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To: LLPComments
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Subject: Legacy Loans Program

Gentelmen:
VC Holdings, L.P. is pleased to have the opportunity to comment on the FDIC's proposed Legacy Loan Program ("LLP"). VC Holdings is a portfolio company of Apollo Management, L.P. created in early 2008 to acquire and service non-conforming residential mortgage loans, through its affiliate Vantium Capital Markets, L.P. Acquired assets are serviced by its affiliate, Vantium Capital, Inc, which is a dedicated special servicer and debt collector based in Plano, Texas.

We very much look forward to participating in the LLP, and accordingly to facilitate your review we have structured our comments to the LLP as answers to the questions posted on the FDIC's website in connection with the LLP as follows:

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?

   The FDIC should focus on residential and commercial real estate loans and properties, as well as leveraged loans, C&I loans, and other consumer and small business loans. While we believe there will be the greatest amount of demand for residential and commercial real estate related assets, we believe the private sector will provide liquidity for all financial assets on banks' balance sheets. For ease of process and to aid in liquidity assets from any one institution should be offered in a homogenous manner – i.e. like assets pooled by a rational selection criterion such as residential, commercial, construction and development, second lien and HELOC, etc. each being offered in separate pools by the selling institution.

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?

   We believe the FDIC should not allow investors to pledge, sell or transfer their interests in the PPIF. The FDIC should endeavor to do business only with deep-pocketed investors with access to stable, committed, long-term capital and who are prepared to commit their capital for at least 3 to 5 years in order to best assure alignment of interests of the investor, the mortgagors and the Government.

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?

   Investors should be required to bid on the entire equity stake being offered in any PPIF. Notwithstanding the offer of the Treasury to participate in the equity of the PPIF, we believe the investor community is fully capable of funding the needed equity on its own. However, for alignment of public and private goals we realize that there must be some retention of upside by the Government. If Treasury doesn't participate in the equity through an outright ownership stake, the Government could still share in any potential upside by attaching warrants to the form of debt they make available, or by specifying either a preferred return to the seller or an "equity-kicker" on the back-end. We believe the Government should share in the upside with a range of a 10% to 50% stake in the equity, and it should be driven by the ultimate scale of the program envisioned by the Government. In other words if more assets are to be sold, then the Government can scale up its ownership to retain more upside for the taxpayer. It is critical to get the private sector involved in a meaningful way. There is a large degree of fixed costs and infrastructure needed on the part of investors to purchase assets pursuant to a plan such as this. The Government needs to ensure there will be enough potential equity investment opportunity available to the private sector so that the return on that equity can cover both the fixed costs and the absolute return hurdles of the investment community. Therefore, the more assets being offered then the higher percentage of upside that the Government should retain (closer to 50%), while a smaller program would imply a lower percentage (closer to 10%). The structure of the Government's equity ownership can depend on the Government's liquidity needs. If Treasury wants to maintain its liquidity then its ownership can be in the form of warrants or equity kickers, rather than an outright cash equity investment into the PPIF. Again this form may be driven by the scale of the program. A larger program may see less cash invested by Treasury versus more warrants or equity kickers being retained.

Equity retention by the Government can be consistent across all asset classes, or it can be structured on a sliding scale whereby as the perceived risk of the asset class increases, then the retention percentages goes up as a way to entice investment dollars into riskier asset classes. For example the Government can retain a 10% interest in residential assets, and scale up to 50% interest on real estate acquisition and development loans. Again this can be size dependent, as well as driven by the Government's own risk appetite.

Any such equity sharing needs to be fully disclosed to the investor prior to the submission of any bid, and fully described in the operative documents. Any deviation of such agreed to terms after the fact, or other attempts to claw back or tax away any perceived "excess profits" or compensation received by the investor, its LPs/Affiliates/Parent entities, management team, etc. should trigger protection for the investors. One protection that may be structured for investors would be to explicitly structure a dollar for dollar swap of the Government equity to the private investor in the PPIF for any claw back or ex post taxes that are enacted.

While equity participation by the Government is important as it aligns the goals of the private sector with the public sector, what is lacking in capital markets right now is access to sufficient amounts of term, non-recourse financing to leverage assets sales such as these in order to achieve normal equity-like returns. Therefore, access to prudent leverage which is used rationally is critical for the PPIF program to be successful. Accordingly, please see our response to no. (9) below for more detail for our thoughts on leverage.

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

   No, we believe the investors' identities should be publicly available.

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?

