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To: LLPComments
Subject: Legacy Loans Program

Submitted by Randy Baird – Baird Fitzgerald Partners

Responses in **BOLD CAPS** following each question:

Which asset categories should be eligible for sale through the LLP? Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale? Are there specific portfolios where there would be more or less interest in selling through the LLP?

1. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF? **YES.** If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors? **THE INCREASED LIQUIDY WILL ADD VALUE TO THE INTEREST AND THEREFORE, THE INVESTOR WILL BE WILLING TO PAY A HIGHER PRICE FOR THE LOAN/POOL WHICH WILL BENEFIT THE BANK AND THE TAX PAYER. SUBSEQUENT INVESTORS WOULD NEED TO BE PRE-QUALIFIED BY THE FDIC.**

2. What is the appropriate percentage of government equity participation which will maximize returns for taxpayers while assuring integrity in the pricing by private investors? How would a higher investment percentage on the part of the government impact private investment in PPIFs? Should the amount of the government's investment depend on the type of portfolio? **THE PROPOSED 50% IS SUFFICIENT TO DRAW INDIVIDUAL AND INSTITUTIONAL CAPITAL INTO THE PROGRAM. AT THE SAME TIME, THE FDIC'S 50% SHARE ALLOWS THE FDIC AND TAX PAYER TO PARTICIPATE SUBSTANTIALLY IN PROFITS. SEEMS LIKE THE BANKS AND TAX PAYERS WILL BENEFIT TWO WAYS – FIRSTLY, THE FDIC'S PARTICIPATION WILL INCREASE THE NUMBER OF WILLING INVESTORS WHICH IN TURN WILL INCREASE COMPETITION AND PRICING IN THE AUCTION PROCESS; AND SECONDLY, THE FDIC AND TAX PAYER WILL BENEFIT SUBSTANTIALLY FROM FUTURE PROFITS ON SALE.**

3. Is there any reason that investors' identities should not be made publicly available? **NO, UNLESS IT WILL REDUCE THE NUMBER OF POTENTIAL INVESTORS AND THEREFORE COMPETITION/PRICING.**

4. How can the FDIC best encourage a broad and diverse range of investment participation? **BY ALLOWING SMALLER INVESTORS TO PARTICIPATE IN THE BIDDING PROCESS AND CREATING LOAN POOLS OF VARIOIUS SIZES.** How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF? **AS I UNDERSTAND THE SUMMARY OF THE PROPOSED PROCESS, I SEE THE PROGRAM AS A MOTIVATOR TO THE SELLERS. SPECIFICALLY, THE GUIDANCE ON PRICING TO BE PROVIDED BY THE FDIC AND THE SELLER'S RIGHT TO REFUSE THE HIGHEST OFFER. PERHAPS AN ENHANCEMENT WOULD BE A STATEMENT THAT THE BOOK VALUE OF THE LOANS WOULD NOT BE WRITTEN DOWN TO THE HIGHEST BID. IF THE BANK IS ABLE TO KEEP THE LOANS ON BOOK AT A MARK-TO-MODEL VALUE, THIS WOULD REDUCE HESITATION.**

5. What type of auction process facilitates the broadest investor participation? **EITHER SEALED BID OR ON-LINE, LIVE AUCTION. IN EITHER CASE, A SUFFICIENT AMOUNT OF TIME SHOULD BE ALLOWED FOR UNDERWRITING.** Should we require investors to bid on the entire equity stake of a PPIF, or should we allow investors to bid on partial stakes in a PPIF? **WE**

WILL LIKELY BE INTERESTED ONLY IN THOSE POOLS IN WHICH WE CAN TAKE A FULL STAKE. If the latter, would a Dutch auction process or some other structure provide the best mechanism for bridging the potential gap between what investors might bid and recoverable value? NA If multiple investors are allowed to bid through a Dutch auction, or similar process, how should asset management control be determined? WE WOULD NOT PARTICIPATE IN A PROCESS IN WHICH THE OUTCOME MAY DICTATE ASSET MANAGEMENT BY A TO-BE-DETERMINED PARTY.

6. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions? IDEALLY, LOANS COLLATERALIZED BY SIMILAR REAL ESTATE (E.G. INDUSTRIAL, RETAIL, OFFICE, MULTI-FAMILY, HOTEL) IN SIMILAR GEOGRAPHY SHOULD BE POOLED TOGETHER. THIS WOULD RESULT IN THE HIGHEST BID VALUES.

