changes in...interests" in any vehicle would be overly burdensome for PPIF fund managers and would constitute a violation of the confidentiality rights of investors in non-PPIF funds. Moreover, Treasury believes that this information is unnecessary, and the existing formulation sufficiently captures the information in non-PPIF funds that Treasury and SIGTARP will need to review in order to ensure adequate oversight and taxpayer protections.

- 4. Allocation & Valuation/Pricing Policy: All Qualified Fund Managers ("QFM") should submit an allocation and pricing policy for approval. All variances should be reported immediately to UST and SIGTARP.**

Treasury will review the allocation and pricing policies of QFMs. All PPIF fund managers will be required to comply with the Investment Advisors Act. Each of the General Partner and its Subadvisors must adopt and ensure compliance with a fair and equitable trade allocation policy ("Allocation Policy") acceptable to Treasury that requires a pro rata or comparably equitable allocation of trades and investment and disposition opportunities between the PPIF and any non-PPIF funds that invest in Eligible Assets. Each of the General Partner and its Subadvisors shall similarly ensure compliance with a valuation/pricing acceptable to Treasury that values similar Eligible Assets consistently regardless of the ownership of the Eligible Assets. The PPIF fund manager will identify non-compliant allocations, pricings and valuations; report such to Treasury and SIGTARP as soon as reasonably possible; and take appropriate corrective action such as reallocation of the trades or comparable action.

- 5. Co-Investment: Complete prohibition of firm management or staff investing personally in the PPIF in any way.**

Treasury will not implement this recommendation. Treasury will permit firm management and staff to invest personally in the PPIF because Treasury believes that this assists in aligning PPIF fund manager's incentives with respect to the performance of the PPIF.

- 6. Record Access: We repeat the overarching need that anytime UST receives access, so should SIGTARP.**

Treasury will provide SIGTARP a disclosure or review right in cases where Treasury has a disclosure or review right with respect to Reports and Financial Information.

- 7. Reviews: This section should include UST and SIGTARP's ability to perform unannounced inspections and reviews of the PPIF and have access to all information across all positions of the QFM regardless of vehicle.**

Treasury and SIGTARP will have the right to perform ad hoc inspections and reviews of the PPIF and have access to all information across all Eligible Assets of the PPIF and non-PPIF funds, but without being overly intrusive or disruptive to the operations / business of the fund manager.

- 8. Eligible Assets Watch List: This section should require that UST receive monthly consolidated report from each of the QFMs across all funds for all eligible and like assets that includes: position, size, pricing, CUSIP, relevant dates, and all other relevant valuation and pricing information. The report will provide a consolidated view of positions across all funds within the QFM in order to readily identify any potential issues. As noted earlier, as part of Treasury's compliance, such data should be analyzed by Treasury or a third party.**

Treasury will require a monthly consolidated report for each of the PPIP fund managers for the Eligible Assets Watch List but only with respect to Eligible Assets. Treasury is working to identify a third-party firm to analyze data from PPIP fund managers received with respect to Eligible Assets.

- 9. Disclosure of Conflicts: In addition to providing quarterly compliance certification to UST, QFM's should provide immediate notification of non-compliance to UST and SIGTARP.**

Treasury will require PPIP fund managers to provide prompt notification of non-compliance of disclosure of conflicts to Treasury and SIGTARP.

- 10. Disclosure of Beneficial Ownership: UST and SIGTARP need a complete "look through" to beneficial owners. The PPIP Fund Managers should disclose to UST all KYC/beneficial ownership information for every investor. Further, UST should have sole discretion to deny access unilaterally to remove any investor for any or no reason. These same requirements apply to the Investor Diligence section.**

Treasury will require that the PPIF fund manager provide Treasury access to the books and records of the private vehicles that invest alongside with Treasury in the PPIFs, as well as any information in their possession regarding any beneficial owners of interest in those private vehicles in their capacity as beneficial owners. However, Treasury will not have sole discretion to deny access unilaterally to or remove any investor for any or no reason. Treasury believes that KYC and OFAC requirements as well as disclosure of investors sufficiently protect Treasury and the taxpayers, and having a unilateral "kickout" right would deter both fund managers and private investors from participating.

- 11. Conflicts with Named Affiliates: Should apply to all legal affiliates. UST should review and approve the policy. UST should consider requiring written compliance**

certifications from the buyer and seller of each security (which is required by the Federal Reserve in the TALF program). Non-Compliant transactions identified and all information should be forwarded immediately to UST and SIGTARP.

While Treasury's conflicts policies must be strict, they must also be tailored to maximize benefit while not posing such onerous restrictions as to prevent Treasury from obtaining access to firms with the expertise needed to effectively manage the PPIFs. Treasury's primary S-PPIP conflicts concerns relate to Eligible Assets. It is not appropriate to apply its rigorous compliance regime beyond those entities related to the S-PPIP which do not deal with Eligible Assets, particularly because they are unlikely to influence decisions made with respect to S-PPIP Eligible Assets.

Requiring written compliance certifications from the buyer/seller of each security is impracticable given the fact that most securities will be purchased or sold through broker dealers. Furthermore, this requirement is overly onerous and superfluous given that Treasury bars affiliate sales (collusion to circumvent such a rule is already outlawed) and requires all sales to be at arms' length. Treasury and SIGTARP will have access to all records pertaining to Eligible Asset transactions. Treasury and SIGTARP will be able to check whether the same CUSIPs habitually "carousel" between PPIFs and affiliates.

- 12. Conflicts with Placement Agents and B/D Relationships: Non-compliant transactions should be identified and reported immediately to UST and SIGTARP. Fund Managers need to initiate best efforts remedial action and report steps taken to correct issue.**

Treasury will require the prompt reporting to Treasury and SIGTARP of non-compliant transactions with respect to conflicts with placement agents and broker / dealer relationships.

- 13. Asset Crossing, Flipping and Round-tripping: Again, QFM's should submit policies and procedures to UST and UST should approve. Also, again, quarterly reporting and immediate notification and reporting to UST and SIGTARP of non-compliance should be required.**

Treasury will require PPIP fund managers to submit policies and procedures to Treasury for approval and will require the prompt reporting to Treasury and SIGTARP of non-compliant transactions with respect to assets crossing, flipping and roundtripping.

- 14. Use of Fund Manager in Recovery-Related Programs: UST should have unilateral right to reject.**

Treasury will have the unilateral right to reject a PPIP fund manager's participation in Recovery-Related Programs.

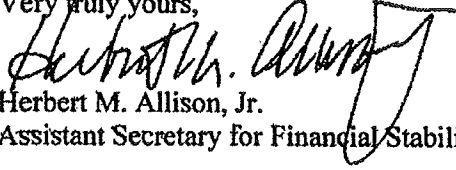
- 15. All QFM's should be required to refer immediately any instance or suspected instance of fraud, waste or abuse to SIGTARP, and to inform their employees of this requirement and provide them with SIGTARP's hotline information.**

PPIP fund managers will be required to promptly refer any instance or suspected instance of fraud, waste or abuse to Treasury and SIGTARP, and to inform their employees of this requirement and provide them with SIGTARP's hotline information.

\* \* \*

We appreciate your team's involvement to date in consulting with the Treasury during its design of S-PPIP. As discussed above, we have given serious consideration to all of your recommendations and have adopted most of them. While there are certain points on which we disagree, the program has benefitted from your team's involvement. I will be available to meet with you to discuss these comments if you would like.

Very truly yours,



Herbert M. Allison, Jr.  
Assistant Secretary for Financial Stability

**From:** Bass, Matthew  
**Sent:** Monday, July 06, 2009 9:58 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Holman, Barry; mccoolt@gao.gov; Baum, Naomi (COP)  
**Cc:** Allison, Herbert; Morse, Duane; Massad, Timothy; Miller, David N; Cook, David; Ferlazzo, Ronald; Bartley, Aaron; Schmerin, Daniel  
**Subject:** S-PPIP -- Final Documents  
**Attachments:** S-PPIP Conflicts Standards.pdf; Schedule As.pdf; LOI and Annexes 7\_6.pdf

Please find attached the following S-PPIP documents --

1. Execution copies of Letter of Intent and Equity and Debt Term Sheets
2. Execution copies of Schedule As
3. Ethical Standards and Conflicts of Interest Rules

We look forward to speaking with you at 10:30AM tomorrow.

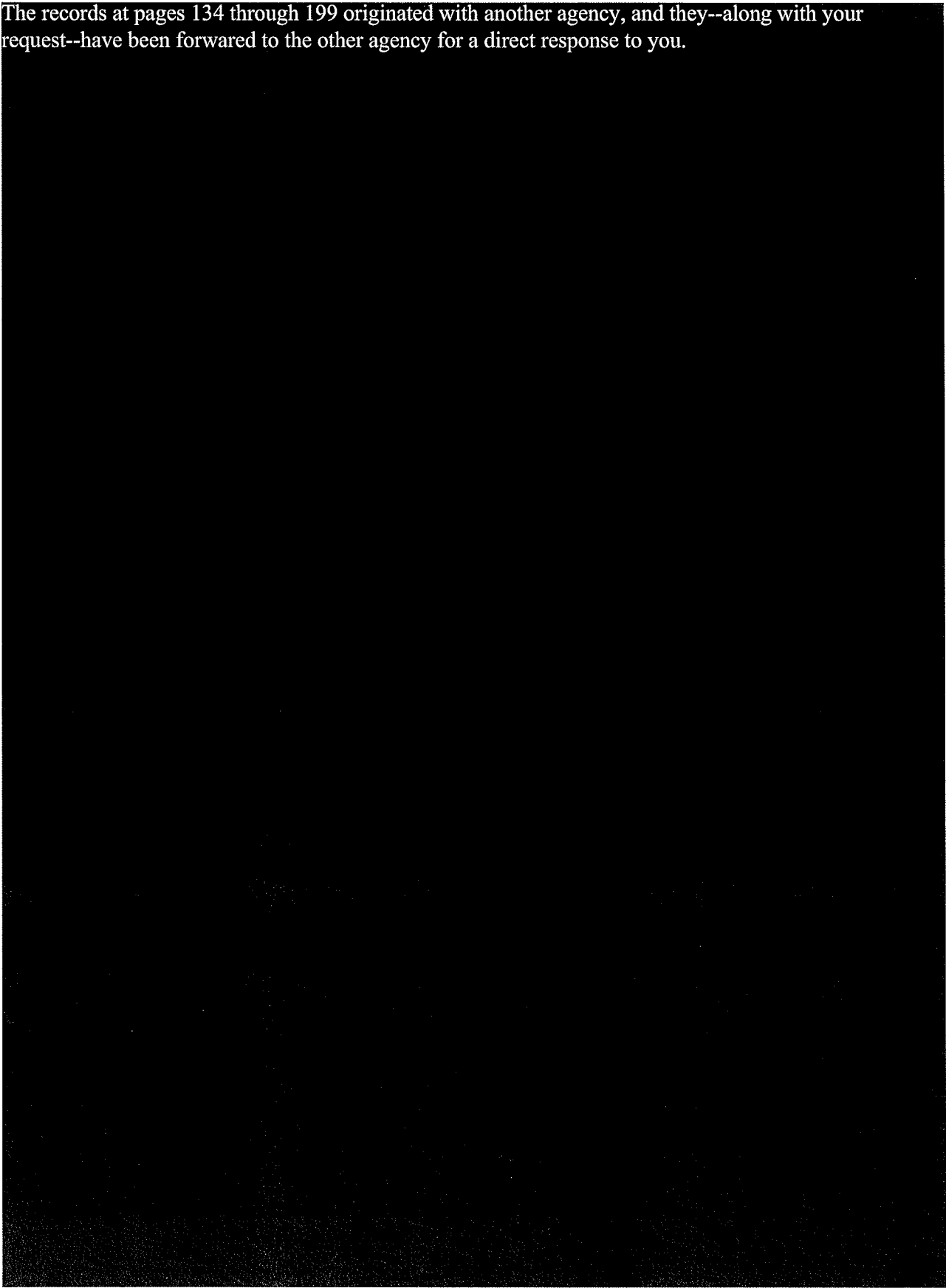
Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

The records at pages 134 through 199 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Morse, Duane  
**Sent:** Wednesday, July 01, 2009 5:24 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Holman, Barry; Rosenfeld, Richard  
**Cc:** 'William.R.Nelson@frb.gov'; Allison, Herbert; Miller, David N; Bass, Matthew; Bartley, Aaron; Ferlazzo, Ronald; Massad, Timothy; Morse, Duane  
**Subject:** S-PPIP Program Compliance and Risk Management  
**Attachments:** S-PPIP Conflicts Standards.pdf, 7-1-09 Nelson Letter re S-PPIP Conflicts Policies.pdf

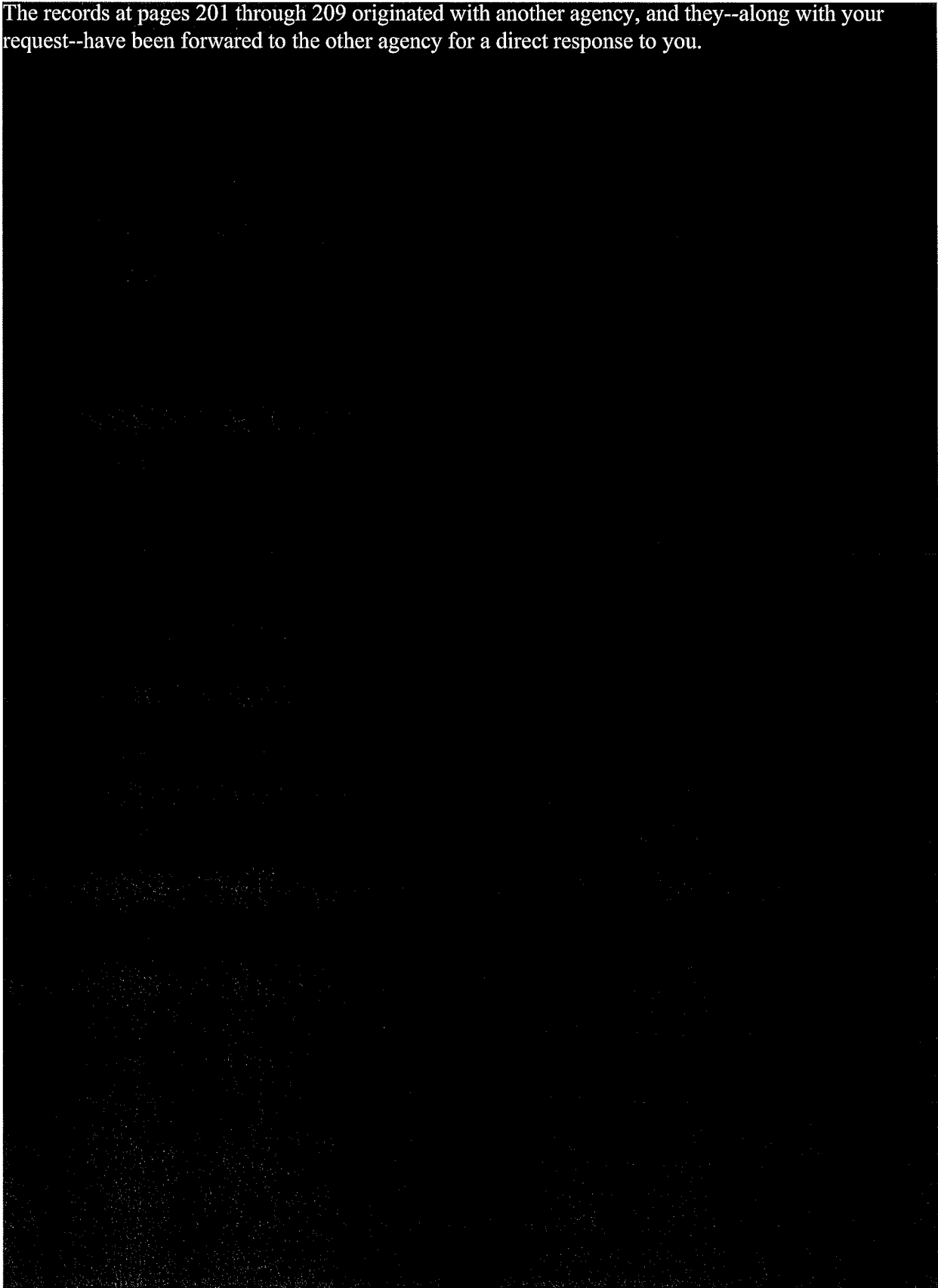
Gentlemen,

Attached for your information are copies of (i) a letter to Bill Nelson of the Fed concerning PPIP conflict procedures and the interaction between PPIP and TALF, and (ii) our conflict standards for PPIP. We are still working on our responses to the recommendations in your prior reports and our response to your June 10 and June 19 letters, but expect to send them to you shortly.

