

SEC Update

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SIGTARP's Pursuit of TARP-Related Misconduct – No End in Sight

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On July 24, 2013, the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP") filed its latest **Quarterly Report to Congress** (the "July Report"). The July Report summarizes SIGTARP's recent and cumulative successes in prosecuting misconduct relating to the TARP bailout program. The July Report serves as a stark reminder of SIGTARP's robust enforcement powers and as an important warning to individuals and entities that touch TARP in any way that the agency is committed to aggressively pursuing TARP-related misconduct for many years to come.

SIGTARP was established by the Emergency Economic Stabilization Act of 2008 (as amended by the Special Inspector General for the Troubled Asset Relief Program Act of 2009), which also authorized TARP in response to the global financial crisis. Congress created SIGTARP to prevent, root out and prosecute fraud, waste and abuse associated with TARP. Congress provided SIGTARP broad investigatory powers to achieve its bold mandate, including the authority to search and seize property and to make arrests. Fittingly, SIGTARP describes itself as "a white-collar law enforcement agency."

SIGTARP is required to provide a report quarterly to Congress describing the agency's activities and other information about the status of TARP. SIGTARP historically has included a detailed discussion of its investigations activity in its quarterly reports. The July Report discloses the following substantial cumulative enforcement results achieved by SIGTARP in its brief 4.5 year history:

- Criminal charges against 144 individuals, including 92 senior officers (CEOs, owners, founders, or senior executives) of their organizations;
- Criminal convictions of 107 defendants;
- Prison sentences for 51 defendants, probation for 9 defendants, and 47 convicted defendants awaiting sentencing;
- Average prison sentences of 68 months – nearly double the national average length of prison sentences involving white collar crime;
- Civil cases and actions against 58 individuals and 47 entities;
- Orders temporarily suspending or permanently banning 37 individuals from working in the banking or financial industry, working as contractors with the federal government, or working as licensed attorneys;
- Orders of restitution and civil judgments entered for \$4.3 billion; and
- Savings of \$553 million in TARP funds that SIGTARP prevented from going to the now-failed Colonial Bank.

A close review of the July Report reveals four factors that portend a future filled with a multitude of SIGTARP investigations and enforcement actions involving entities and persons associated with TARP.

First, SIGTARP reported that as of July 11, 2013, it has "more than 150 ongoing criminal and civil investigations." A law enforcement agency naturally must perform at least some minimum level of investigation in order to determine whether to pursue or close a pending investigation. Accordingly, many individuals and companies will become embroiled in SIGTARP investigative activity as the agency assesses the viability of its 150+ ongoing investigations.

Second, SIGTARP's sophisticated investigative tools and expertise will invariably lead the agency to open additional investigations. SIGTARP continually monitors the TARP programs to identify overt instances of improper conduct and uses its investigative tools and experience to unearth more inconspicuous fraud.

Third, SIGTARP partners with a diverse group of prosecutors and regulators, which enables it to effectively pursue a broad array of legal charges, both civil and criminal, across the country. By pursuing

civil enforcement actions in addition to criminal convictions, SIGTARP increases its pool of potential defendants due to the lower threshold for proving civil liability. Furthermore, this approach expands the scope of agencies SIGTARP can partner with on investigations, including, for example, the Securities and Exchange Commission, Consumer Financial Protection Bureau, Civil Division of the Department of Justice, and the banking regulators. Indeed, according to the July Report, "SIGTARP investigations have resulted in 102 civil charges and other actions against 58 individuals (including 44 senior executives) and 47 corporate entities. These charges have resulted in 55 settlements yielding over \$282 million in civil penalties and other actions." SIGTARP's decision to pursue both civil and criminal enforcement actions has enabled it to prosecute a broad array of legal charges, including as SIGTARP reported "bank fraud, accounting fraud, securities fraud, insider trading, mortgage fraud, mortgage-servicer misconduct, fraudulent advance-fee schemes, public corruption, false statements (including to SIGTARP agents), obstruction of justice, theft of trade secrets, money laundering, bankruptcy fraud, and tax-related matters, among others."

Moreover, despite its relatively small size, SIGTARP is capable of conducting investigations seamlessly throughout the nation. SIGTARP partners with law enforcement agencies and prosecutors across the country. In fact, the July Report disclosed that SIGTARP criminal defendants have been charged in courts in 17 states plus the District of Columbia and that SIGTARP filed these charges in partnership with 25 U.S. Attorneys' Offices across the country. SIGTARP also has successfully pursued TARP charges in partnership with numerous other state and local prosecutors, as well as with civil enforcement agencies.

Fourth, the end of TARP is not upon us; neither is the end of SIGTARP. SIGTARP's mandate remains in full force as long as any TARP asset remains outstanding. A total of 270 institutions remain in TARP and approximately \$28.6 billion in TARP funds remain outstanding, according to the July Report. In addition, the Department of Treasury is authorized to spend up to an additional \$29.9 billion in TARP funds on housing support programs implemented under TARP. SIGTARP has made clear that it will target aggressively TARP-related misconduct until every TARP penny is repaid. SIGTARP therefore will remain a fixture on the government enforcement scene for many years to come as TARP funds will remain outstanding for the foreseeable future.

While some may perceive that TARP, and by extension SIGTARP, have wound down, this perception is erroneous and dangerous. SIGTARP will remain a tough cop on the beat so long as TARP endures. Entities and individuals that come in contact with TARP – including in particular, TARP-recipient banks and their employees, customers of TARP-recipient banks, TARP applicant banks, and financial institutions, mortgage servicers, their employees, homeowners, and others that participate in TARP housing support programs – should conduct themselves with due care. Those who engage in misconduct bear a significant risk of receiving a knock on their door from a SIGTARP criminal law enforcement agent.

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