NATIONAL
BANKRUPTCY
SERVICES

Friday, April 10, 2009

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, D.C.
20429

RE: Legacy Loan Program Request for Public Comments

Dear Mr. Feldman:

Pursuant to the request made by the Federal Deposit Insurance Corporation (FDIC) for public comment on the Legacy Loan Program (LLP), please find our comments attached hereto. Thank you for taking the time to review National Bankruptcy Services' ("NBS") thoughts and opinions about the program as currently proposed, including our constructive criticisms that we feel may be useful as the program evolves. As the nation's leading provider of consumer and mortgage-secured bankruptcy administration and domestically based outsourcing services, we believe we can provide unique insights into the ongoing development of the LLP and the Public Private Investment Funds (PPIF).

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Given our unique experience and the role NBS serves to many client's involved with TARP, we appreciate the opportunity to provide comments regarding the LLP and PPIF programs and look forward to answering discussing our analysis in further detail.

Regards,

Larry Buckley
Executive Vice President
National Bankruptcy Services

CC: LLPCommente@FDIC.gov

National Bankruptcy Services: Comments to FDIC Legacy Loan Program

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?

   NBS Response: We believe that any non-performing, under-secured assets on bank balance sheets should be eligible for sale, including any real estate owned (REO) properties. Non-performing real estate secured assets offer particular opportunities for loss mitigation (in the bankruptcy and non-bankruptcy spaces) and the creation of re-performing pools of assets. NBS has deep experience in developing and executing on loss mitigation strategies in bankruptcy.

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?

   NBS Response: Affording flexibility in the financial management of acquired assets is likely to stimulate a more active market, create competitive bidding for assets and generally provide liquidity. The FDIC should create subsequent investor qualification criteria that will permit appropriate vetting of the investor's financial stability and their ability to manage and service non-performing assets.

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?

   NBS Response: Private-public equity participations should be based on sound business principles that are motivated by rewarding risk with appropriate returns commensurate with the relative financial participation. The government should be cognizant that some of poorest performing asset categories represent the most significant opportunities for return through the creative use of loan modifications that result in re-performing loans, particularly in the bankruptcy context.

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

   NBS Response: Providing public visibility and transparency into the identity of investors is essential to creating public trust and confidence in the process.

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?

   NBS Response: Encouraging sellers to create varying sized pools of assets for sale that are targeted to investors with different appetites for investment will increase the universe of potential investors. A one size fits all approach in terms of asset size and pools will limit investment participation. Utilizing multiple and independent valuation sources will help ensure that pools are fairly valued. Setting minimum bid prices will discourage "cherry picking" and "bottom feeding" in the bidding process. Providing easy access to tapes with appropriate data for due diligence only to qualified bidders will expedite the process.

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?

   NBS Response: If the goal is attract multiple investors, permitting bidding partial on stakes or tranches is likely to attract a broader range of investors. If the goal is sell all the assets in a given pool at a common price, a Dutch auction or descending price approach may facilitate that goal. This might be complicated if partial stakes are made available because of the variance in asset values within a given pool. Asset management control should be centralized by the FDIC to ensure that consistent practices are deployed so that individual borrowers are given every chance to retain home ownership. Our centralized and report driven bankruptcy process is designed to facilitate loss mitigation and avoid asset liquidation. The goal is to create continuing cash flow that allows for asset appreciation over time.

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

   NBS Response: Non-performing Subprime, Alt-A, Stated income and "no-doc" pools of loan present the greatest risk to banks and the greatest opportunity for investment. Non or sub-performing home equity and consumer secured loans (primarily automobile secured) also offer significant risk and opportunity.

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

   NBS Response: There is no one ideal or optimal pools size or characteristics because there are investors looking to participate with different risk tolerance, capital and investment strategy. Investors frequently look to pools focused on a particular geographic region for acquisitions because of local knowledge or perceived opportunities.

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?

   NBS Response: A private capital investor will want to know the characteristics of the composite components of the individual note rates and structures within a given pool including fixed, ARM, negative amortization, adjustment cycles, current coupon 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?

    NBS Response: No comment.

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?

    NBS Response: It would seem the guarantee fee should be adjusted based on risk factors in the pools in which it is participating. Private investors will need to believe there is a sufficient risk-reward quotient that merits investment.

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?

    NBS Response: Increased governmental participation on investments that will exceed targeted levels seems prudent and appropriate. Determining the appropriate level and structure requires detailed financial analysis.

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?

    NBS Response: Pooling assets among selling banks may create attractive aggregations but runs the risk of complicating transferability with regard to assignment tracking and other procedural matters. Allocation of proceeds would be also be complicated because of the difficulty in arriving at equitable valuation of the assets from the various selling banks. Establishing ownership and standing in state and federal courts proceedings, including bankruptcy proceedings, has become standard. This is complicated by serious challenges in establishing true chains of title in public records due to missing assignments and endorsements. NBS utilizes sophisticated impediment tracking and resolution solutions to manage these complex legal and administrative processes.

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?

    NBS Response: Investors should not hold any ownership interests in valuation companies selected to provide the FDIC with existing asset valuations. Common ownership among potential investors could also create conflicts. Representations and warranties re conflicts of interest should be required as to potential investors in any purchase agreements. NBS uses conflict checking technology software to resolve potential conflicts of interest in the representation of its clients that may have competing interests in common assets pledged as security.

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 that promotes profitability for both public and private investors?

    NBS Response: In order to ensure appropriate asset management, the FDIC should strongly consider a centralized approach to selection and oversight of asset managers to ensure consistency and provide a common reporting structure for performance. NBS can provide consistency, technology, reporting, reduced FTE cost and drive desired performance (cash flow) in the bankruptcy space.

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?

    NBS Response: Most bidders will want control over servicing to ensure best results on execution once the assets have been acquired. Combining servicing rights with underlying assets will likely drive better pricing.

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?

    NBS Response: Providing independent valuation information typically expedites bidding, sets expectations and discourages unrealistic bidding