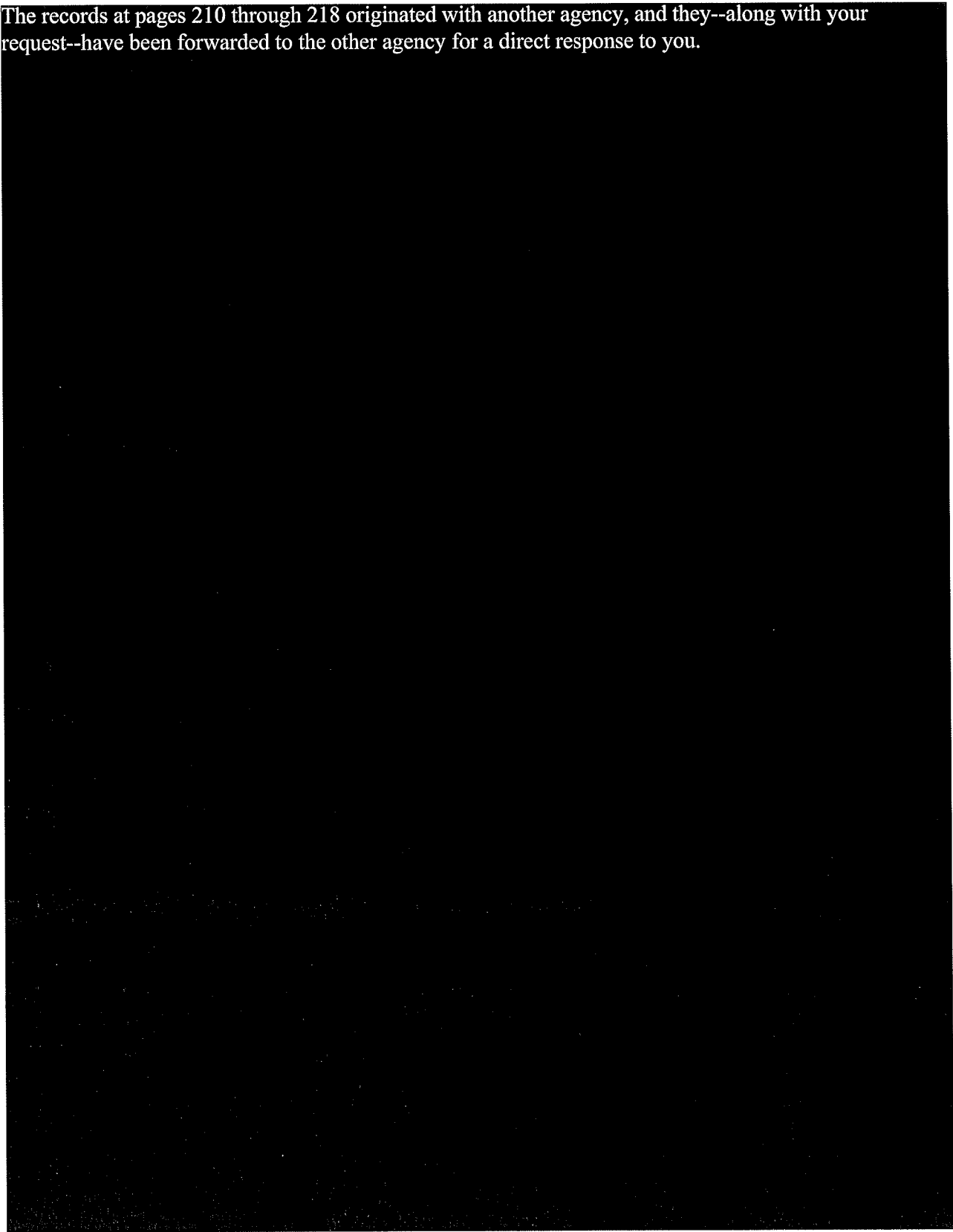
Regards, Duane

Duane D. Morse  
Chief Risk and Compliance Officer - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

The records at pages 201 through 209 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



The records at pages 210 through 218 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Allison, Herbert  
**Sent:** Tuesday, June 30, 2009 4:24 PM  
**To:** Barofsky, Neil  
**Cc:** Miller, David N; Massad, Timothy; Morse, Duane  
**Subject:** Re: Timing of Legacy PPIP

Neil,

We're hoping to announce late this week. We'll send you the latest term sheet (if we haven't already done so).

Regards,  
Herb

---

**From:** Barofsky, Neil  
**To:** Morse, Duane; Allison, Herbert  
**Cc:** Puvalowski, Kevin  
**Sent:** Tue Jun 30 11:59:09 2009  
**Subject:** Timing of Legacy PPIP

Our most recent understanding was that the announcement would be early this week. Can you please provide an update? If you have updated term sheets, etc., it would be helpful for us to get them so we can get a jump on describing the program for our quarterly report. Thanks.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Barofsky, Neil  
**Sent:** Tuesday, June 30, 2009 11:59 AM  
**To:** Morse, Duane; Allison, Herbert  
**Cc:** Pivalowski, Kevin  
**Subject:** Timing of Legacy PPIP

Our most recent understanding was that the announcement would be early this week. Can you please provide an update? If you have updated term sheets, etc., it would be helpful for us to get them so we can get a jump on describing the program for our quarterly report. Thanks.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Allison, Herbert  
**Sent:** Tuesday, June 23, 2009 10:26 AM  
**To:** Barofsky, Neil; Miller, David N; Massad, Timothy  
**Cc:** Hunt, Anita Maria  
**Subject:** Re: Todays Meeting

Neil,

Thanks for your note. I'm glad that, with the preliminaries behind me, I can get down to work.

I would like to meet with you in person today, and if that's not too inconvenient for you, to discuss your recommendations for the PPIP and what I've learned in discussions with prospective asset managers since our last meeting. I'll ask Tim Massad, counsel to OFS, and David Miller to join me.

---

**From:** Barofsky, Neil  
**To:** Allison, Herbert  
**Sent:** Tue Jun 23 09:32:18 2009  
**Subject:** Todays Meeting

Herb –First, congrats on the confirmation. Second, I was not sure what is on your agenda today. Ours is quite light, so was considering doing our meeting by conference call today. Of course, if you have substantive issues that you want to discuss in detail, we will come over. (And I am assuming that our comments were self-explanatory, but if you want to discuss specific term sheet issues, I will bring Rich Rosenfeld along as well). Thanks.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Morse, Duane  
**Sent:** Friday, June 19, 2009 2:52 PM  
**To:** Barofsky, Neil  
**Cc:** Holman, Barry; Puvalowski, Kevin  
**Subject:** RE: Asset Managers

Certainly, although I'm not sure of the timing. Let me check and get back to you.

Duane D. Morse  
Chief Risk and Compliance Officer - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

---

**From:** Barofsky, Neil  
**Sent:** Friday, June 19, 2009 2:05 PM  
**To:** Morse, Duane  
**Cc:** Holman, Barry; Puvalowski, Kevin  
**Subject:** Asset Managers

Duane -- can we schedule a briefing on the three asset managers, their roles, portfolios, conflict mitigation, etc?

Thanks.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Barofsky, Neil  
**Sent:** Friday, June 19, 2009 2:05 PM  
**To:** Morse, Duane  
**Cc:** Holman, Barry; Puvalowski, Kevin  
**Subject:** Asset Managers

Duane – can we schedule a briefing on the three asset managers, their roles, portfolios, conflict mitigation, etc?

Thanks.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Morse, Duane  
**Sent:** Friday, June 19, 2009 11:56 AM  
**To:** Satar, Abdul; Allison, Herbert  
**Cc:** Barofsky, Neil; Holman, Barry; Puvalowski, Kevin  
**Subject:** RE: Additional SIGTARP PPIP Recommendations

Thanks for your additional comments. We will consider them.

Duane D. Morse  
Chief Risk and Compliance Officer - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

---

**From:** Satar, Abdul  
**Sent:** Friday, June 19, 2009 11:37 AM  
**To:** Morse, Duane; Allison, Herbert  
**Cc:** Barofsky, Neil; Holman, Barry; Puvalowski, Kevin  
**Subject:** Additional SIGTARP PPIP Recommendations

Please see the attached letter concerning additional SIGTARP PPIP recommendations.

**Abdul Satar**  
**Office of the Special Inspector General - TARP**  
**U.S. Department of the Treasury**

**From:** Satar, Abdul  
**To:** Morse, Duane; Allison, Herbert  
**Cc:** Barofsky, Neil; Holman, Barry; Puvalowski, Kevin  
**Sent:** Fri Jun 19 11:36:39 2009  
**Subject:** Additional SIGTARP PPIP Recommendations  
Please see the attached letter concerning additional SIGTARP PPIP recommendations.

**Abdul Satar**  
**Office of the Special Inspector General - TARP**  
**U.S. Department of the Treasury**



OFFICE OF THE SPECIAL INSPECTOR GENERAL  
FOR THE TROUBLED ASSET RELIEF PROGRAM  
1801 L STREET, NW, 6<sup>TH</sup> FLOOR  
WASHINGTON, D.C. 20220

June 19, 2009

Herbert Allison  
Counselor to the Secretary  
United States Department of the Treasury  
Main Treasury Building  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Duane Morse  
Chief Risk and Compliance Officer  
Office of Financial Stability  
United States Department of the Treasury  
1801 L. Street, NW  
Washington, D.C. 20220

Re: Additional SIGTARP PPIP Recommendations

Dear Messrs. Allison and Morse:

As requested, I have included below some of the suggestions and recommendations that my office has provided Treasury with regard to the Legacy Securities Public Private Investment Program ("PPIP"). As with our June 10, 2009, letter to you, the comments herein are intended to supplement, and not replace, our earlier recommendations.

As to the proposed Equity Term Sheet, we appreciate that you have accepted our previous recommendations that all Managers will be required to register with the SEC as Investment Advisors and are subject to the Investment Advisors Act of 1940; clarifying Treasury's consent rights as written consents; making in kind distributions pro rata; and requiring an annual budget for Partnership. However, we have the remaining suggestions:

1. Generally, where the UST has consent rights, the standard for withholding consent should be "for any reason or no reason" or "in the sole and absolute discretion" instead of the lower standard of "reasonable."
2. Conversely, all fees and distributions should be, at a minimum, "reasonable."
3. Participation in the Private Vehicles: This section should delete the following language, "that would adversely affect UST, the Partnership or the Partnership's investment activities" and the language to implement it that follows beginning with "which notice will be accompanied. . ." through the end of that sentence.
4. Distributions: In the "tax payments" paragraph, if any tax payments are contemplated for the LP's, the deemed distribution should be pro rata as to actual tax payments made since UST is a non-taxed entity.
5. Partnership Expenses: These should be capped and reasonable. The reasonableness standard should be informed by the required annual budget.
6. Exclusivity: As drafted, there is little exclusivity. Without a wall, written consent should be required for any trades in Eligible Assets not made in the PPIP by PPIP fund managers, and there should be a blanket prohibition against forming, closing on

7. or accepting commitments in any vehicle dealing in any Eligible Assets without UST's written consent. Further, as currently written, the exception permitting actions where the General Partner, in its own discretion, can make investments to maintain diversification in non PPIF funds could swallow the rule.
8. Restriction on Hedging Products, Restrictions on Certain Transactions, and Restrictions on Affiliates: You should consider prohibiting all of these.
9. Allocation of Business Time: Consistent with the comments above, those making investment decisions for the PPIF should be exclusive to the PPIF.
10. Removal of the General Partner: Treasury should have greater removal rights. Standardized language for both for cause and without cause terminations should be used. For cause should be at the initial stages of adverse proceedings (such as Indictment), keyed to notice of the institution of proceedings against the manager or a key person. It should be in UST's discretion at that point to terminate.
11. Reports and Financial Information: Monthly reports should be delivered within 7 calendar days of the end of each quarter so information may be included in SIGTARP's quarterly report. As we have explained, it will be impossible for us to meet our reporting obligations under the current proposed schedule. As noted above, information on Eligible Assets should include Date, CUSIP, position, size, pricing, dates and any other relevant valuation information to be reported monthly to Treasury so that it can be analyzed. The document retention policy should be "acceptable" to Treasury.
12. Notice: Although this is not a section, standard notice provisions should apply. At a minimum, Treasury should receive notice of the commencement of any action (regulatory, criminal, civil or otherwise), and any material event of default occurring against the manager.

As to the PPIF Ethical Standards and Conflicts of Interest Rules we have the following observations:

1. Please include SIGTARP anywhere that UST has a disclosure or review right. For example, while SIGTARP has access to the fund's books and records, under the document, only UST has access to key persons and other personnel.
2. Remedies and Penalties: Treasury should have the ability to change behavior and alter unwanted action. There should be strict penalty provisions, including termination, for violations of the terms and conditions, beyond merely requiring the fund to undo the bad act.
3. Proprietary Interests and Interests for Other Clients: All interests in any vehicle should be disclosed as to all changes in those interests. UST and SIGTARP should have access to all information for all managed assets across all funds.

4. Allocation & Valuation/Pricing Policy: All Qualified Fund Managers (“QFM”) should submit an allocation and pricing policy for approval. All variances should be reported immediately to UST and SIGTARP.
5. Co-Investment: Complete prohibition of firm management or staff investing personally in the PPIF in any way.
6. Record Access: We repeat the overarching need that anytime UST receives access, so should SIGTARP.
7. Reviews: This section should include UST and SIGTARP’s ability to perform unannounced inspections and reviews of the PPIF and have access to all information across all positions of the QFM regardless of vehicle.
8. Eligible Assets Watch List: This section should require that UST receive a monthly consolidated report from each of the QFMs across all funds for all eligible and like assets that includes: position, size, pricing, cusip, relevant dates, and all other relevant valuation and pricing information. The report will provide a consolidated view of positions across all funds within the QFM in order to readily identify any potential issues. As noted earlier, as part of Treasury’s compliance, such data should be analyzed by Treasury or a third party.
9. Disclosure of Conflicts: In addition to providing quarterly compliance certification to UST, QFM’s should provide immediate notification of non-compliance to UST and SIGTARP.
10. Disclosure of Beneficial Ownership: UST and SIGTARP need a complete “look through” to the beneficial owners. The PPIF Fund Managers should disclose to UST all KYC/beneficial ownership information for every investor. Further, UST should have sole discretion to deny access unilaterally to or remove any investor for any or no reason. These same requirements apply to the Investor Diligence section.
11. Conflicts with Named Affiliates: Should apply to all legal affiliates. UST should review and approve the policy. UST should consider requiring written compliance certifications from the buyer and seller of each security (which is required by the Federal Reserve in the TALF program). Non-Compliant transactions identified and all information should be forwarded immediately to UST and SIGTARP.
12. Conflicts with Placement Agents and B/D Relationships: Non-compliant transactions should be identified and reported immediately to UST and SIGTARP. Fund Managers need to initiate best efforts remedial action and report steps taken to correct issue.
13. Asset Crossing, Flipping and Round-tripping: Again, QFM’s should submit policies and procedures to UST and UST should approve. Also, again, quarterly reporting and immediate notification and reporting to UST and SIGTARP of non-compliance should be required.

