From: Seth Freeman [mailto:sfreeman@phoenixrg.com]
Sent: Friday, April 10, 2009 10:13 AM
To: LLPComments
Subject: Legacy Loans Program

Robert E. Feldman,

This email is in response to your request for comment on the Legacy Loan Program. I have prepared the below comments on behalf of my firm.

1. 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?

   Comment: The current economic crisis was triggered by real estate and real estate related securities, therefore, the program should ensure that this asset class receives a fair and adequate allocation of the treasury's equity. However, allowing all bank assets to be eligible to this program will allow the bank to increase its liquidity and unfreeze the lending markets.

2. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF? If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors?

   Comment: The initial investors should be able to pledge, sell or transfer their interests in the PPIF to maximize the pricing of the pools. Heavy restrictions on this process will reduce liquidity in the secondary market for these interests creating a liquidity pricing issue that this program is intended to eliminate.

3. 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?

   Comment: The proposed 50/50 split seems the best structure to align the interests of the public and private investor. However, a higher investment percentage on the part of the government should not remove the controlling interests of the private investor. Having the private investor being the controlling member is vital to ensure private investor participation.

4. Is there any reason that investors' identities should not be made publicly available?

   Comment: The entity and the qualified controlling party should be available to the public.

5. How can the FDIC best encourage a broad and diverse range of investment participation? How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF?

   Comment: To ensure a diverse range of investment participants the pools that are being auctioned should be made up of a homogenous grouping of assets with various pool sizes. This will allow for investors of numerous sizes that posses a specific expertise in an asset class to develop an accurate price point for the pool, thus maximizing the potential for both the public and private investor to profit.

6. What type of auction process facilitates the broadest investor participation? 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? 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? If multiple investors are allowed to bid through a Dutch auction, or similar process, how should asset management control be determined?

   Comment: Investors should bid on the entire equity stake of a PPIF to avoid unintended partnerships. The potential for unintended partnership would deter investors from this program.

   A sealed first-price auction with a reserve price made public during the due diligence period would create an ideal auction process. This process would ensure that bids being submitted be either at or above the reserve price.

7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions?

   Comment: The pools of assets in the initial PPIF auctions should focus on a group of homogenous real estate loans.

8. What are the optimal size and characteristics of a pool for a PPIF?

   Comment: From the perspective of a private equity company the amount of the private equity would be roughly $10-$100M per pool. The characteristics should be both similar in asset composition and geographical location.

9. 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?

   Comment: All information regarding the note that is to be guaranteed by the FDIC will be needed for a private investor to participate in the auction. These items include, but not limited to: rate, term, pay-down ability, recourse, term of FDIC guarantee, transferability, etc.

10. 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?

    Comment: With the bank issuing the note all the needed terms (comment #9) of the note would be available to private investors in determining the price point for the pool of assets.

    Having the PPIF issue debt seems to have two issues; First, is there a market with enough buying power for this type of debt, and Second, without knowing the rate of the debt prior to the auction the private investor is missing a valuable piece of information that will be used for pricing.

11. 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?

    Comment: Having the guarantee fee be adjusted based on risk presents no issue, however, this guarantee fee needs to be disclosed prior to auction.

12. 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?

    Comment: It is contemplated that profits and loses are distributed pari passu and any modification that will limit the up-side of the private investor will drive away these investors from this program.

13. Should the program permit multiple selling banks to pool assets for sale? If so, what constraints should be applied to such pooling arrangements? How can the PPIF structure equitably accommodate participation by smaller institutions? Under what process would proceeds be allocated to selling banks if they pool assets?

    Comment: From the private equity view, banks should be allowed to pool assets to create a more attractive offering for the private investors. With multiple banks pooling assets there should be a clear mechanism on the accept/reject protocol following the submission of the bids. It would seem that the best course of action would be to have the independent consultant determine the allocation of proceeds prior to the pool being available for the auction process.

14. 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?

    Comment: It would be important for this program to restrict affiliates/related parties of the selling party to participate in the auction process for those particular assets.

15. 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?

    Comment: The asset manager should be qualified by the FDIC but the private investor must have the control in selecting the asset manager. The FDIC will have access to the books and records at all reasonable times. The FDIC will have the ability to perform site visits of the underlying asset with reasonable judgment.

16. 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?

    Comment: The pools should be sold on a servicing released basis that is included in the final bid price. If the selling bank retains the servicing the servicing fee should be available prior to the auction. It is very important for the private investor to have complete control to move the servicing of the loans to another servicer.

17. 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?

    Comment: The data and results from independent valuation consultants should be available to both seller and buyer. Having this information available to both sides will help determine the appropriate reserve and selling price.

Thank you,

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