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April 10, 2009

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

Re: Comments to Legacy Loans Program

Dear Mr. Feldman:

Thank you for permitting this opportunity to comment on the Legacy Loans program. It is a great honor to participate in shaping the future of this program and we thank you for your efforts to rehabilitate the banking sector.

We have consulted with a number of our clients and friends, all of whom are significant players in the real estate market, for meaningful feedback on the Legacy Loans program. We have identified our primary areas of concern and we offer our comments on how we believe these issues should be addressed.

The program should be structured to appeal to a wide spectrum of investors. We believe that the size of the loan pools should be smaller to enable a larger number of investors to participate. Ideally, we would like to see loan pools of $25-150 million. These pools should also be divided along geographical lines and type of loan. Regionalizing the loan pools would reduce due diligence costs to investors.

The costs of performing due diligence on each of the loan pools will be high to potential investors. In order to reduce the burden on potential investors, and to ensure that they will participate, there should not be a minimum reserve price for the seller during the auction process.

A primary concern for investors is the length of time that the investor will be required to hold assets once they invest in the PPIF. We propose that the investors should be able to transfer their interests in the PPIF to ensure that the investments are relatively liquid.

Generally, the right to foreclose on a loan should not be limited in any agreement with the government. The private investor must have access to all of the traditional rights and remedies for protecting its interest in the event of a default or a non-performing loan. However, it should be noted that foreclosure rights will be limited in pools of certain loans, such as those secured by single family homes.

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Underlying assets should be sold to a PPIF free of any servicing requirements. The private sector should have freedom to select servicers to be retained on the basis of achieving economic targets. Providing complete access to servicing history is a crucial component of due diligence to be made available to purchasers. This is important not only to evaluate how loans a pool have been performing but also to enable the purchaser to determine whether retention of the same servicer is warranted.

Voting for major decisions should not lie entirely with the government. If the government has too much control, then investors may not invest with the program for fear that there will be non-economic reasons for decisions.

Private investors are also concerned about the equity structure as it is currently proposed. We would like to see a promote or a buy-out provision for the private investor integrated into any joint venture agreement.

Selling banks should be allowed to take part in the equity. Otherwise, banks may not have much incentive to participate if they are going to have to dramatically write down the assets on their books with no potential upside.

In regards to additional required equity, a primary concern is what kind of capital call provisions will be in an agreement between the government and private investors. Such an agreement would need to specify when additional capital would be required. We propose that the government should fund its percentage interest in regards to future capital calls or be subject to a 1:1 squeezedown.

There should be additional governmental incentives to purchase distressed senior housing and affordable housing.

Please find attached a proposed term sheet outlining the terms of a joint venture agreement between the government and private investors.

Very truly yours,

Herrick, Feinstein LLP