7. What are the optimal size and characteristics of a pool for a PPIF? INVESTORS WILL BE SEEKING TO FORM/PARTICIPATE IN MULTIPLE PPIF'S IN ORDER TO DIVERSIFY RISK. ADDITIONALLY, DIFFERENT INVESTORS WILL HAVE DIFFERING AMOUNTS OF CAPITAL TO INVEST. I BELIEVE THERE WILL BE MULTIPLE INVESTORS COMPETING FOR ANY POOLS AS SMALL AS $2.5MM IN PAR LOAN VALUE TO $1B+ IN PAR LOAN VALUE. LIKEWISE, THERE WILL BE INVESTORS WILLING TO MANAGE/SERVICE DOZENS OF SMALL LOANS AND THOSE SEEKING A LOWER NUMBER OF LARGER LOANS. POOLS SEGMENTATED BY PROPERTY TYPE AND /OR GEOGRAPHY WILL RESULT IN HIGHEST PRICING.

8. What parameters of the note and its rate structure would be essential for a potential private capital investor to know at the time of the equity auction to provide equity? TERM AND ABILITY TO EXTEND, INTEREST RATE (FIXED OR FLOATING), LOAN AS PERCENT OF BID PRICE, RECOURSE.

9. Would it be preferable for the selling bank to take a note from the PPIF in exchange for the pool of loans and other assets that it sells? Alternatively, what would be the advantages and disadvantages of structuring the program so that the PPIF issues debt publicly in order to pay cash to the selling bank? Would a public issuance of debt by the PPIF limit its flexibility compared to the issuance of a note to a selling bank?

10. In return for its guarantee of the debt of the PPIF, the FDIC will be paid an annual fee based on the amount of debt outstanding. Should the guarantee fee be adjusted based on the risk characteristics of the underlying pool or other criteria? IN AN OPEN MARKET, THE RISK OF THE POOL SHOULD PLACE A SELF-GOVERNOR ON PRICING AND THEREFORE LOAN AMOUNT, ULTIMATELY BRINGING RISK BACK AN AMOUNT EQUAL TO OTHER POOLS SOLD ON THE OPEN MARKET. ACCORDINGLY "HIGHER RISK" POOLS SHOULD NOT BE FURTHER PENALIZED WITH A HIGHER FEE.

11. Should the program include provisions under which the government would increase its participation in any investment returns that exceed a specified trigger level? If so, what would be the appropriate level and how should that participation be structured? NOT UNLESS THE GOVERNMENT IS THE RESPONSIBLE FOR CREATING VALUE THROUGH ASSET MANAGEMENT AFTER ACQUISITION. IF A POOL IS EXPOSED TO THE OPEN MARKET, THE HIGHEST POSSIBLE PRICE WILL BE PAID. IF THE RETURNS EXCEED EXPECTATION, IT WILL HAVE BEEN THE RESULT OF EXCEPTIONAL ASSET MANAGEMENT. IF ANY PARTY WERE TO RECEIVE A RETURN DISPROPORTIONATE TO THEIR EQUITY INVESTMENT, IT SHOULD BE THE PARTY RESPONSIBLE FOR ASSET MANAGEMENT.

12. Should the program permit multiple selling banks to pool assets for sale? THIS MAY RESULT IN THE HIGHEST PRICING BECAUSE THE POOLS CAN BE CUSTOMIZED (SUCH AS POOLING LOANS SECURED BY INDUSTRIAL BUILDINGS IN A SINGLE REGION). If so,

what constraints should be applied to such pooling arrangements? How can the PPIF structure equitably accommodate participation by smaller institutions? **CREATE A CLEARING HOUSE FOR SUB-POOLS WHICH ARE TOO SMALL TO STAND ALONE. SUB-POOLS COULD BE MATCHED WITH SIMILAR ASSETS TO CREATE THE LARGER POOL THAT WOULD RESULT IN HIGHEST PRICING.** Under what process would proceeds be allocated to selling banks if they pool assets? **ASSETS WOULD NEED TO BE APPRAISED BEFORE POOLING. EACH ASSET WOULD RECEIVE ITS PRORATA SHARE OF PROCEEDS BASED ON APPRAISED VALUE. ALTERNATIVELY, BIDDERS COULD BE REQUIRED TO ALLOCATE VALUES. THIS METHOD HAS ITS DOWNSIDE AS THE HIGHEST BIDDER MAY HAVE ALLOCATIONS VERY DIFFERENT THAN THE RUNNER UP.**

13. What are the potential conflicts which could arise among LLP participants? What structural arrangements and safeguards should the FDIC put into place to address or mitigate those concerns?

14. What should the relative role of the government and private sector be in the selection and oversight of asset managers? How can the FDIC most effectively oversee asset management to protect the government's investment, while providing flexibility for working assets in a way which promotes profitability for both public and private investors?

15. How should on-going servicing requirements of underlying assets be sold to a PPIF and paid for? Should value be separately attributed to control of the servicing rights?

16. Should data used by the independent valuation consultant, as well as results of such consultant's analysis, be made available to potential bidders? Should it be made available to potential sellers prior to their decision to submit assets to bid?

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