



May 21, 2009



## PPIP and TARP Transparency

[Harold P. Reichwald](#)

Secretary Geithner has announced that he expects the PPIP program for the purchase of so-called Legacy Loans from banks to be up and running before June 30, 2009. This should be a signal to the investing community that the start-up phase will not be bogged down for a lengthy period of time in a bureaucratic process. This is the good news

However, there also is some potentially bad news to consider. Only hours before the Secretary's comments, the House and Senate completed work on the Helping Families Save Their Homes Act of 2009, which was promptly signed into law by the President. This hopefully salutary piece of legislation has embedded within it some troublesome provisions that should be of interest to every potential investor seeking opportunity through the purchase of Legacy Loans under the FDIC's PPIP program.

Section 601 of the newly enacted statute amends the original TARP authority legislation passed in October 2008 (the "EESA"). Originally, Section 116 of EESA mandated the U.S. Comptroller General (not the Comptroller of the Currency) and the Government Accountability Office to essentially perform an audit function over any U.S. governmental unit engaged in any activity under the authority of TARP. This was intended to provide the necessary financial oversight to ensure the proper expenditure of U.S. government funds by government agencies. The amended version of Section 116 goes further and should give potential investors some pause as they contemplate making a PPIP investment.

The amended Section 116 requires that every agreement between the Treasury or any TARP unit of government with a nongovernmental entity must provide for access by the

### NEWSLETTER EDITORS

**[Harold P. Reichwald](#)**

Partner  
[hreichwald@manatt.com](mailto:hreichwald@manatt.com)  
310.312.4148

**[Clayton B. Gantz](#)**

Partner  
[cgantz@manatt.com](mailto:cgantz@manatt.com)  
415.291.7600

### OUR PRACTICE

Today's challenging combination of difficult economic, real estate and credit market conditions presents great risk for investors. Risk, however, creates reward for those with the experience and skill to evaluate, manage and exploit it. At Manatt, our professionals have the capability, market knowledge and... [more](#)

- [Practice Group Overview](#)
- [Practice Group Members](#)

### INFO & RESOURCES

- [Subscribe](#)
- [Unsubscribe](#)
- [Sarbanes-Oxley Act](#)
- [Newsletter Disclaimer](#)
- [Manatt.com](#)

Comptroller General to the books and records of the nongovernmental entity participating in a program under TARP, thereby extending the reach of the Comptroller General's authority. Since the Treasury has stated its intention to use TARP funds for its contribution of 50% of the equity of each the public/private entity established to purchase Legacy Loans under PPIP, each of those nongovernmental entities is now subject to audit by the Comptroller General.

While that may be reason for some to question the wisdom of participating in PPIP, the new enactment also provides that this audit right may extend to all who may be considered an agent or representative of the contemplated public/private entity, such as a managing member of a limited liability company, a general partner of a limited partnership, an officer and director of a corporation and others in similar positions. It also raises the possibility of an interpretation that includes any other person directly or indirectly participating in the PPIP program.

The dragnet quality of the amendment may not have been intended. At the very least, the FDIC and the Treasury need to clarify how they intend to proceed given this new enactment. Otherwise, there is a considerable risk that potential purchasers may decide it is better to simply sit on the sidelines without having an audit spotlight on them.

[back to top](#)

---

**FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:**



**Harold P. Reichwald** Mr. Reichwald is a highly experienced banking and finance attorney whose career encompasses domestic and international matters for banks and specialty finance institutions. His experience comprises a broad range of matters including: governance matters, sophisticated financial transactions such as asset securitization, LBOs, project finance, corporate lending and restructuring; representation of a variety of domestic and foreign financial institutions before the FDIC, Comptroller of the Currency, the Federal Reserve Board and other bank regulatory agencies in connection with new product development, chartering new banks and branches, issues arising out of the bank examination process and enforcement actions demanded by regulatory authorities. In addition, Mr. Reichwald has counseled senior executives, boards of directors, audit committees and credit review staffs of financial institutions,

including conducting special investigations on their behalf. Mr. Reichwald's experience includes serving as Executive Vice President and General Counsel for Crocker National Corporation and its subsidiary, Crocker National Bank.

ATTORNEY ADVERTISING pursuant to New York DR 2-101(f)  
Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.  
© 2009 Manatt, Phelps & Phillips, LLP. All rights reserved.