14. Use of Fund Managers in Recovery-Related Programs: UST should have a unilateral right to reject.
15. All QFM's should be required to refer immediately any instance or suspected instance of fraud, waste or abuse to SIGTARP, and to inform their employees of this requirement and provide them with SIGTARP's hotline information.

Due to our limited amount of time to review each of the documents, and that we have not yet received amended versions of Schedule A's, we expect to have additional comments going forward.

To reiterate with respect to the broader issues, we continue to believe that the failure to demand that the PPIF managers be subject to a strict ethical wall represents a material deficiency in the PPIF program. This deficiency leaves the program unnecessarily vulnerable not only to the risks identified in our June 10, 2009, letter and in our April 21, 2009, Quarterly Report to Congress, but also creates an enormous reputational risk to Treasury and the TARP program. In its current format, the selected asset managers could profit, in their non-PPIF funds, by the decisions that they make as PPIF managers, including, by way of limited example, by driving up the price on an already held security. This could result in the perception that Treasury has picked winners and losers, leaving the Program subject to criticism that it permits a few selected funds to profit unfairly at the expense of the PPIF and the rest of the market. In particular, in light of the role that certain fund manager applicants have had in Federal Reserve programs, and the recent negative publicity surrounding them, the reputational damage of announcing that these very same corporations will be managing Government funds in the PPIF Program, with significantly *less* stringent conflict of interest restrictions than those implemented by the Federal Reserve, could be extremely harmful to the program. While we have not ruled out the possibility that there may exist some set of conditions that could be imposed that would address our concerns short of a wall, the proposals that you have shared with us appear insufficient.

Similarly, we do not believe that proposed standards for the interaction between the PPIF and TALF programs adequately address our previously expressed concerns regarding dilution of the haircut and "skin in the game." We also continue to be concerned that the dangers presented by the failure to implement an ethical wall will only be exacerbated by increasing the PPIF leverage through the TALF program.

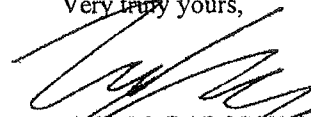
With these warnings and recommendations in mind, we have and will continue to provide you with our thoughts regarding the various terms and conditions that you have shared with us. As we have noted, given the absence of a wall, we feel that it is essential that the remaining conflicts rules discussed above are carefully and strictly constructed to minimize the potential harm to the program.

Finally, as we noted, it is absolutely essential that Treasury establish a vigorous compliance regime to oversee the PPIF Fund Managers. This program should include, among other things, specific terms and conditions that will enable close monitoring by dedicated Treasury personnel. Similarly, there should be established metrics, performance plans and goals, an ability for Treasury to adjust those expectations, a way to measure performance across funds, and remedies as necessary, including for poor or non-compliant performance.

Messrs. Allison and Morse  
Page 5

As always, we are available to meet with you to discuss these issues more fully if that would be helpful to you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Neil M. Barofsky', written in a cursive style.

NEIL M. BAROFSKY  
Special Inspector General

**From:** Barofsky, Neil  
**Sent:** Thursday, June 18, 2009 8:26 PM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin  
**Subject:** Letter

Herb and Duane -- we will get our letter comments to you tomorrow morning.

-Neil

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Allison, Herbert  
**Sent:** Wednesday, June 17, 2009 1:35 PM  
**To:** Barofsky, Neil; Bass, Matthew  
**Cc:** Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Subject:** Re: S-PPIP Follow-up

Neil,

I did and we will when we meet later this afternoon.

Herb

---

**From:** Barofsky, Neil  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Puvalowski, Kevin; Rosenfeld, Richard; Holman, Barry  
**Sent:** Wed Jun 17 13:31:37 2009  
**Subject:** RE: S-PPIP Follow-up

I take it from the use of the word "final" that you are not seeking additional comments. This is somewhat surprising. Last Friday Herb asked us to hold off on making additional comments, and in particular in submitting written comments, assuring us that we would have an opportunity to be heard before anything was finalized. A quick review of the term sheets indicates that there are potentially significant problems in several areas, including the failure to address some of the core issues we have been discussing regarding conflicts as well as more basic concepts such as providing our office with sufficient access. We will, of course, provide you with written comments in advance of the finalization of the deal documents. Of course, should you then adopt those recommendations, it may require a significant deviation from the final term sheets.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

---

**From:** Bass, Matthew  
**Sent:** Wednesday, June 17, 2009 11:06 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron  
**Subject:** RE: S-PPIP Follow-up

Neil,

Attached are final drafts of Equity and Debt term sheets (blackline vs. drafts we sent you Friday). Please let me know if you have any questions. We are finalizing Schedule As and will send final drafts over later today.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

---

**From:** Bass, Matthew  
**Sent:** Friday, June 12, 2009 12:08 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Tosini, Suzanne  
**Subject:** RE: S-PPIP Follow-up

Please find attached revised Equity and Debt term sheets. We are finalizing schedule As and will distribute shortly.

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

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**Sent:** Thursday, June 11, 2009 10:58 PM  
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**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Tosini, Suzanne  
**Subject:** RE: S-PPIP Follow-up

Neil,

Please find attached draft ethical standards and conflicts of interest rules for S-PPIP fund managers. We welcome your comments on this document. We will also be forwarding revised Equity (including Schedule A) and Debt term sheets to you shortly.

Thanks,

Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

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SENSITIVE / PRE-DECISIONAL

---

**From:** Barofsky, Neil  
**Sent:** Monday, June 08, 2009 3:29 PM  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** RE: S-PPIP Follow-up

Thanks, will you also be forwarding the draft equity term sheet? Or is that one still too draft to share?

---

**From:** Bass, Matthew

**Sent:** Monday, June 08, 2009 10:20 AM

**To:** Barofsky, Neil

**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan

**Subject:** S-PPIP Follow-up

Neil,

As a follow-up to this morning's meeting, attached please find the following –

1. Draft UST debt term sheet
2. 1 page summary of capital structure, leverage and coverage ratios we discussed

Please feel free to call me if you have any questions.

Thanks,  
Matt

Matthew Bass  
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O: (202) 622-4424

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Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

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SENSITIVE / PRE-DECISIONAL

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**Sent:** Wednesday, June 17, 2009 11:06 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron  
**Subject:** RE: S-PPIP Follow-up  
**Attachments:** Blackline 6\_12 6\_16pm.doc; Blackline Debt TSH 6\_12 6\_16.doc

Neil,

Attached are final drafts of Equity and Debt term sheets (blackline vs. drafts we sent you Friday). Please let me know if you have any questions. We are finalizing Schedule As and will send final drafts over later today.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424  
(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

---

**From:** Bass, Matthew  
**Sent:** Friday, June 12, 2009 12:08 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Tosini, Suzanne  
**Subject:** RE: S-PPIP Follow-up

Please find attached revised Equity and Debt term sheets. We are finalizing schedule As and will distribute shortly.

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424  
(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

---

**From:** Bass, Matthew  
**Sent:** Thursday, June 11, 2009 10:58 PM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Tosini, Suzanne  
**Subject:** RE: S-PPIP Follow-up

Neil,

Please find attached draft ethical standards and conflicts of interest rules for S-PPIP fund managers. We welcome your comments on this document. We will also be forwarding revised Equity (including Schedule A) and Debt term sheets to you shortly.

Thanks,

Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

---

**From:** Barofsky, Neil  
**Sent:** Monday, June 08, 2009 3:29 PM  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** RE: S-PPIP Follow-up

Thanks, will you also be forwarding the draft equity term sheet? Or is that one still too draft to share?

---

**From:** Bass, Matthew  
**Sent:** Monday, June 08, 2009 10:20 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** S-PPIP Follow-up

Neil,

As a follow-up to this morning's meeting, attached please find the following –

1. Draft UST debt term sheet
2. 1 page summary of capital structure, leverage and coverage ratios we discussed

Please feel free to call me if you have any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

The records at pages 240 through 280 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.

**From:** Barofsky, Neil  
**Sent:** Wednesday, June 17, 2009 9:55 AM  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron  
**Subject:** RE:

Thank you, we will not.

---

**From:** Bass, Matthew  
**Sent:** Wednesday, June 17, 2009 9:54 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron  
**Subject:**

Neil,

Attached please find the following materials related to the S-PPIP Fund Manager Evaluation and Approval Process –

1. 4/24/09 Investment Committee memorandum:
  - a. Approval of S-PPIP Fund Manager Evaluation and Approval Process
  - b. S-PPIP Evaluation Committee nomination
  - c. Approval of S-PPIP Evaluation Committee Directive
2. All four S-PPIP Evaluation Committee memorandums memorializing the Fund Manager Evaluation and Approval Process (as outlined in the 4/24/09 IC memo).

Please note that the Evaluation Committee memorandums contain fund manger names so please do not distribute outside of your team. We are available to discuss any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)

[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

**From:** Bass, Matthew  
**Sent:** Wednesday, June 17, 2009 9:54 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron  
**Attachments:** Review Stage 3 EC Memo Final.pdf; Finalist Stage EC Memo Final.pdf; Review Stage 1 EC Memo Final.pdf; Review Stage 2 EC Memo Final.pdf; S-PPIP IC Memo (04-24-09).pdf

Neil,

Attached please find the following materials related to the S-PPIP Fund Manager Evaluation and Approval Process –

1. 4/24/09 Investment Committee memorandum:
  - a. Approval of S-PPIP Fund Manager Evaluation and Approval Process
  - b. S-PPIP Evaluation Committee nomination
  - c. Approval of S-PPIP Evaluation Committee Directive
2. All four S-PPIP Evaluation Committee memorandums memorializing the Fund Manager Evaluation and Approval Process (as outlined in the 4/24/09 IC memo).

Please note that the Evaluation Committee memorandums contain fund manger names so please do not distribute outside of your team. We are available to discuss any questions.

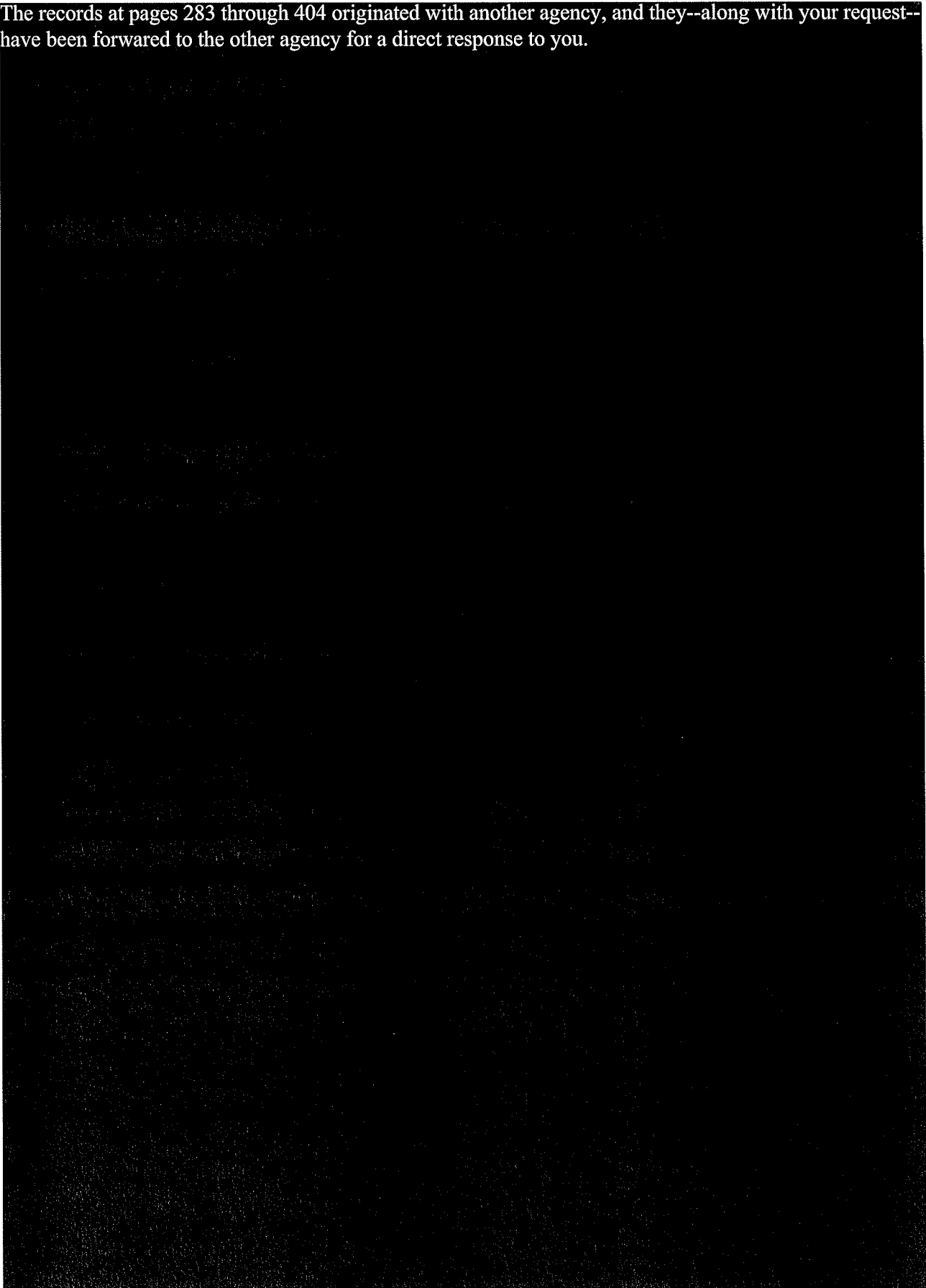
Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

The records at pages 283 through 404 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Bartley, Aaron  
**Sent:** Saturday, June 13, 2009 11:16 PM  
**To:** Barofsky, Neil  
**Cc:** Morse, Duane; Bass, Matthew; Miller, David N; Cook, David; Ferlazzo, Ronald  
**Subject:** Schedule As  
**Attachments:** Schedule A - AllianceBernstein.doc; AG-GECC - Schedule A.DOC; BlackRock - Schedule A.DOC; Invesco - Schedule A.DOC; Schedule A - Marathon.doc; Oaktree - Schedule A.DOC; Schedule A - TCW.DOC; Wellington - Schedule A.DOC; Schedule A - Western Asset.doc

Neil,

As requested, please find attached the preliminary Schedule As with respect to Treasury's Equity Term Sheet for the Legacy Securities PPIP. Please let us know if you have any questions.

Best Regards,

Aaron

**Aaron M. Bartley**  
**Office of Financial Stability**  
**U.S. Department of the Treasury**  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
phone: (202) 622-3767  
email: [Aaron.Bartley@do.treas.gov](mailto:Aaron.Bartley@do.treas.gov)

**DRAFT/PRE-DECISIONAL, SENSITIVE BUT UNCLASSIFIED**

The records at pages 406 through 426 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.

**From:** Bass, Matthew  
**Sent:** Saturday, June 13, 2009 6:57 PM  
**To:** Barofsky, Neil; Bartley, Aaron  
**Cc:** Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Subject:** Re: Schedule As

Ok. We will send over shortly.

---

**From:** Barofsky, Neil  
**To:** Bass, Matthew; Bartley, Aaron  
**Cc:** Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Sent:** Sat Jun 13 18:46:13 2009  
**Subject:** Re: Schedule As

I would like an unredacted set. I will not distribute it, even internally.

---

**From:** Bass, Matthew  
**To:** Barofsky, Neil; Bartley, Aaron  
**Cc:** Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Sent:** Sat Jun 13 17:20:56 2009  
**Subject:** Re: Schedule As

Throughout our process, we have redacted / used code-names for fund managers and specific individuals in materials we distribute internally for confidentiality purposes. We intend to continue this until final selection is made. You should still be able to assess the protections we will have re Key Person tests without specific names. Please let us know if this is an issue or you feel otherwise.

Thanks,  
Matt

---

**From:** Barofsky, Neil  
**To:** Bartley, Aaron  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Sent:** Sat Jun 13 16:56:08 2009  
**Subject:** Re: Schedule As

Why are these redacted?

