From: Ian McGrath [mailto:mcgrath@mcgrathlegal.com]
Sent: Thursday, April 09, 2009 6:26 PM
To: LLPComments
Subject: Legacy Loans Program

Dear FDIC:

I am submitting this additional comment on behalf of Capital Legacy Partners, based on feedback we have received today from, among others, the Office of the General Counsel of the Virginia State Corporation Commission.

Based on this feedback, we believe that, should the management of a given PPIF wish to modify or novate a loan that the PPIF has acquired under the Legacy Loans Program, it would cause the PPIF to be required to register as a mortgage lender under state law (for example, in Virginia). Many states (again, for example, Virginia) require a business that "makes" consumer mortgage loans to obtain licensure as a mortgage lender from a relevant state regulator. In many states, this amounts to substantive regulation, as the regulator very often has power to grant or refrain from granting a mortgage lender license (as in Virginia).

Many states, like Virginia, do not consider simply buying and holding an already-originated mortgage loan to be "making" such a loan. But they do consider modifying or novating a loan to be "making" a loan, thereby triggering state licensing requirements.

Because a PPIF does not, in and of itself, fall into any existing statutory exemptions from the licensing requirements in many states, it would be required to go through a licensure process in each and every state in which it acquired a consumer mortgage loan that it wishes to modify (even where such a modification would clearly benefit the borrower, the PPIF, and the general policy behind the LLP). For example, the Office of General Counsel of the Virginia State Corporation Commission does not believe that a PPIF would fall into the exempt category that covers federally-regulated banks, savings institutions and credit unions, and similarly does not believe that the US Treasury's 50% ownership of a PPIF renders it a governmental or quasi-governmental agency for state exemption purposes.

We therefore strongly recommend that the FDIC and/or Treasury adopt regulations specifically preempting state law, explicitly allowing PPIFs to operate in all states without triggering state licensing or registration requirements (provided, of course, that the PPIF does not attempt to originate new mortgages). We believe that a significant component of prudent asset management in the Legacy Loans Program will entail modifying mortgages so that they are reasonably affordable to the borrower and still profitable to the PPIF. If bidders in the PPIF are concerned that each time they want to modify a mortgage in a given state, they will need to spend months (and thousands of dollars in legal fees) obtaining licensure in that state, it will greatly discourage participation in the LLP and it will seriously impair the public policy imperatives at the heart of the LLP. At the very least, it will obviously impair one cornerstone of a PPIF's asset mangement strategy and therefore reduce the bids that purchasers may be willing to pay for loan pools.

We also feel that effective regulation of PPIFs by the FDIC, and the close oversight of each PPIF by its 50% owner (the US Treasury), will serve quite effectively as a check on any sort of unscrupulous behavior that it is the purpose of state regulation to prevent.

Thank you,

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