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April 10, 2009

Via Electronic Mail: LLPComments@FDIC.gov
Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments

Re: Legacy Loans Program

Dear Mr. Feldman:

The undersigned is an attorney who has served for many years as counsel to a banker's trade organization and whose firm has been deeply involved in representing banks, land owners and developers in the real estate market in Florida. As a firm we are actively involved in representing banks dealing with distressed loans and with investors who are looking for suitable ways to deploy capital. The following comments are personal views based on familiarity with the Florida banking and real estate markets and do not reflect the views of any particular client or group.

I would note at the outset that in Florida there is a very large amount of distressed commercial real estate loans and much of it is in the hands of community banks and smaller regional institutions. Moving these distressed loans out of these banks and into productive hands is absolutely crucial to restoring the economic health of the state. A structure that may move large loans out of large institutions will not work well to address the needs of Florida and similarly situated states.

The Importance of Participation by Investors with Local Knowledge.

Real estate is an intensely local business. Relative to non-local competition, investors with local knowledge tend to have a deeper understanding of their market in terms of the history, the regulatory landscape, the demographic trends and the likely sources of opportunity. Local investors also tend to have a broader network of personal relationships with local lenders, landlords, tenants, developers, contractors, regulators and other industry players. This network gives them greater insight into the local market than their non-local competition. In sum, local investors enjoy a competitive advantage in terms of their ability to analyze, value and facilitate work-outs of troubled loans backed by real estate in their market. This competitive advantage will enable them to realize greater value than their non-local competition on troubled loans as well as to recognize the problems and pitfalls in a loan portfolio. In turn, their ability to realize greater value should enable them to make higher bids than their non-local competition in the legacy loan auctions. Bidders with local knowledge will do a much more effective job of determining the real value of troubled assets. Accordingly, in order to maximize bids and the potential success of the Legacy Loan Program, it is crucial for the FDIC to leverage the competitive advantage of local investors.

The Importance of Pool Structure.

The FDIC should give careful attention to the construction of the pools it offers for bid. Some pools should be constructed with geographic concentrations. We know of well qualified investors who are interested in loans in Florida but would have much less interest in a pool that contained loans in properties in other markets in which they do not have experience.

Pools should also be constructed in sizes that encourage the broadest range of investors to bid. We know of a number of investors with resources in the $50 million to $350 million range who have firm track records and experience in our Florida market who would like an opportunity to purchase troubled commercial real estate loans. We know of many banks who have such loans. If the pools are constructed so that investors with local knowledge are excluded from the process then the process will lose many of its most knowledgeable and qualified bidders.

A. Geographic Concentration.

The collateral underlying some of the PPIF pools should be geographically concentrated. Geographical concentration will empower investors to leverage their local expertise in analyzing PPIF pools and the underlying collateral. Moreover, geographical concentration will empower investors to leverage their local network of relationships to facilitate work-outs and implement other value realization strategies. If the collateral underlying PPIF pools is too geographically dispersed, the competitive advantage of investors with local knowledge will be undermined, fewer bidders will participate in the auctions and the resulting bids will be lower.

B. Pool Size

PPIF pools should be structured in sizes that allow investors with different levels of resources to participate. If the FDIC sets a size minimum that makes it impossible to assemble geographically concentrated pools, the competitive advantage of local investors will be undermined. In addition, locally oriented investors may be priced out of the program if pools are too large. An enormous amount of local capital is currently on the sidelines, but investment funds in most markets are denominated in millions rather than billions. We understand the FDIC's position that the transaction costs underlying the program require a certain amount of scale, but the FDIC should not allow scale to become a barrier to entry for local investors. If local investors do not participate widely in the Legacy Loan Program, its prospects for success will be greatly diminished.

Tailor Pools to Investor Expertise.

PPIF pools should also be tailored to maximize the competitive advantages of investors who are expert in dealing with particular forms of collateral. For example, the skill set necessary to analyze a pool of residential mortgages is completely different than the skill set necessary to analyze a pool of loans backed by retail shopping centers. Moreover, the potential strategies to realize value from these two pools are completely different. As such, PPIF pools should be as homogenous as possible in terms of the underlying collateral. Much like geographical concentration, collateral concentration will enable investors to maximize their competitive advantages and realize greater returns. The prospect of greater returns will enable them to make higher bids, thereby increasing the Legacy Loan Program's likelihood of success.

Permit Selling Banks to Amortize Losses.

A number of commentators are concerned that the unwillingness of some banks to realize losses in connection with the sale of legacy loans will prevent their participation in the program. One strategy to counter this potential problem would be to permit selling banks to amortize such losses over multiple periods. Softening the short-run capital impact of legacy loan sales in this manner will encourage banks to participate in the program and take the difficult steps necessary to fortify their balance sheets for the long-run.

We are concerned with the willingness of financial institutions to sell their loans at prices investors are willing to pay. In our current experience with investors seeking to buy loans, there is an unwillingness of banks to sell at a price that makes sense to the investor. The FDIC needs a mechanism that mitigates the immediate losses that are inevitably going to be sustained. Without such a mechanism, there is a substantial risk that no market will develop. Whether the FDIC uses a carrot or a stick, or both, financial institutions need an appropriate motivation to come to grips with the value of their troubled loan assets.

Very truly yours,

J. Thomas Cardwell

J. Thomas Cardwell

JTC/ja