---

**From:** Bartley, Aaron  
**To:** Barofsky, Neil  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald  
**Sent:** Sat Jun 13 16:48:08 2009  
**Subject:** Schedule As  
Neil,

Please find attached the redacted Schedule As with respect to Treasury's Equity Term Sheet for the Legacy Securities PPIP. Please let us know if you have any questions.

Best Regards,

Aaron

**Aaron M. Bartley**  
**Office of Financial Stability**  
**U.S. Department of the Treasury**  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
phone: (202) 622-3767  
email: [Aaron.Bartley@do.treas.gov](mailto:Aaron.Bartley@do.treas.gov)

**DRAFT/PRE-DECISIONAL, SENSITIVE BUT UNCLASSIFIED**

**From:** Barofsky, Neil  
**Sent:** Saturday, June 13, 2009 6:46 PM  
**To:** Bass, Matthew; Bartley, Aaron  
**Cc:** Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Subject:** Re: Schedule As

I would like an unredacted set. I will not distribute it, even internally.

---

**From:** Bass, Matthew  
**To:** Barofsky, Neil; Bartley, Aaron  
**Cc:** Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Sent:** Sat Jun 13 17:20:56 2009  
**Subject:** Re: Schedule As

Throughout our process, we have redacted / used code-names for fund managers and specific individuals in materials we distribute internally for confidentiality purposes. We intend to continue this until final selection is made. You should still be able to assess the protections we will have re Key Person tests without specific names. Please let us know if this is an issue or you feel otherwise.

Thanks,  
Matt

---

**From:** Barofsky, Neil  
**To:** Bartley, Aaron  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Sent:** Sat Jun 13 16:56:08 2009  
**Subject:** Re: Schedule As

Why are these redacted?

---

**From:** Bartley, Aaron  
**To:** Barofsky, Neil  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald  
**Sent:** Sat Jun 13 16:48:08 2009  
**Subject:** Schedule As  
Neil,

Please find attached the redacted Schedule As with respect to Treasury's Equity Term Sheet for the Legacy Securities PPIP. Please let us know if you have any questions.

Best Regards,

Aaron

**Aaron M. Bartley**  
Office of Financial Stability  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
phone: (202) 622-3767  
email: [Aaron.Bartley@do.treas.gov](mailto:Aaron.Bartley@do.treas.gov)



**From:** Bass, Matthew  
**Sent:** Saturday, June 13, 2009 5:21 PM  
**To:** Barofsky, Neil; Bartley, Aaron  
**Cc:** Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Subject:** Re: Schedule As

Throughout our process, we have redacted / used code-names for fund managers and specific individuals in materials we distribute internally for confidentiality purposes. We intend to continue this until final selection is made. You should still be able to assess the protections we will have re Key Person tests without specific names. Please let us know if this is an issue or you feel otherwise.

Thanks,  
Matt

---

**From:** Barofsky, Neil  
**To:** Bartley, Aaron  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Sent:** Sat Jun 13 16:56:08 2009  
**Subject:** Re: Schedule As

Why are these redacted?

---

**From:** Bartley, Aaron  
**To:** Barofsky, Neil  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald  
**Sent:** Sat Jun 13 16:48:08 2009  
**Subject:** Schedule As  
Neil,

Please find attached the redacted Schedule As with respect to Treasury's Equity Term Sheet for the Legacy Securities PPIP. Please let us know if you have any questions.

Best Regards,

Aaron

**Aaron M. Bartley**  
**Office of Financial Stability**  
**U.S. Department of the Treasury**  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
phone: (202) 622-3767  
email: [Aaron.Bartley@do.treas.gov](mailto:Aaron.Bartley@do.treas.gov)

**DRAFT/PRE-DECISIONAL, SENSITIVE BUT UNCLASSIFIED**

**From:** Barofsky, Neil  
**Sent:** Saturday, June 13, 2009 4:56 PM  
**To:** Bartley, Aaron  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald; Rosenfeld, Richard; Puvalowski, Kevin  
**Subject:** Re: Schedule As

Why are these redacted?

---

**From:** Bartley, Aaron  
**To:** Barofsky, Neil  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald  
**Sent:** Sat Jun 13 16:48:08 2009  
**Subject:** Schedule As  
Neil,

Please find attached the redacted Schedule As with respect to Treasury's Equity Term Sheet for the Legacy Securities PPIP. Please let us know if you have any questions.

Best Regards,

Aaron

**Aaron M. Bartley**  
**Office of Financial Stability**  
**U.S. Department of the Treasury**  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
phone: (202) 622-3767  
email: [Aaron.Bartley@do.treas.gov](mailto:Aaron.Bartley@do.treas.gov)

**DRAFT/PRE-DECISIONAL, SENSITIVE BUT UNCLASSIFIED**

**From:** Bartley, Aaron  
**Sent:** Saturday, June 13, 2009 4:48 PM  
**To:** Barofsky, Neil  
**Cc:** Bass, Matthew; Miller, David N; Morse, Duane; Cook, David; Ferlazzo, Ronald  
**Subject:** Schedule As  
**Attachments:** Applicant A.doc.pdf; Applicant B.doc.pdf; Applicant C.doc.pdf; Applicant D.doc.pdf; Applicant E.doc.pdf; Applicant F.doc.pdf; Applicant G.doc.pdf; Applicant H.doc.pdf; Applicant I.PDF

Neil,

Please find attached the redacted Schedule As with respect to Treasury's Equity Term Sheet for the Legacy Securities PPIP. Please let us know if you have any questions.

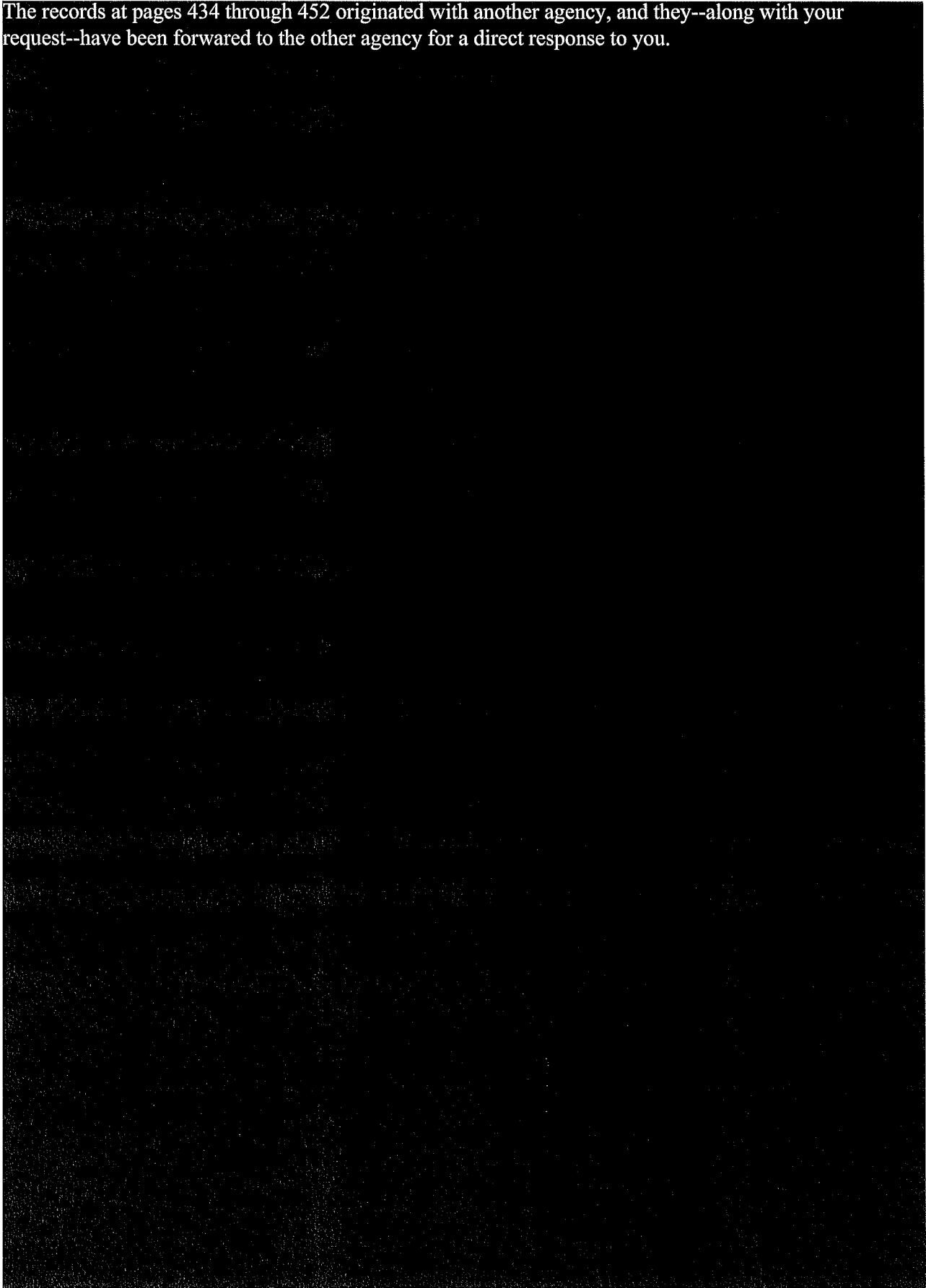
Best Regards,

Aaron

**Aaron M. Bartley**  
**Office of Financial Stability**  
**U.S. Department of the Treasury**  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
phone: (202) 622-3767  
email: [Aaron.Bartley@do.treas.gov](mailto:Aaron.Bartley@do.treas.gov)

**DRAFT/PRE-DECISIONAL, SENSITIVE BUT UNCLASSIFIED**

The records at pages 434 through 452 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Miller, David N  
**Sent:** Saturday, June 13, 2009 9:08 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Bass, Matthew; Cook, David; Morse, Duane; Abdelrazek, Rawan; 'William.R.Nelson@frb.gov'; 'martin.grant@ny.frb.org'  
**Subject:** compliance documents  
**Attachments:** S-PPIP Equity Term Sheet (6\_11\_09).doc; Conflicts standards for S-PPIP Fund Managers 6.11.09.docx; Preliminary Compliance Due Diligence Questionnaire - Final [Redacted].docx; S-PPIP Debt Term Sheet (6\_11\_09).DOC

Neil,

Attached is an example of the compliance questionnaire that was send to Fund Managers during the initial phase of due diligence. I have also included two other set of documents that I believe you have already received. (1) draft term sheets (which we went over with your team on Thursday night) and (2) the conflicts standards.

I have also copied Martin Grant from FRBNY and Bill Nelson from the Board.

Please let me know if you have any questions,

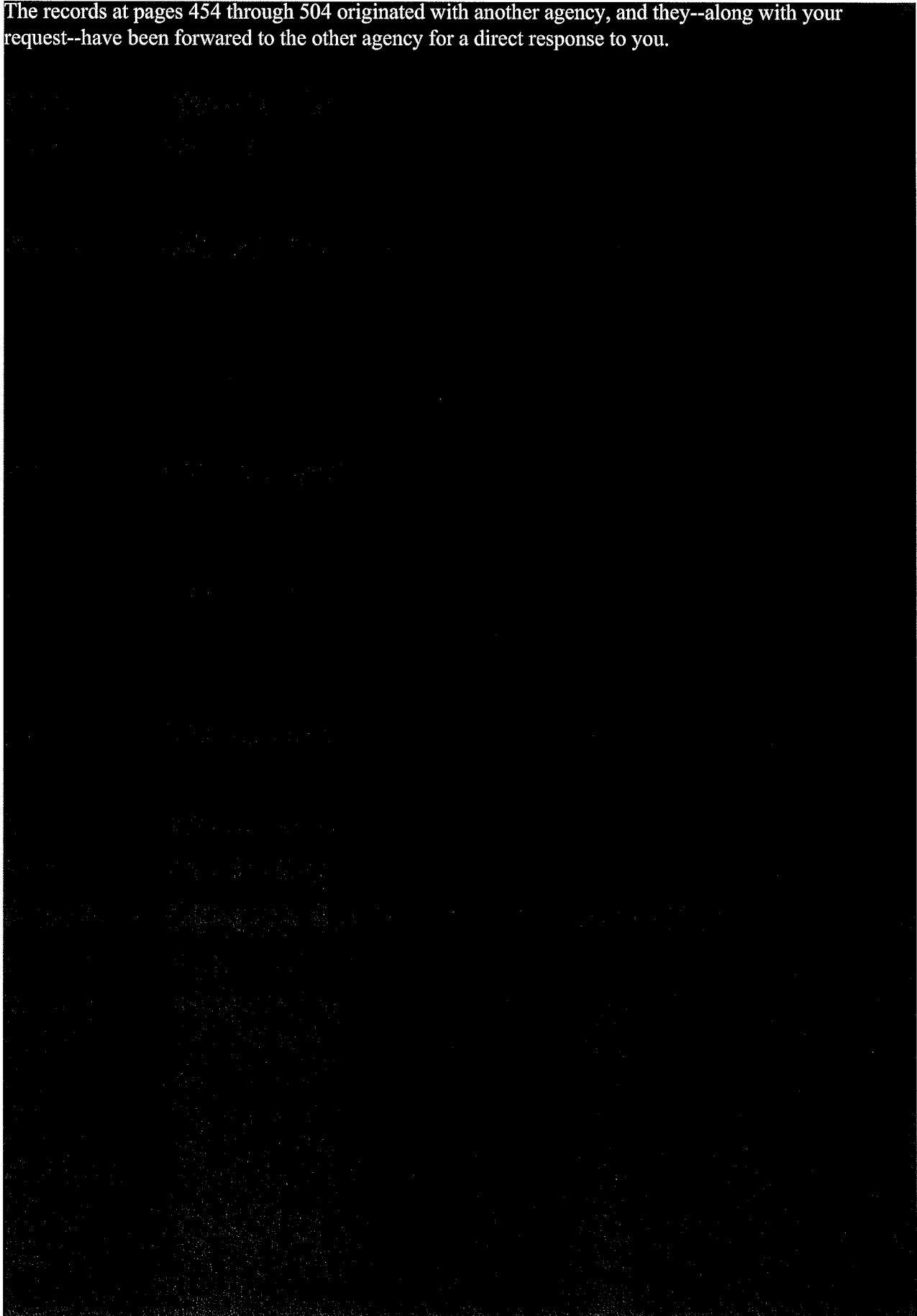
Thanks,

David

David N. Miller  
Director of Investments  
Office of Financial Stability  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
Tel: 202-622-7392

(b) (6)  
[david.n.miller@do.treas.gov](mailto:david.n.miller@do.treas.gov)

The records at pages 454 through 504 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Barofsky, Neil  
**Sent:** Friday, June 12, 2009 7:34 PM  
**To:** Allison, Herbert  
**Subject:** Re:

Herb - I am a little confused by your reference to the questionnaires, I am not sure if I have them. If it is ok, we will send on the term sheets and I know that your team has already sent on the conflicts sheet. Thanks.

----- Original Message -----

**From:** Allison, Herbert  
**To:** Barofsky, Neil  
**Cc:** Miller, David N; 'timothy.massad@do.treas.com' <timothy.massad@do.treas.com>  
**Sent:** Fri Jun 12 18:13:37 2009  
**Subject:**

Neil,

Please feel free to share our questionnaire with the Fed. We will also send the Fed (FRBNY and the Board) a draft of our compliance guidelines that have been provided to you. You may discuss those as well.

Regards,  
Herb

**From:** Allison, Herbert  
**Sent:** Friday, June 12, 2009 6:14 PM  
**To:** Barofsky, Neil  
**Cc:** Miller, David N; 'timothy.massad@do.treas.com'

Neil,

Please feel free to share our questionnaire with the Fed. We will also send the Fed (FRBNY and the Board) a draft of our compliance guidelines that have been provided to you. You may discuss those as well.

