April 10, 2009

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 02429

RE: Legacy Loan Program – Program Description and Request for Comments

FDIC Legacy Loan Program Implementation Team:

The Mortgage Bankers Association[1] (MBA) is pleased to respond to the Legacy Loan Program (LLP) – Program Description and Request for Comments (RFC) issued by the Federal Deposit Insurance Corporation (FDIC). MBA commends the FDIC for requesting banking industry input prior to LLP implementation. Given that the LLP will constitute a public/private partnership, input from private sector stakeholders holds the promise of increasing the overall participation and effectiveness of this program. The FDIC's March 26, 2009 and April 9, 2009 conference calls that were intended for bankers and investors respectively were also positive transparency measures.

MBA strongly supports the position stated by FDIC Chairman Sheila Bair, during the first conference call, in which she indicated that the initial rollout of the program will include both single family and commercial real estate mortgages.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Given the distinct but severe challenges faced by both of these real estate sectors, including them in the initial launch of the LLP will positively impact the financial position of many banks and help to facilitate the return of liquidity to the capital markets.

Background

In an effort to cleanse bank balance sheets of legacy loans and other assets and reduce the associated market overhang, the FDIC and the Department of Treasury (Treasury) announced the pending launch of the LLP. The FDIC will provide oversight related to the formation, funding, and operation of new public-private investment funds (PPIFs) that will purchase loans and other assets from depository institutions. The LLP will attract private capital through an FDIC debt guarantee and Treasury equity co-investment. The FDIC anticipates the private market equity investors (Private Investors) will include but not be limited to: financial institutions; individuals; insurance companies; mutual funds; publicly managed investment funds; pension funds; foreign investors with a headquarters in the United States; private equity funds; and hedge funds. The FDIC is specifically targeting mutual funds, pension plans, insurance companies, and other long term investors for participation in the LLP.

The FDIC will staff operations relating to the formation, funding, and operation of PPIFs and will work with participant banks, the Treasury, Private Investors and contractors to administer the asset pool auctions. The Treasury will be responsible for overseeing and managing its equity contribution in the PPIFs, while the FDIC will be responsible for overseeing and managing its debt guarantees to the PPIFs.

Additional LLP Considerations

Although they may not have been addressed specifically in the RFC, MBA's comments are focused on certain program parameters of the LLP that warrant additional elaboration. These program parameters include:

1. **Supervisory Agency Approval Authority** - Eligible assets for PPIFs will be determined through discussions between the financial institution and supervisory agency staff. A concern that has been raised is that financial institutions may be "encouraged" to sell assets to PPIFs based upon their balance sheet concentration of certain loan categories rather than the performance of individual loans. In addition, banks are subject to examinations and new stress tests. How will this information impact bank and supervisory agency dialogue related to legacy loans that will be eligible to participate in the PPIF? Are there going to be FDIC guidelines that will establish fixed parameters for supervisory personnel in making determinations for PPIF eligible loans? Will this decision be left to the

discretion of supervisory staff and if so, at what level? How will these decisions be reviewed and approved by the FDIC?

2. **Data Confidentiality** – In order to create greater efficiency in the bidding process, the FDIC will retain a financial advisor to put together a due diligence package for each loan pool that will be utilized by bidders as well as the FDIC. What efforts has the FDIC undertaken to ensure that information disclosed to bidders does not violate confidentiality elements of loan documents or credit laws? How will the asset pool due diligence information be disseminated in a way that provides for borrower confidentiality protection while also providing investor accessibility?

3. **Additional Servicing Issues –** The FDIC intends for the servicing rights to be conveyed for loans sold to a PPIF. However, in the case of some loans, banks have purchased the loans but not servicing rights from the loan originator. Will these loans be ineligible for contribution to a PPIF loan pool?

Continue MBA's Dialog with the FDIC

MBA lauds FDIC's efforts to solicit input from potential LLP stakeholders. In addition to the RFC, the two FDIC conference calls provided an ideal forum for a constructive dialog for the LLP. We would like to arrange a meeting with the FDIC Legacy Loan Program Implementation Team to discuss these specific issues. MBA would include industry experts that could advance the discussion of these and a variety of other topics. Within the next week, we will be contacting the FDIC to arrange a meeting. We very much look forward to a productive interaction on this important topic. Should you have any questions regarding this letter, please contact Jan Sternin, Senior Vice President Commercial/Multifamily at (202) 557-2740 or by e-mail at jsternin@mortgagebankers.org.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association