   The FDIC can encourage a broad and diverse range of investment participation by running an organized auction process, with clearly defined terms and conditions of participation as well as operative form documents (Asset Sale Agreement, Asset Servicing Agreement, etc.) that have been previously vetted and commented on by the investment community. Moreover, due diligence information and representations and warranties from the selling institution need to be offered in a rational, cohesive manner (see answer to no. (6) below for more detail). Most importantly, to encourage investor participation, the FDIC should ensure the investors are not wasting a lot of time and money bidding on asset pools that do no trade. This can be accomplished one of two ways: a) offer the assets with no reserve price whereby the FDIC mandates that the selling institution must sell the offered assets to the highest bidder; or b) offer the assets with a fully disclosed reserve price, and let the investor community make an initial determination to participate based on such reserve price. One of the main problems with private sector sales presently is the lack of motivated sellers whereby prospective buyers do a lot of work valuing, and in some cases expend further resources performing due diligence on the assets, to find that the bank offering the assets for sale is unwilling to sell them to the highest bidder – notwithstanding the fact that a fair and balanced auction process was conducted. For this program to be successful, the investor community needs to be assured they will either buy assets or not waste a lot of time and money in a futile attempt to do so. Keep in mind that it was the certainty of sale that made the sales conducted by the Resolution Trust Company so successful, since investors knew that the assets being offered by the Government would indeed be sold.

Furthermore the Government's profit sharing must be explicitly addressed upfront and fully disclosed in all of the operative deal documents which would then be executed by the Government. In such documents, the Government must explicitly waive its rights to claw back or tax away any perceived "excess profits" or compensation received by the investor, its LPs/Affiliates/Parent entities, management team, etc. One protection that may be structured for investors would be to explicitly structure a dollar for dollar forgiveness of the FDIC debt for any claw back or ex post taxes that are enacted. To further ensure participation by the private sector, the FDIC could extend such protections so that they would address acts of Congress regarding Cram Down legislation and foreclosure moratoriums that change the legal landscape on an ex post basis after PPIF sales are completed.

The FDIC can best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF by ensuring the sellers will be selling into a deep pool of well capitalized, sophisticated buyers with the expertise to thoroughly evaluate the assets being offered, and fund with certainty on a timely basis. The Government should also create incentives for banks to sell into the program, such as granting favorable capital treatment for any FDIC notes tendered to the bank in connection with the sale in order to help bridge the gap between the banks' valuation of the assets and the market price as determined in the auction. Another possible solution may be to waive for a period of time any increases to fees for the insurance fund for sellers accessing the program.

Most importantly, to ensure broad participation by as many well capitalized counter-parties as possible, the Government needs to be flexible in structuring the whatever joint venture they propose as having an interest in either a grantor trust, REMIC or LLC as the case may be. Since many private investors invest money on behalf of tax-exempt or off-shore entities the structure of the asset sale as well as any proposed future modification of the underlying loans is heavily influenced by existing tax regulation. For example there are facets of Unrelated Business Taxable Income (UBTI) and the Foreign Investment in Real Property Act of 1980 (FIRPTA) that need to be addressed and possibly temporarily waived or modified for participants in the PPIF to ensure the broadest possible participation by sophisticated, well capitalized investors.

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?

A well organized, orderly auction process, with clearly defined terms and conditions of participation will ensure the broadest investor participation. We recommend a competitive auction with the assets being sold to the highest bidder as opposed to a "Dutch Auction". To maximize sale proceeds the Government should provide as much information as possible either in the form of representations and warranties or through due diligence as part of any offering. Lacking either these reps and warrants or ready access to due diligence information will force prospective buyers to conduct their own, limiting participation and potentially repeat bidders as they use up their due diligence budgets, or will force such purchasers to reflect the lack of data and certainty through lower bid prices. The most efficient way to handle this would be to conduct the auction as a two step process whereby in phase one an initial bid indication would be based on the information contained on the data tape and in the due diligence data-site as well as terms and conditions as described in pre-approved forms of asset purchase and servicing agreements. In phase two the highest two or three bidders from phase one would be invited back for a final round of due diligence, and to tender their final price. The losing bidder(s) would then have their due diligence expenses reimbursed to them.