Regards,  
Herb

**From:** Cook, David  
**Sent:** Friday, June 12, 2009 10:07 AM  
**To:** 'Nathaniel.Wuerffel@ny.frb.org'; 'martin.grant@ny.frb.org'  
**Cc:** Bass, Matthew; Bartley, Aaron; Looney, Adam; Gandhi, KoonalDisabled; Miller, David N; Barofsky, Neil  
**Subject:** Draft ethics and conflict of interest standards for S-PPIP Fund Managers  
**Attachments:** Conflicts standards for S-PPIP Fund Managers - SIGTARP 6.12.09.docx

Nate and Martin,

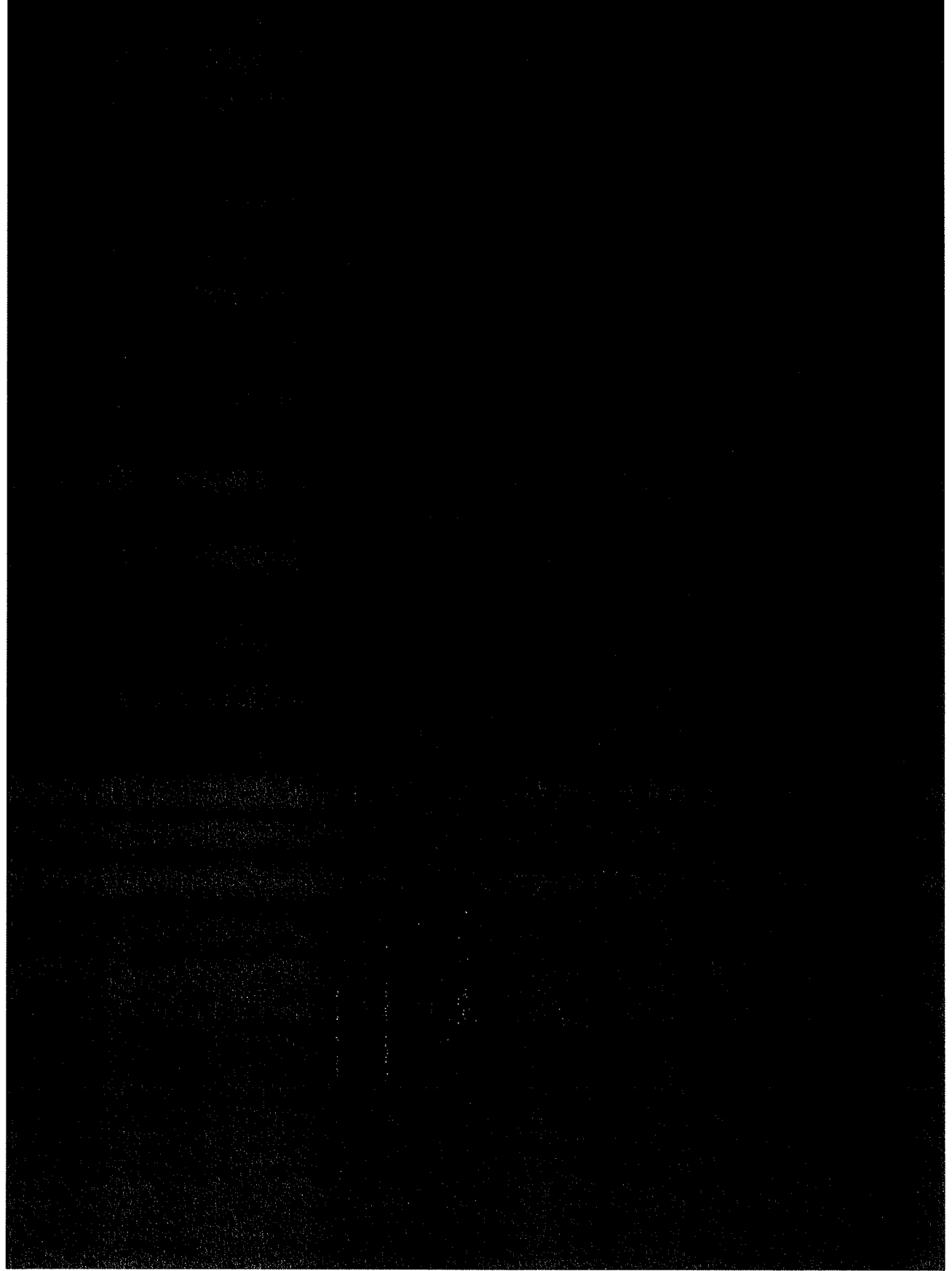
Thank you for all your help in understanding the FRBNY's approach to compliance in recovery-related programs. To keep you in the loop, attached please find a draft of the ethics and conflict of interest rules we intend to apply to the Legacy Securities Public Private Investment Program Fund Managers.

Any thoughts you care to share are greatly appreciated.

Best Regards,

David M. Cook  
U.S. Department of Treasury  
Office of Financial Stability, #8010  
Risk and Compliance  
1500 Pennsylvania Avenue N.W.  
Washington, D.C.  
20220  
v: 202-927-9405  
f: 202-927-9225  
[david.cook@do.treas.gov](mailto:david.cook@do.treas.gov)

The records at pages 508 through 515 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.




**From:** Williams, Jennifer  
**Sent:** Thursday, June 11, 2009 10:01 PM  
**To:** Holman, Barry  
**Cc:** Oversight Requests for OFS  
**Subject:** FW: SIGTARP requests

Barry,

I wanted to give you an update on where we are with your outstanding request.

The term sheet for the PPIP program are still being discussed. I will let you know when decisions have been reached.

Not responsive to your request.



Best regards,

Jennifer

---

Jennifer G. Williams  
Office of Financial Stability  
Department of the Treasury  
(202) 927-5821  
[jennifer.williams@do.treas.gov](mailto:jennifer.williams@do.treas.gov)

---

**From:** Holman, Barry  
**Sent:** Thursday, May 28, 2009 11:04 AM  
**To:** Morse, Duane  
**Subject:**

Duane,

I wanted to check to see if we could get the following:

Not responsive to your request.



■ Term sheet for the PPIP program,  
Not responsive to your request.

Thanks.

Barry

**From:** Allison, Herbert  
**Sent:** Thursday, June 11, 2009 11:09 AM  
**To:** Morse, Duane; Barofsky, Neil  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** RE: Term Sheets

Neil,

Thanks very much for the suggestions from yourself and Richard. As Duane wrote, we'll do our best to provide you with Schedule A's in a timely manner.

Best regards,  
Herb

---

**From:** Morse, Duane  
**Sent:** Thursday, June 11, 2009 11:04 AM  
**To:** Barofsky, Neil; Allison, Herbert  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** RE: Term Sheets

Neil,

I sat in on last night's meeting and agree that it was productive. Rich's comments and questions were very thoughtful. We will keep you in the loop as we move forward and give you as much of an opportunity to comment as we can, given the schedule we need to meet.

Regards, Duane

Duane D. Morse  
Chief Risk and Compliance Officer  
Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

---

**From:** Barofsky, Neil  
**Sent:** Thursday, June 11, 2009 10:14 AM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** Term Sheets

Herb/Duane – sounds like the meeting last night was productive, our questions were answered and, hopefully, our concerns are communicated. If not, we will be happy to provide you with written comments. I would suggest that the next step would be to provide us a revised term sheet when available, and we can address with you our remaining concerns at that time, just please be sure to give us enough time to do so. Also, I believe that the plan is to negotiate Schedule A on a fund by fund basis. Obviously, that is ultimately going to be among the most important aspect of the Term Sheets, so, once again, to the extent that you want our input, please make sure that we get advance copies of Schedule A in time to give us the opportunity to make meaningful comments.

Neil M. Barofsky  
Special Inspector General

Troubled Asset Relief Program

**From:** Bass, Matthew  
**Sent:** Friday, June 12, 2009 12:08 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Tosini, Suzanne  
**Subject:** RE: S-PPIP Follow-up  
**Attachments:** S-PPIP Debt Term Sheet (6\_11\_09).DOC; S-PPIP Equity Term Sheet (6\_11\_09).doc

Please find attached revised Equity and Debt term sheets. We are finalizing schedule As and will distribute shortly.

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424  
M: (202) 316-2188  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

---

**From:** Bass, Matthew  
**Sent:** Thursday, June 11, 2009 10:58 PM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Tosini, Suzanne  
**Subject:** RE: S-PPIP Follow-up

Neil,

Please find attached draft ethical standards and conflicts of interest rules for S-PPIP fund managers. We welcome your comments on this document. We will also be forwarding revised Equity (including Schedule A) and Debt term sheets to you shortly.

Thanks,

Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424  
(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

---

**From:** Barofsky, Neil  
**Sent:** Monday, June 08, 2009 3:29 PM  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** RE: S-PPIP Follow-up

Thanks, will you also be forwarding the draft equity term sheet? Or is that one still too draft to share?

---

**From:** Bass, Matthew  
**Sent:** Monday, June 08, 2009 10:20 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani;

Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan

**Subject:** S-PPIP Follow-up

Neil,

As a follow-up to this morning's meeting, attached please find the following –

1. Draft UST debt term sheet
2. 1 page summary of capital structure, leverage and coverage ratios we discussed

Please feel free to call me if you have any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)

[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

The records at pages 522 through 560 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.

**From:** Bass, Matthew  
**Sent:** Thursday, June 11, 2009 10:58 PM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan; Bartley, Aaron; Tosini, Suzanne  
**Subject:** RE: S-PPIP Follow-up  
**Attachments:** Conflicts standards for S-PPIP Fund Managers 6.11.09.docx

Neil,

Please find attached draft ethical standards and conflicts of interest rules for S-PPIP fund managers. We welcome your comments on this document. We will also be forwarding revised Equity (including Schedule A) and Debt term sheets to you shortly.

Thanks,

Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

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**From:** Barofsky, Neil  
**Sent:** Monday, June 08, 2009 3:29 PM  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** RE: S-PPIP Follow-up

Thanks, will you also be forwarding the draft equity term sheet? Or is that one still too draft to share?

---

**From:** Bass, Matthew  
**Sent:** Monday, June 08, 2009 10:20 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** S-PPIP Follow-up

Neil,

As a follow-up to this morning's meeting, attached please find the following –

1. Draft UST debt term sheet
2. 1 page summary of capital structure, leverage and coverage ratios we discussed

Please feel free to call me if you have any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability

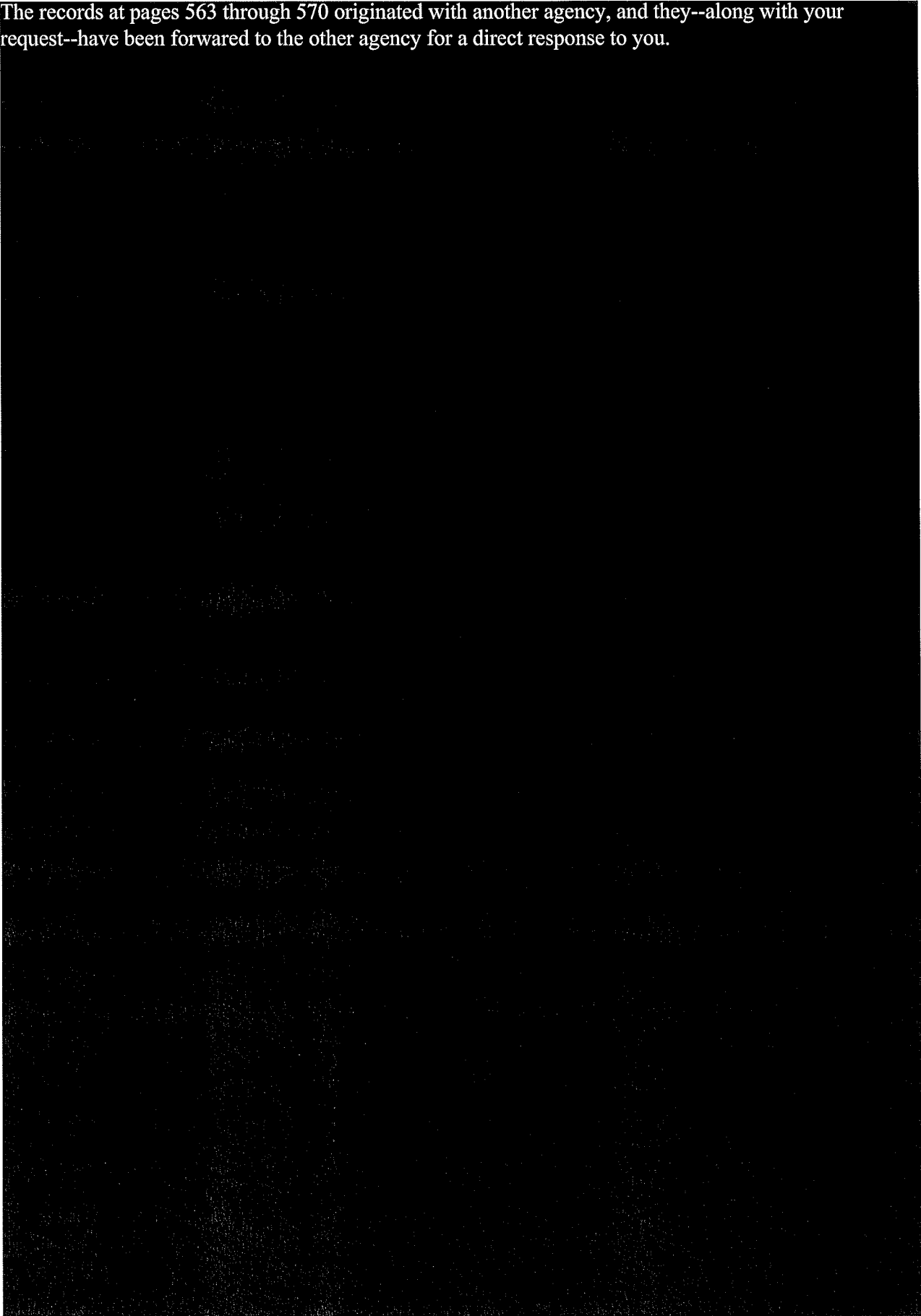
O: (202) 622-4424

(b) (6)

[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

The records at pages 563 through 570 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Morse, Duane  
**Sent:** Thursday, June 11, 2009 11:04 AM  
**To:** Barofsky, Neil; Allison, Herbert  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** RE: Term Sheets

Neil,

I sat in on last night's meeting and agree that it was productive. Rich's comments and questions were very thoughtful. We will keep you in the loop as we move forward and give you as much of an opportunity to comment as we can, given the schedule we need to meet.

Regards, Duane

Duane D. Morse  
Chief Risk and Compliance Officer  
Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

---

**From:** Barofsky, Neil  
**Sent:** Thursday, June 11, 2009 10:14 AM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** Term Sheets

Herb/Duane -- sounds like the meeting last night was productive, our questions were answered and, hopefully, our concerns are communicated. If not, we will be happy to provide you with written comments. I would suggest that the next step would be to provide us a revised term sheet when available, and we can address with you our remaining concerns at that time, just please be sure to give us enough time to do so. Also, I believe that the plan is to negotiate Schedule A on a fund by fund basis. Obviously, that is ultimately going to be among the most important aspect of the Term Sheets, so, once again, to the extent that you want our input, please make sure that we get advance copies of Schedule A in time to give us the opportunity to make meaningful comments.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Barofsky, Neil  
**Sent:** Thursday, June 11, 2009 10:14 AM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** Term Sheets

Herb/Duane – sounds like the meeting last night was productive, our questions were answered and, hopefully, our concerns are communicated. If not, we will be happy to provide you with written comments. I would suggest that the next step would be to provide us a revised term sheet when available, and we can address with you our remaining concerns at that time, just please be sure to give us enough time to do so. Also, I believe that the plan is to negotiate Schedule A on a fund by fund basis. Obviously, that is ultimately going to be among the most important aspect of the Term Sheets, so, once again, to the extent that you want our input, please make sure that we get advance copies of Schedule A in time to give us the opportunity to make meaningful comments.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Barofsky, Neil  
**Sent:** Wednesday, June 10, 2009 6:48 PM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin; Satar, Abdul  
**Attachments:** S-PPIP 6-10-09.pdf

Revised letter.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program



OFFICE OF THE SPECIAL INSPECTOR GENERAL  
FOR THE TROUBLED ASSET RELIEF PROGRAM  
1801 L STREET, NW, 6<sup>TH</sup> FLOOR  
WASHINGTON, D.C. 20220

June 10, 2009

Herbert Allison  
Counselor to the Secretary  
United States Department of the Treasury  
Main Treasury Building  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Duane Morse  
Chief Risk and Compliance Officer  
Office of Financial Stability  
United States Department of the Treasury  
1801 L Street, NW  
Washington, D.C. 20220

Re: Additional SIGTARP PPIP Recommendations

Dear Messrs. Allison and Morse:

As you know, the Office of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) made a series of recommendations regarding the Public Private Investment Program (“PPIP”) in our Quarterly Report dated April 21, 2009 (the “Report”). Over recent weeks, we have appreciated the opportunity to meet with you and other officials from the Office of Financial Stability (“OFS”) to discuss the evolution of the program, and in this letter we memorialize and describe in greater detail several of the the recommendations that we have made over the course of these meetings. These recommendations, of course, are not intended to replace those found in the Report; rather, they are refinements or additional considerations that should be taken into account as the fund managers are selected and final terms are developed.

