

Client Alert

# Economic Crisis Response Group

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Economic Crisis  
Response Group

Edited by  
Charles E. Dropkin

## **FDIC Program to Auction Legacy Loans Put on Hold**

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The FDIC announced on June 3 that it will suspend a pilot auction of loans under the Legacy Loans Program (the “Program”), a key element of the Treasury Department’s Public-Private Investment Program (“PPIP”) designed to rid banks of distressed whole loans, originally scheduled for June.

The FDIC, through a statement by Chairman Sheila Bair, noted that some banks have been able to access capital markets despite continued ownership of distressed assets. To date, there has been a seeming lack of interest in the PPIP among potential participants which has generally been attributed to: (i) investor concern that lawmakers may change the program’s rules once participants were committed, and (ii) a lack of incentives for banks to sell their distressed assets at market prices, which are currently far below their balance-sheet valuations. In May, Chairman Bair cited recent legislation calling for increased government scrutiny related to conflicts of interest and authorizing the special inspector general of TARP to conduct audits of participants in the PPIP as another cause of private-sector concern. Lack of enthusiasm by banks as sellers reflects the fact that at current market prices, aggregate losses could exceed \$150 billion.

Instead of a June launch of the PPIP, the FDIC will instead test the model successfully employed by the Resolution Trust Corporation (“RTC”) in the 1990s, in which RTC marketed assets of troubled banks to prospective buyers and assisted in the financing of asset sales through the use of leverage. The FDIC expects to solicit bids for sale of receivership assets in July.

Proskauer's Economic Crisis Response Group includes lawyers with extensive experience representing private and public companies, institutional investors, financial services companies, private equity and hedge funds, lenders, commercial banks and individuals in the complex and interrelated areas impacted by the current financial situation. Our multidisciplinary group brings together the talents of our business and transactional lawyers with our litigation capabilities, particularly as they pertain to acquiring, managing or disposing of distressed assets; issues concerning investments in financial services companies; and complex financial instruments and transactions, including structured finance products, as well as a broad range of other areas such as corporate governance and defense, insurance coverage, reductions in force and other employment and benefit-related issues, securities regulation, and bankruptcy and restructuring matters.

If you have any questions regarding the matters discussed in this Client Alert, please contact any of the lawyers listed below:

**Charles E. Dropkin**

212.969.3535 – [cdropkin@proskauer.com](mailto:cdropkin@proskauer.com)

**James P. Gerkis**

212.969.3135 – [jgerkis@proskauer.com](mailto:jgerkis@proskauer.com)

**Jeffrey A. Horwitz**

212.969.3229 – [jhorwitz@proskauer.com](mailto:jhorwitz@proskauer.com)

**Bruce L. Lieb**

212.969.3320 – [blieb@proskauer.com](mailto:blieb@proskauer.com)

**David A. Picon**

212.969.3974 – [dpicon@proskauer.com](mailto:dpicon@proskauer.com)

**Stephen L. Ratner**

212.969.3290 – [sratner@proskauer.com](mailto:sratner@proskauer.com)

**D. Eric Remensperger**

310.284.4590 – [eremensperger@proskauer.com](mailto:eremensperger@proskauer.com)

**Kathy H. Rocklen**

212.969.3755 – [krocklen@proskauer.com](mailto:krocklen@proskauer.com)

**David W. Tegeler**

617.526.9795 – [dtegeler@proskauer.com](mailto:dtegeler@proskauer.com)

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