**Registration of Fund Managers**

As an initial matter, prior to being accepted as fund managers for a Public Private Investment Fund (“PPIF”), each manager should be required to become (if they are not already) registered Investment Advisors with the Securities and Exchange Commission and thus subject to the Investment Advisors Act of 1940 (the “Advisors Act”). The Advisors Act identifies Investment Advisors as fiduciaries and subjects them to certain antifraud provisions as well as rules regarding record keeping, contracts, advertising, custody of client funds and assets, disclosure, and transparency, among others. These minimum protections are set forth in an existing accepted regulatory framework already applicable to fund managers in many contexts; the taxpayer should not receive any less consideration than an investor in a mutual fund, the advisors of which must be registered.

### **Conflicts of Interest – Implementation of a “Wall”**

When we made our initial recommendations, we had assumed that Treasury would follow, at a minimum, the conflict of interest provisions instituted by the Federal Reserve Bank of New York (“FRBNY”) with respect to asset managers it retained in several of its programs, including its Agency Mortgage-Backed Security Purchase Program, its management of the assets acquired or managed as part of the bailouts/purchases of American International Group and Bear Stearns, and its Commercial Paper Funding Facility. As you know, these programs involve many of the same types of conflicts concerns that we identified in our Report, and FRBNY has instituted an aggressive, albeit not perfect, conflicts plan that includes the walling off of managers who work on FRBNY projects from the rest of their firms. FRBNY has proven – in the context of programs that are, in our view, not as inherently fraught with conflicts issues – that requiring a strict wall is possible. Comparing the conflicts regime implemented by FRBNY to that being contemplated by Treasury for use with PPIF fund managers seems particularly apt in light of the fact that there appears to be some commonality between the FRBNY vendors and the fund managers under consideration for the PPIP program.

In our discussions with OFS, however, it has become apparent that Treasury’s inclination is not to require such a wall between those managing the PPIFs and the rest of their firms. Because we felt that requiring such a wall was the only measure that could adequately address the innumerable conflicts and collusion dangers inherently presented in the design of the PPIP program, we encouraged OFS to meet with FRBNY officials to discuss the mechanics and economic feasibility of mandating such a wall. On June 3, 2009, such a meeting occurred and was attended by representatives of OFS, SIGTARP and FRBNY. We believe that this meeting only further demonstrated the vital importance of requiring such a wall in the PPIP program.

In our view, the need for a wall in the PPIP program is made necessary by, among other things, the very design and purpose of the program, which gives the fund managers an unprecedented ability to set prices for illiquid mortgage-backed securities (“MBS”). As has been noted repeatedly, one of the purposes of the PPIP program is to increase the prices in the “frozen” MBS markets by bringing additional liquidity to those markets. In light of the anticipated size of the PPIFs, the dollar-for-dollar equity matching, and the leverage on top of the equity, a PPIF manager’s buy and sell decisions will likely have a dramatic impact on the market price of the securities involved. As we detailed in our Report, this creates an incentive for a PPIF manager to overpay for a given security in order to otherwise benefit his company by raising the price of any such security or related securities already in that firm’s portfolio. A wall would not only mitigate that danger (because the fund manager would be walled off from knowing the trading activity or holdings elsewhere in the firm), but would also limit the dangers of “front running” or insider trading. This danger, initially raised by SIGTARP and then independently raised by FRBNY in the June 3, 2009, meeting, would result from the fund manager sharing his buy decision with other fund managers (or even without the need to share if

he himself is managing other funds) so that the management firm could buy the same or related securities before the run up of the price that will result from the ensuing PPIF purchases. Similarly, such information could be used to unload securities in other parts of the firm in advance of sales within the PPIF of a given security. Of course, the value of this information, if freely available, would not necessarily be limited to transactions made by the PPIF Firm, but could be shared with other firms or PPIFs on a *quid pro quo* basis.

Simply put, absent a wall, it is likely that advance information about buy and sell decisions could readily be used for the benefit of the other funds managed by the PPIF manager at the expense of the general market and, eventually, of the PPIF itself. While a wall, standing alone, will not necessarily put a halt to such behavior, based on our own analysis, our consultations with others (including the FRBNY), and as was made apparent by the comments of FRBNY at the June 3, 2009, meeting, we believe that such a wall is essential to protect against these and the other dangers identified in our Report. The mechanisms and details of the wall, including mandatory cooling off periods and periodic review by Treasury, should be at least as stringent as those provisions imposed by FRBNY.

One of the arguments repeatedly advanced by Treasury in opposition to a wall is that the firms would not risk harming their client investors or their reputations by making decisions contrary to the interests of the PPIF. Unfortunately, we believe these observations do not reflect the realities of the marketplace. As we have noted in our meetings, similar comments were made regarding such formerly highly regarded firms as Enron, WorldCom, and Refco, to name a few. Further, such comments do not reflect that an investor's satisfaction with a firm is not limited to its performance in one particular fund: even if a PPIF is not profitable, an investor would likely be satisfied with the fund manager if it makes a significant profit (such as in circumstances where other funds that they are investing in profit from front running or if they successfully hedge against the positions in the PPIF) across all of their investments with that manager.

While we understand that the imposition of a strict wall may result in increased expenses and fees, may dissuade some of the more than 100 fund manager applicants from participating in the PPIF program, and may also result in making some personnel at the firms not available to the program, we believe that, in light of the announced structure of the program, those risks and expenses would be worth it to protect the interests of both the taxpayer and the market generally.

#### **Other Conflict Rules**

In any event, Treasury should also require certain conflict mitigation policies and procedures. Prior to engaging any manager, Treasury should require each PPIF manager applicant to: (a) identify all actual and potential conflicts of interest with the PPIF, including a detailed listing of all the ways in which its financial interests and those of its existing clients are likely to be affected by the PPIF; (b) present a policy acceptable to Treasury with respect to

conflicts of interest that includes rules on who within the firm shall have access to PPIF investment decisions and strategy and how investments in the same or similar assets will be allocated among the PPIF and the other funds under the manager's control; and (c) certify that the policies have been implemented and controls are in place to ensure their compliance. Once the program begins, Treasury should establish a compliance protocol within OFS to police these conflicts mitigation issues.

Additionally, Treasury should collect information, not for public disclosure, from every PPIF manager on holdings, valuation and transactions in the same or similar assets in their other funds and retain a third-party to review that data to screen for conflicts and collusive conduct. By comparing all of the activity in the PPIFs with all of the various managers' activity in the same assets, Treasury (again, perhaps through a retained third party) will be better able to screen for and detect the effects of problematic conflicts and/or collusive behavior. Treasury should also require that Treasury, SIGTARP and other pertinent oversight bodies have access to all of the fund manager's books, records and relevant personnel. The agreements should also require that such reports from the fund managers be certified by a senior executive and provide for strict penalty provisions should the fund manager violate the conflict of interest provisions.

#### **Disclosure**

As previously stated, it is SIGTARP's recommendation that, subject to reasonable protections of a manager's strategy (such as a reasonable delay in reporting if necessary), all transactions in the PPIF itself should be disclosed to SIGTARP for inclusion in our quarterly reports. Such reporting should be certified and provided to SIGTARP within seven calendar days of the end of the Quarter.

#### **Other Provisions**

SIGTARP also reiterates its recommendations that Treasury: 1) prohibit the fund manager from engaging in marketing related to Treasury's relationship to the manager (other than with respect to marketing the PPIF itself, which should also be carefully limited); 2) require so-called "key man" provisions mandating that the PPIF obtain the services of the personnel who were promised during the application process; 3) institute a comprehensive ban on all insider, cross, or affiliated transactions with provisions at least as strict as those required by the FRBNY in its programs; and 4) require the recording of all telephone calls of the PPIF fund manager and employees.

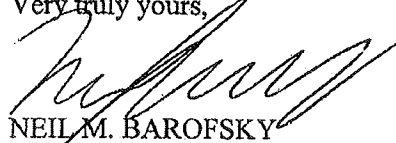
We also think it essential that appropriate metrics be defined and an evaluation system be in place to monitor the effectiveness of the PPIF managers, both to ensure that they are fulfilling the terms of their agreements and to measure their performance against pre-established benchmarks and against each other. To that end, there must be mechanisms in place to deal with

any failings on the part of PPIF managers to satisfy their contractual terms or with managers who are performing poorly.

**PPIP and TALF**

Finally, while we appreciate the briefing that OFS provided regarding Treasury's initial thoughts regarding the interaction between PPIP and TALF, until the above issues concerning the PPIP are resolved, it is difficult for us to evaluate the other factors outlined in our meeting. It is fair to say that the increased leverage provided by the TALF will only increase the already significant power of the PPIF manager to set prices. We cannot fairly assess the vulnerabilities that such increased power presents without first knowing whether the PPIF manager will be walled off from the rest of the firm's business.

Very truly yours,



NEIL M. BAROFSKY  
Special Inspector General

**From:** Allison, Herbert  
**Sent:** Wednesday, June 10, 2009 5:57 PM  
**To:** Barofsky, Neil; Morse, Duane; Miller, David N  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** RE: PPIP Term Sheets

Neil,

Thanks very much for your note, and for meeting with us this morning.

I'm asking Duane and David to arrange a meeting with Rich to discuss the term sheets.

Herb

---

**From:** Barofsky, Neil  
**Sent:** Wednesday, June 10, 2009 5:10 PM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** PPIP Term Sheets

We have some concerns/questions about some of the provisions in the Term Sheets. What I would propose, given your suggestion this morning, is having Rich Rosenfeld sit down with someone knowledgeable at Treasury about the contents of the two term sheets, so he can provide our initial comments and suggestions, as well as get some more detailed information regarding several of the terms. After that meeting, Kevin and I can then sit down with you and go over any issues that may remain.

Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Morse, Duane  
**Sent:** Wednesday, June 10, 2009 5:16 PM  
**To:** Barofsky, Neil; Allison, Herbert  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** RE: PPIP Term Sheets

I will arrange for someone from the PPIP team to talk with Rich.

Duane D. Morse  
Chief Risk and Compliance Officer - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

---

**From:** Barofsky, Neil  
**Sent:** Wednesday, June 10, 2009 5:10 PM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Puvalowski, Kevin; Rosenfeld, Richard  
**Subject:** PPIP Term Sheets

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Special Inspector General  
Troubled Asset Relief Program

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Neil M. Barofsky  
Special Inspector General  
Troubled Asset Relief Program

**From:** Puvalowski, Kevin  
**Sent:** Tuesday, June 09, 2009 6:28 PM  
**To:** Allison, Herbert; Morse, Duane  
**Cc:** Satar, Abdul; Barofsky, Neil  
**Subject:** Additional SIGTARP PPIP Recommendations  
**Attachments:** DigitalSenderDOC.pdf.pdf

Please see the attached letter concerning additional SIGTARP PPIP recommendations. We look forward to discussing them further with you tomorrow.

Regards.

*Kevin R. Puvalowski*  
*Deputy Special Inspector General*  
*Office of the Special Inspector General*  
*For The Troubled Asset Relief Program*  
*(202) 622-1584*  
[kevin.puvalowski@do.treas.gov](mailto:kevin.puvalowski@do.treas.gov)



OFFICE OF THE SPECIAL INSPECTOR GENERAL  
FOR THE TROUBLED ASSET RELIEF PROGRAM

1801 L STREET, NW, 6<sup>TH</sup> FLOOR

WASHINGTON, D.C. 20220

June 9, 2009

Herbert Allison  
Counselor to the Secretary  
United States Department of the Treasury  
Main Treasury Building  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Duane Morse  
Chief Risk and Compliance Officer  
Office of Financial Stability  
United States Department of the Treasury  
1801 L. Street, NW  
Washington, D.C. 20220

Re: Additional SIGTARP PPIP Recommendations

Dear Messrs. Allison and Morse:

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As an initial matter, prior to being accepted as fund managers for a Public Private Investment Fund ("PPIF"), each manager should be required to become (if they are not already) registered Investment Advisors with the Securities and Exchange Commission and thus subject to the Investment Advisors Act of 1940 (the "Advisors Act"). The Advisors Act identifies Investment Advisors as fiduciaries and subjects them to certain antifraud provisions as well as rules regarding record keeping, contracts, advertising, custody of client funds and assets, disclosure, and transparency, among others. These minimum protections are set forth in an existing accepted regulatory framework already applicable to fund managers in many contexts; the taxpayer should not receive any less consideration than an investor in a mutual fund, the advisors of which must be registered.

### **Conflicts of Interest – Implementation of a “Wall”**

When we made our initial recommendations, we had assumed that Treasury would follow, at a minimum, the conflict of interest provisions instituted by the Federal Reserve Bank of New York (“FRBNY”) with respect to asset managers it retained in several of its programs, including its Agency Mortgage-Backed Security Purchase Program, its management of the assets acquired or managed as part of the bailouts/purchases of American International Group and Bear Stearns, and its Commercial Paper Funding Facility. As you know, these programs involve many of the same types of conflicts concerns that we identified in our Report, and FRBNY has instituted an aggressive, albeit not perfect, conflicts plan that includes the walling off of managers who work on FRBNY projects from the rest of their firms. FRBNY has proven – in the context of programs that are, in our view, not as inherently fraught with conflicts issues – that requiring a strict wall is possible. Comparing the conflicts regime implemented by FRBNY to that being contemplated by Treasury for use with PPIF fund managers seems particularly apt in light of the fact that there appears to be some commonality between the FRBNY vendors and the fund managers under consideration for the PPIP program.

In our discussions with OFS, however, it has become apparent that Treasury’s inclination is not to require such a wall between those managing the PPIFs and the rest of their firms. Because we felt that requiring such a wall was the only measure that could adequately address the innumerable conflicts and collusion dangers inherently presented in the design of the PPIP program, we encouraged OFS to meet with FRBNY officials to discuss the mechanics and economic feasibility of mandating such a wall. On June 3, 2009, such a meeting occurred and was attended by representatives of OFS, SIGTARP and FRBNY. We believe that this meeting only further demonstrated the vital importance of requiring such a wall in the PPIP program.

In our view, the need for a wall in the PPIP program is made necessary by, among other things, the very design and purpose of the program, which gives the fund managers an unprecedented ability to set prices for illiquid mortgage-backed securities (“MBS”). As has been noted repeatedly, one of the purposes of the PPIP program is to increase the prices in the “frozen” MBS markets by bringing additional liquidity to those markets. In light of the anticipated size of the PPIFs, the dollar-for-dollar equity matching, and the leverage on top of the equity, a PPIF manager’s buy and sell decisions will likely have a dramatic impact on the market price of the securities involved. As we detailed in our Report, this creates an incentive for a PPIF manager to overpay for a given security in order to otherwise benefit his company by raising the price of any such security or related securities already in that firm’s portfolio. A wall would not only mitigate that danger (because the fund manager would be walled off from knowing the trading activity or holdings elsewhere in the firm), but would also limit the dangers of “front running” or insider trading. This danger, initially raised by SIGTARP and then independently raised by FRBNY in the June 3, 2009, meeting, would result from the fund manager sharing his buy decision with other fund managers (or even without the need to share if

he himself is managing other funds) so that the management firm could buy the same or related securities before the run up of the price that will result from the ensuing PPIF purchases. Similarly, such information could be used to unload securities in other parts of the firm in advance of sales within the PPIF of a given security. Of course, the value of this information, if freely available, would not necessarily be limited to transactions made by the PPIF Firm, but could be shared with other firms or PPIFs on a *quid pro quo* basis.

Simply put, absent a wall, it is likely that advance information about buy and sell decisions could readily be used for the benefit of the other funds managed by the PPIF manager at the expense of the general market and, eventually, of the PPIF itself. While a wall, standing alone, will not necessarily put a halt to such behavior, based on our own analysis, our consultations with others (including the FRBNY), and as was made apparent by the comments of FRBNY at the June 3, 2009, meeting, we believe that such a wall is essential to protect against these and the other dangers identified in our Report. The mechanisms and details of the wall, including mandatory cooling off periods and periodic review by Treasury, should be at least as stringent as those provisions imposed by FRBNY.

One of the arguments repeatedly advanced by Treasury in opposition to a wall is that the firms would not risk harming their client investors or their reputations by making decisions contrary to the interests of the PPIF. Unfortunately, we believe these observations do not reflect the realities of the marketplace. As we have noted in our meetings, similar comments were made regarding such formerly highly regarded firms as Enron, WorldCom, and Refco, to name a few. Further, such comments do not reflect that an investor's satisfaction with a firm is not limited to its performance in one particular fund: even if a PPIF is not profitable, an investor would likely be satisfied with the fund manager if it makes a significant profit (such as in circumstances where other funds that they are investing in profit from front running or if they successfully hedge against the positions in the PPIF) across all of their investments with that manager.

While we understand that the imposition of a strict wall may result in increased expenses and fees, may dissuade some of the more than 100 fund manager applicants from participating in the PPIF program, and may also result in making some personnel at the firms not available to the program, we believe that, in light of the announced structure of the program, those risks and expenses would be worth it to protect the interests of both the taxpayer and the market generally.

#### **Other Conflict Rules**

In any event, Treasury should also require certain conflict mitigation policies and procedures. As an observer to Treasury's interviews with potential asset management firms, SIGTARP is concerned about the very limited nature of the discussions that took place regarding conflicts and compliance issues – in some cases, no discussions at all. Prior to engaging any manager, Treasury should require each PPIF manager applicant to: (a) identify all actual and

potential conflicts of interest with the PPIF, including a detailed listing of all the ways in which its financial interests and those of its existing clients are likely to be affected by the PPIF; (b) present a policy acceptable to Treasury with respect to conflicts of interest that includes rules on who within the firm shall have access to PPIF investment decisions and strategy and how investments in the same or similar assets will be allocated among the PPIF and the other funds under the manager's control; and (c) certify that the policies have been implemented and controls are in place to ensure their compliance. Once the program begins, Treasury should establish a compliance protocol within OFS to police these conflicts mitigation issues.

Additionally, Treasury should collect information, not for public disclosure, from every PPIF manager on holdings, valuation and transactions in the same or similar assets in their other funds and retain a third-party to review that data to screen for conflicts and collusive conduct. By comparing all of the activity in the PPIFs with all of the various managers' activity in the same assets, Treasury (again, perhaps through a retained third party) will be better able to screen for and detect the effects of problematic conflicts and/or collusive behavior. Treasury should also require that Treasury, SIGTARP and other pertinent oversight bodies have access to all of the fund manager's books, records and relevant personnel. The agreements should also require that such reports from the fund managers be certified by a senior executive and provide for strict penalty provisions should the fund manager violate the conflict of interest provisions.

#### **Disclosure**

As previously stated, it is SIGTARP's recommendation that, subject to reasonable protections of a manager's strategy (such as a reasonable delay in reporting if necessary), all transactions in the PPIF itself should be disclosed to SIGTARP for inclusion in our quarterly reports. Such reporting should be certified and provided to SIGTARP within seven calendar days of the end of the Quarter.

#### **Other Provisions**

SIGTARP also reiterates its recommendations that Treasury: 1) prohibit the fund manager from engaging in marketing related to Treasury's relationship to the manager (other than with respect to marketing the PPIF itself, which should also be carefully limited); 2) require so-called "key man" provisions mandating that the PPIF obtain the services of the personnel who were promised during the application process; 3) institute a comprehensive ban on all insider, cross, or affiliated transactions with provisions at least as strict as those required by the FRBNY in its programs; and 4) require the recording of all telephone calls of the PPIF fund manager and employees.

We also think it essential that appropriate metrics be defined and an evaluation system be in place to monitor the effectiveness of the PPIF managers, both to ensure that they are fulfilling the terms of their agreements and to measure their performance against pre-established

benchmarks and against each other. To that end, there must be mechanisms in place to deal with any failings on the part of PPIF managers to satisfy their contractual terms or with managers who are performing poorly.

**PPIF and TALF**

Finally, while we appreciate the briefing that OFS provided regarding Treasury's initial thoughts regarding the interaction between PPIF and TALF, until the above issues concerning the PPIF are resolved, it is difficult for us to evaluate the other factors outlined in our meeting. It is fair to say that the increased leverage provided by the TALF will only increase the already significant power of the PPIF manager to set prices. We cannot fairly assess the vulnerabilities that such increased power presents without first knowing whether the PPIF manager will be walled off from the rest of the firm's business.

Very truly yours,



NEIL M. BAROFSKY  
Special Inspector General

The information at pages 588 through 590 are not responsive to the request.

**From:** Bass, Matthew  
**Sent:** Tuesday, June 09, 2009 10:17 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** RE: S-PPIP Follow-up  
**Attachments:** S-PPIP Equity Term Sheet 6-3-09.doc

Attached please find latest draft of the equity term sheet. Please let me know if you have any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)

[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

---

**From:** Barofsky, Neil  
**Sent:** Monday, June 08, 2009 3:29 PM  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** RE: S-PPIP Follow-up

Thanks, will you also be forwarding the draft equity term sheet? Or is that one still too draft to share?

---

**From:** Bass, Matthew  
**Sent:** Monday, June 08, 2009 10:20 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** S-PPIP Follow-up

Neil,

As a follow-up to this morning's meeting, attached please find the following –

1. Draft UST debt term sheet
2. 1 page summary of capital structure, leverage and coverage ratios we discussed

Please feel free to call me if you have any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

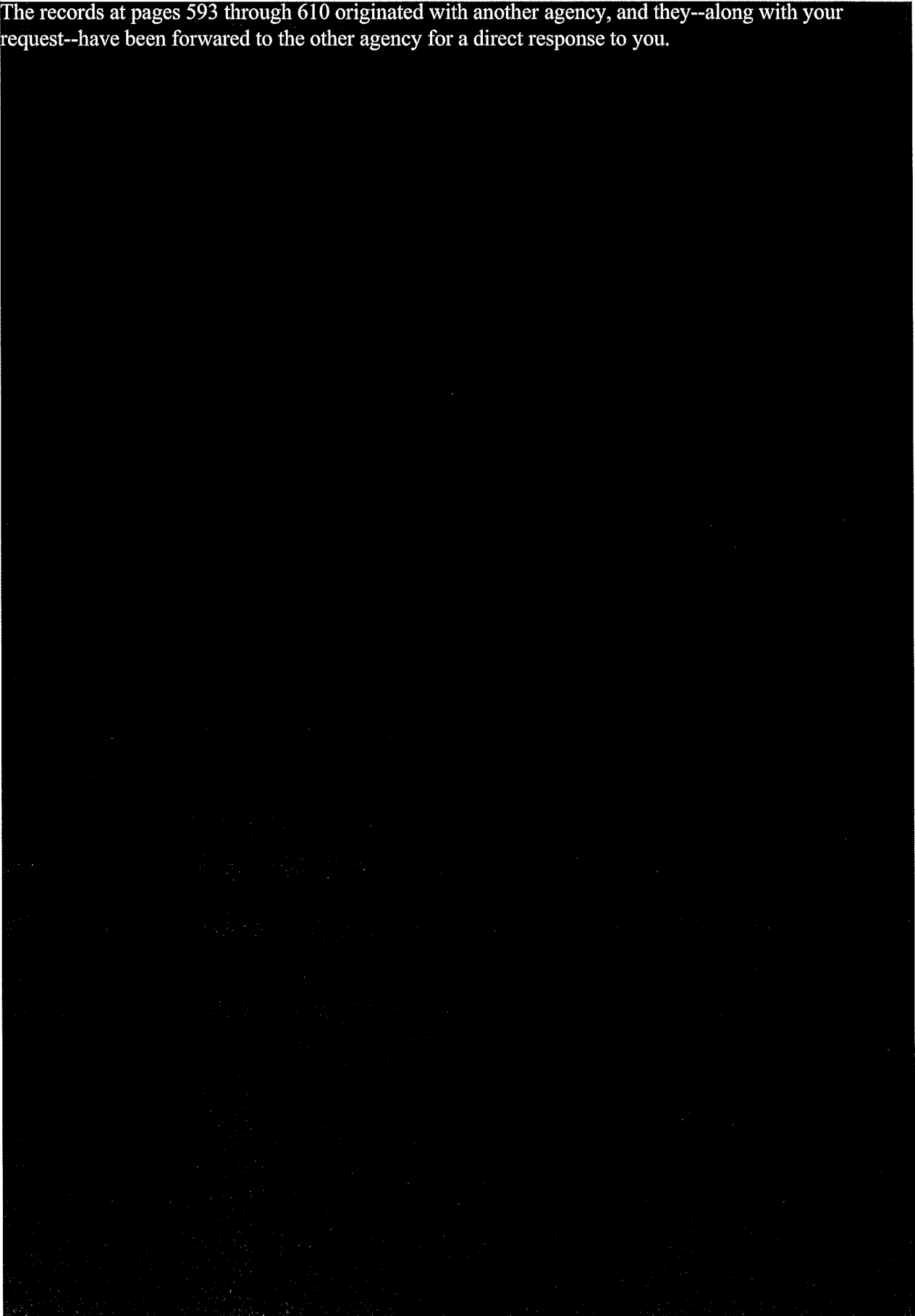
(b) (6)

[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL



The records at pages 593 through 610 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Bass, Matthew  
**Sent:** Monday, June 08, 2009 9:57 PM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** Re: S-PPIP Follow-up

Yes. I will send you latest draft tomorrow.

---

**From:** Barofsky, Neil  
**To:** Bass, Matthew  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Sent:** Mon Jun 08 15:29:14 2009  
**Subject:** RE: S-PPIP Follow-up  
Thanks, will you also be forwarding the draft equity term sheet? Or is that one still too draft to share?

---

**From:** Bass, Matthew  
**Sent:** Monday, June 08, 2009 10:20 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** S-PPIP Follow-up

Neil,

As a follow-up to this morning's meeting, attached please find the following --

1. Draft UST debt term sheet
2. 1 page summary of capital structure, leverage and coverage ratios we discussed

Please feel free to call me if you have any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

**From:** Bass, Matthew  
**Sent:** Monday, June 08, 2009 10:20 AM  
**To:** Barofsky, Neil  
**Cc:** Allison, Herbert; Sachs, Lee; Kabaker, Matthew; Miller, David N; Morse, Duane; Massad, Timothy; Vartanian, Ani; Speaker, Michael; Ferlazzo, Ronald; Cook, David; Abdelrazek, Rawan  
**Subject:** S-PPIP Follow-up  
**Attachments:** S-PPIP UST Debt Term Sheet.doc; S-PPIP - TALF Example.pptx

Neil,

As a follow-up to this morning's meeting, attached please find the following –

1. Draft UST debt term sheet
2. 1 page summary of capital structure, leverage and coverage ratios we discussed

Please feel free to call me if you have any questions.

Thanks,  
Matt

Matthew Bass  
Office of Financial Stability  
O: (202) 622-4424

(b) (6)  
[matthew.bass@do.treas.gov](mailto:matthew.bass@do.treas.gov)

SENSITIVE / PRE-DECISIONAL

The records at pages 613 through 629 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.

**From:** Morse, Duane  
**Sent:** Tuesday, April 14, 2009 1:37 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin  
**Subject:** PPIP update meeting

The PPIP team would like to schedule a meeting with you for Monday, April 20, to update you on the securities PPIF and get your thoughts on fraud vulnerabilities and how to deal with them. Please propose some times that would work for you.

Regards, Duane

Duane D. Morse  
Chief Counsel - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

**From:** Morse, Duane  
**Sent:** Tuesday, April 14, 2009 1:33 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin  
**Cc:** Kashkari, Neel; Abdelrazek, Rawan  
**Subject:** FW: Final Signed Letter to SIG April 14 2009.pdf - Adobe Acrobat Professional  
**Attachments:** Final Signed Letter to SIG April 14 2009.pdf

Here is the letter we promised you yesterday. Sorry for the delay in getting it to you. I'll give you the original this afternoon.

Duane D. Morse  
Chief Counsel - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

---

**From:** Abdelrazek, Rawan  
**Sent:** Tuesday, April 14, 2009 12:01 PM  
**To:** Morse, Duane  
**Cc:** Patterson, Dawn A. (Office of Compliance); Kashkari, Neel  
**Subject:** Final Signed Letter to SIG April 14 2009.pdf - Adobe Acrobat Professional



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

ASSISTANT SECRETARY

April 14, 2009

Neil Barofsky, Esq.  
Special Inspector General  
United States Department of the Treasury  
1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220

Re: SIGTARP Quarterly Report Recommendations

Dear Mr. Barofsky:

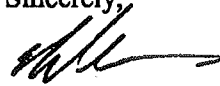
Thank you for giving us the opportunity to review and comment on your draft quarterly report and recommendations for the period ending March 31, 2009. As we discussed with you, many of your draft recommendations raise important points that will be helpful to us in structuring and documenting transactions under the new programs discussed in your report.

I wish to reemphasize the fact that these programs, along with the other components of Treasury's comprehensive Financial Stability Plan, are being undertaken to stabilize the financial system and restore confidence in our financial and housing markets by supporting the flow of credit to consumers and businesses. Our programs are designed to strengthen financial institutions and provide aid to homeowners and small businesses. The Public-Private Investment Program and the expansion of TALF to include legacy assets -- residential and commercial mortgage-backed securities issued prior to the economic downturn -- are important components of the Financial Stability Plan because they are designed to restart the market for legacy assets and help clear banks' balance sheets. Many banks burdened by substantial amounts of these assets have found it more difficult to raise capital in private markets and support lending to consumers and businesses. Our goal in creating the Public-Private Investment Program and expanding TALF to cover legacy MBS is to restart markets for these assets to support the flow of credit that is absolutely vital to our economic recovery.

As your recommendations make clear, there are risks associated with investing in or lending against legacy assets, which is in part why markets for them are currently frozen. Your recommendations are helpful in pointing out steps that could be taken to reduce those risks. We intend not only to consider those suggestions but to solicit additional input from your team as we structure and document the programs.

Our objective is to design effective programs that restart these markets and help clear banks' balance sheets in order to restore the flow of credit, while protecting taxpayers. We have structured our programs to attract the very best private sector expertise, both to select and price assets and to share in the risks and rewards of the programs. Given the severity of the crisis, Treasury must take these unprecedented actions to stabilize our financial system. Our actions must be in the long-term best interest of taxpayers, considering both the potential risks to taxpayers of action and also the potential risks to taxpayers of inaction. We believe our programs strike the right balance, and we appreciate your team's efforts to help us make them better.

Sincerely,



Neel Kashkari  
Interim Assistant Secretary  
for Financial Stability

**From:** Puvalowski, Kevin  
**Sent:** Monday, April 13, 2009 6:04 PM  
**To:** Morse, Duane; 'Andreas.Lehnert@frb.gov'; Knight, Bernard Jr.; Morse, Duane; 'Martin.Grant@ny.frb.org'; Kashkari, NeelDisabled; Wolfeich, Paul; 'thomas.baxter@ny.frb.org'; 'William.Treacy@frb.gov'  
**Cc:** Barofsky, Neil  
**Subject:** Comments on SIGTARP Recommendations

(b) (5)



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**From:** Morse, Duane  
**Sent:** Monday, April 13, 2009 3:34 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin  
**Subject:** 4-13-09 Comments on SIGTARP Recommendations

Here are some more specific comments on the draft recommendations.

Duane D. Morse

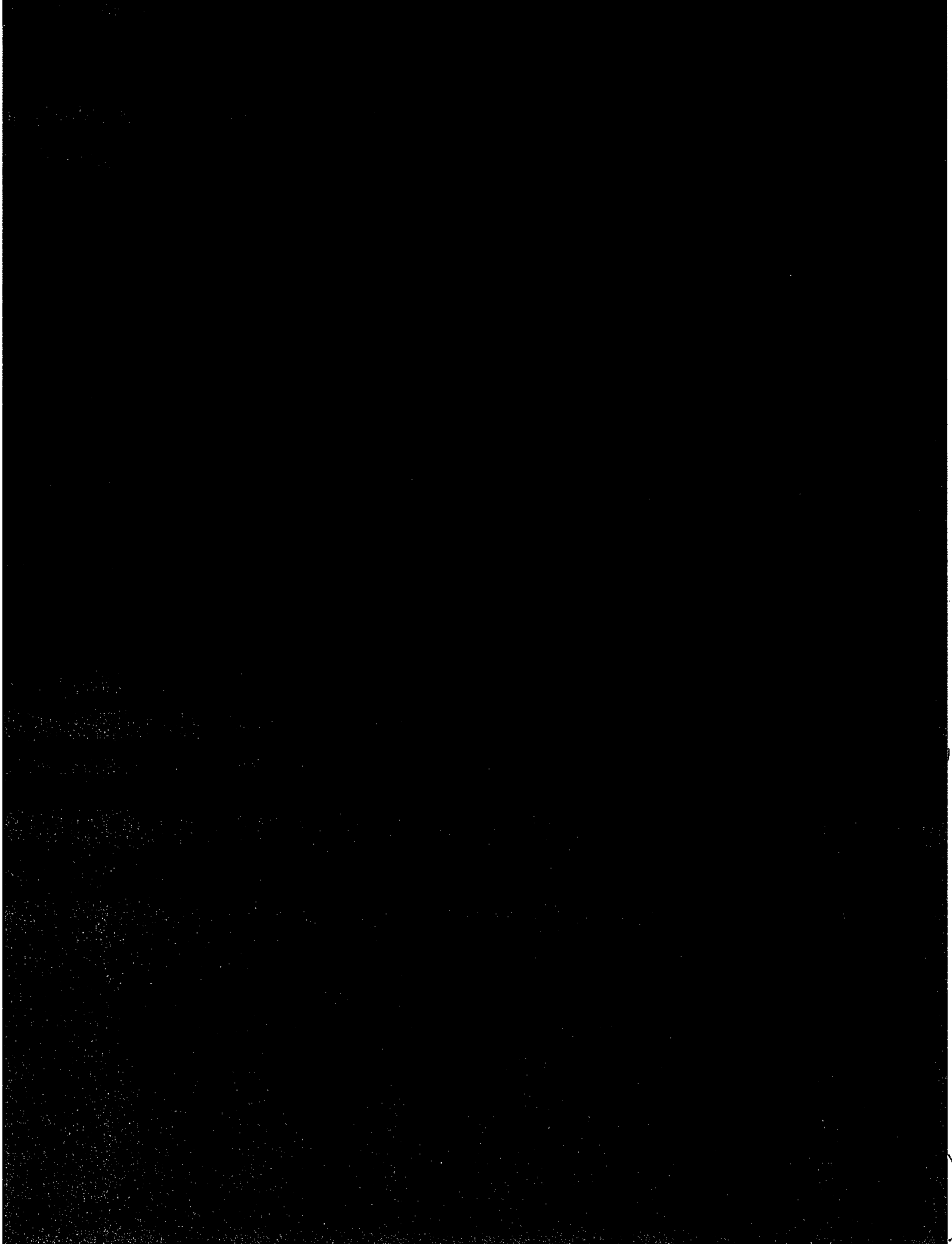
Chief Counsel - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

**From:** Morse, Duane  
**Sent:** Monday, April 13, 2009 3:34 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin  
**Subject:** 4-13-09 Comments on SIGTARP Recommendations  
**Attachments:** Suggested Mark-ups to SIGTARP Recommendations.pdf; 4-13-09 Comments on SIGTARP Recommendations.doc

Here are some more specific comments on the draft recommendations.

Duane D. Morse  
Chief Counsel - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

The records at pages 637 through 648 are vetting drafts of SIGTARP's Quarterly Reports to Congress, and, thus, they have been redacted pursuant to 5 USC 552(b)(5).



(b)(5) DPP

**From:** Puvalowski, Kevin  
**Sent:** Thursday, April 09, 2009 8:23 PM  
**To:** Patterson, Mark (DO); Kashkari, NeelDisabled; Morse, Duane; Wolfteich, Paul; Knight, Bernard Jr.; 'William.Treacy@frb.gov'; 'Kieran.Fallon@frb.gov'; 'Andreas.Lehnert@frb.gov'; 'Martin.Grant@ny.frb.org'; 'thomas.baxter@ny.frb.org'  
**Cc:** Barofsky, Neil  
**Subject:** SIGTARP's Draft Recommendations  
**Attachments:** SIGTARP Section 4 Vetting Draft.pdf

I have attached for your review and comments the draft of the recommendations that will be going into SIGTARP's quarterly report. As with the last report, we are happy to discuss any comments or concerns that you might have. To have an adequate opportunity to address any concerns, we need to have any comments by Monday morning. If anyone would like to meet in person with Neil to discuss the recommendations, please let me know; we have carved out time on Monday at 9:00 a.m. for that purpose, but will try to accommodate your schedules if we can.

You may share the draft with others within your respective agencies as you deem necessary, but please do not distribute it outside your agency.

Regards.

*Kevin R. Puvalowski*  
*Chief of Staff*  
*Office of the Special Inspector General*  
*For The Troubled Asset Relief Program*  
*(202) 622-1584*  
[kevin.puvalowski@do.treas.gov](mailto:kevin.puvalowski@do.treas.gov)

The records at pages 650 through 668 are vetting drafts of SIGTARP's Quarterly Reports to Congress, and, thus, they have been redacted pursuant to 5 USC 552(b)(5).

**From:** Puvalowski, Kevin  
**Sent:** Monday, April 06, 2009 10:36 AM  
**To:** Patterson, Mark (DO); Kashkari, NeelDisabled; Morse, Duane; Wolfeich, Paul; Knight, Bernard Jr.; 'William.Treacy@frb.gov'; 'Kieran.Fallon@frb.gov'; 'beth.coleman@frb.gov'; 'martin.grant@ny.frb.org'; 'McCoolT@GAO.GOV'; 'JRymer@FDIC.gov'  
**Cc:** Barofsky, Neil  
**Subject:** SIGTARP Quarterly Report Vetting Draft  
**Attachments:** SIGTARP Vetting Draft.pdf; Comment Resolution Form.doc

On behalf of the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), I respectfully request your assistance in reviewing the attached vetting draft of SIGTARP's quarterly report to Congress.

The vetting draft has yet to be edited for style, syntax, and grammar, so we ask that you limit your remarks to the presentation and accuracy of the content as it pertains to your agency.

To ensure that all of your comments are received and appropriately considered, to the extent feasible please have your reviewers use the attached Comment Resolution Form. This will help us track and resolve any issues that your agency raises. Please return your comments to me. We are requesting responses by close of business, Thursday, April 9, 2009.

The information contained in this e-mail and any accompanying attachments may contain inspector general sensitive information that is protected from mandatory disclosure under the Freedom of Information Act ("FOIA"), 5 USC § 552. Matters covered within vetting versions of SIGTARP reports often include information that is still being developed. As a result of this, the version included here does not represent a final approved SIGTARP report. Dissemination beyond your immediate organization is prohibited. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is prohibited. Please contact the undersigned if you have received this information in error.

We appreciate your efforts to assist us in providing Congress and the American public with an authoritative, accurate, and useful document.

Regards.

*Kevin R. Puvalowski*  
*Chief of Staff*  
*Office of the Special Inspector General*  
*For The Troubled Asset Relief Program*  
*(202) 622-1584*  
[kevin.puvalowski@do.treas.gov](mailto:kevin.puvalowski@do.treas.gov)

**From:** Wolfeich, Paul  
**Sent:** Monday, March 30, 2009 11:32 AM  
**To:** Barofsky, Neil; 'hillmanr@gao.gov'; 'mccoolt@gao.gov'  
**Attachments:** projected use of tarp funds 0327 GBS.DOC

Rick, Neil --

Attached is a draft document that Treasury created internally to discuss its projected use of TARP funds. The document does not include today's auto announcements, and uses the term "Funds Committed" in a non-technical way, so I would ask you not to share it publicly. The funds listed as "committed" are not committed in a legally binding way in some instances (such as housing).

We'd like to discuss these numbers with you – Rick, I'll call you momentarily.

- Paul

**From:** Wolfeich, Paul  
**Sent:** Monday, March 30, 2009 11:32 AM  
**To:** Barofsky, Neil; 'hillmanr@gao.gov'; 'mccoolt@gao.gov'  
**Attachments:** projected use of tarp funds 0327 GBS.DOC

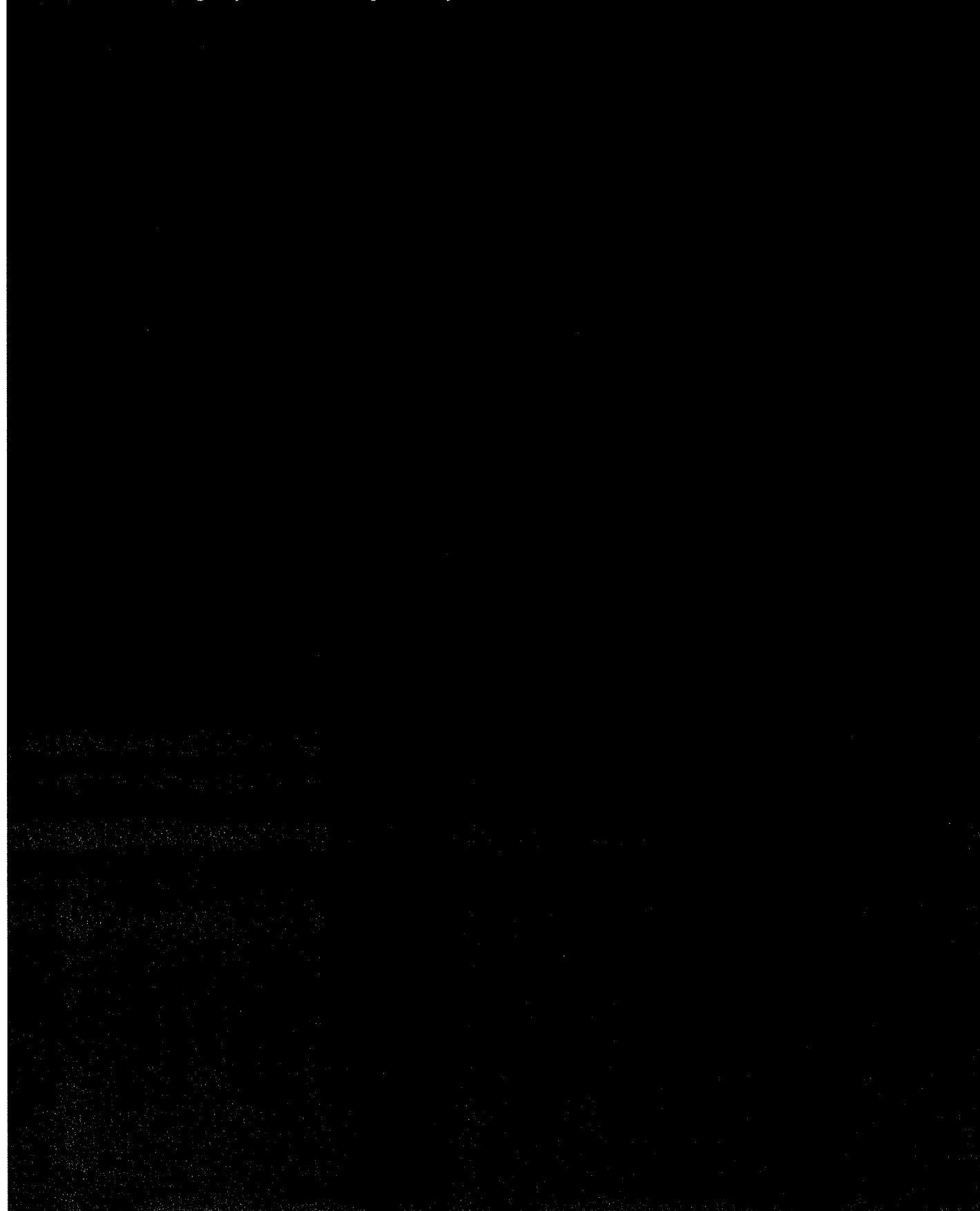
Rick, Neil --

Attached is a draft document that Treasury created internally to discuss its projected use of TARP funds. The document does not include today's auto announcements, and uses the term "Funds Committed" in a non-technical way, so I would ask you not to share it publicly. The funds listed as "committed" are not committed in a legally binding way in some instances (such as housing).

We'd like to discuss these numbers with you – Rick, I'll call you momentarily.

- Paul

The records at pages 672 through 673 originated with another agency, and they--along with your request--have been forwarded to the other agency for a direct response to you.



**From:** Morse, Duane  
**Sent:** Thursday, March 19, 2009 5:01 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin; Holman, Barry; Sharpley, Chris; Rosenfeld, Richard  
**Cc:** Wolfeich, Paul  
**Subject:** RE: PPIF Briefing

Sorry for the short notice, but we're not in control of the timing. I'll get back to you with a proposed time for the meeting tomorrow afternoon.

Duane D. Morse  
Chief Counsel - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

---

**From:** Barofsky, Neil  
**Sent:** Thursday, March 19, 2009 4:56 PM  
**To:** Morse, Duane; Puvalowski, Kevin; Holman, Barry; Sharpley, Chris; Rosenfeld, Richard  
**Cc:** Wolfeich, Paul  
**Subject:** Re: PPIF Briefing

I am available after 2:30pm. afternoon. Obviously we are not going to be able to make any meaningful recommendations (that would have a chance of being fully considered and adopted) on this time frame.

---

**From:** Morse, Duane  
**To:** Barofsky, Neil; Puvalowski, Kevin  
**Cc:** Wolfeich, Paul  
**Sent:** Thu Mar 19 16:40:41 2009  
**Subject:** PPIF Briefing

It looks like the PPIF program is going to be announced on Monday. Can we get together tomorrow to brief your team on the program?


Duane D. Morse  
Chief Counsel - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

**From:** Morse, Duane  
**Sent:** Thursday, March 19, 2009 4:41 PM  
**To:** Barofsky, Neil; Puvalowski, Kevin  
**Cc:** Wolfeich, Paul  
**Subject:** PPIF Briefing

It looks like the PPIF program is going to be announced on Monday. Can we get together tomorrow to brief your team on the program?

Duane D. Morse  
Chief Counsel - Office of Financial Stability  
Department of the Treasury  
202-622-1192  
[Duane.Morse@do.treas.gov](mailto:Duane.Morse@do.treas.gov)

Not responsive to your request.



Not responsive to your request.