The seller should make available all relevant loan level information in the due diligence data-site such as:

- Updated BPO's
- Servicing and collection comments
- Twelve month pay histories and cash flows
- Updated FICO scores
- Updated title searches addressing lien and property tax status
- Simultaneous second lien status, if any
- Identification of known legal compliance issues
- A third-party custodial certification for the requisite legal documents (note, mortgage, assignment chain, title policy).
- Imaged copies of all origination and servicing documents

By providing a fairly thorough due diligence and representation and warranty package, the Government should be able to reduce both seller and investor due diligence cost and time as well as alleviate issues about reimbursing bidders for due diligence, and will provide a level playing field for all parties involved. We are prepared to recommend various vendors, with whom we have contracted in the past that we believe are efficient suppliers of very accurate data. We are also prepared to draft, or comment on, a form of Asset Purchase Agreement and Asset Servicing Agreement which could be used for all these transactions to ensure a streamlined and efficient process.

Investors should be required to bid on the entire equity stake being offered in any PPIF. Notwithstanding the offer of the Treasury to participate in the equity of the PPIF, we believe the investor community is fully capable of funding the needed equity on its own. However, for alignment of public and private goals we realize that there must be some retention of upside by the Government. In the same vein, If the Government wants to allow for the participation of minority participants as a way to show an alignment of interests between "Wall Street" and "Main Street", then this needs to be fully disclosed in the offering materials with respect to any auction, and fully described in the operative documents. We would suggest that the FDIC initially retain any minority stake that is being contemplated in any PPIF. After the lead investor is chosen, due diligence completed and the sale to the lead consummated, then the FDIC should seek out minority investors who will buy into that PPIF under the same terms and price as the lead. If no minority investors can be found, then the lead investor should be given a right of first refusal on the minority stake, and if not exercised, then it would be retained by the FDIC.

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

   The FDIC should prioritize the assets for sale by the depth of the available market and liquidity for such assets. Accordingly, we believe that residential and commercial real estate assets should be the first such assets offered for sale. Additionally the assets should be offered by well known, sizable institutions capable of selling assets in a bulk sale scaled to attract the most interest from well capitalized, sophisticated investors. Early successes in the form of sizable completed transactions are critical to properly get the PPIF program off the ground.

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

   The optimal size of a pool for a PPIF would engender an equity investment on the part of the lead investor of at least $100mm to $200mm. Asset pools for sale must be sized appropriately so that the return on the pool can cover an investor's costs of participating in the program. The characteristics would be as described above in no. (7) above and such assets could be either performing, sub-performing or non-performing as the case may be, grouped homogenously, since the investor community is appropriately sophisticated to properly analyze the risks of such assets.

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?

   Currently, the private sector is lacking access to sufficient amounts of term, non-recourse financing to leverage assets sales such as these in order to achieve normal equity-like returns. Therefore, the term structure of leverage proposed by the FDIC is critical for this be successful. Leverage should be offered prudently and used rationally to provide long term value to both the Government and its partners. Excessive leverage may lead to the loss of the Treasury's initial equity deposits as well as losses to the FDIC's secured financing. Excessive leverage may also lead to incentives whereby purchasers invest solely to create revenues for their servicing affiliates that far outweigh the size of their initial equity investment. We suggest no more than 1 to 1 leverage on initially non-performing assets and no more than 3 to 1 on initially performing assets. In certain cases depending on the credit attributes of the underlying assets being sold as well as expected housing price movement in the related area, more leverage could possibly be offered. However, that would need to be decided strictly on a risk-adjusted, case by case basis. The leverage offered should be easy to administrate so that to the extent performing assets become non-performing (or vice versa), additional margin should not be required. Rather, the initial margin requirement should be scaled to address the migration of the assets through various stages of delinquency.

   The leverage should be offered in a fashion that leads to a long term hold, so that rather than a having a bullet maturity, it rolls into a full turbo structure, say in 3 to 5 years, whereby all cash-flow above servicing fees and protective advances are directed to repay the FDIC until the loan is fully repaid. By having the debt roll into a full turbo structure, it allows for a matching of the term of the liability and duration of the asset, and avoids any potential refinance risk down the road as large amounts of the debt originated under this program come due at once. To avoid any basis risk and the cost of hedging the same, assets should be match funded as much as possible whereby fixed rate assets are funded with fixed rate debt and floating rate assets are funded with floating rate debt. Whatever rate and term structure is decided upon, it should be visible, easy to track and model and remain unchanged (other than with respect to the floating rate features) from the offering period, through closing of the PPIF and ultimately through payoff.

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?

    We believable it would 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. As discussed in no. (5) above we believe the Government should create incentives for banks to sell into the program, possibly by allowing them to have favorable capital treatment for any FDIC notes issued to them in connection with sales into a PPIF. Such treatment would help them bridge the gap between the banks' valuation of the assets and the market price as determined in the sale process. We believe it would be more advantageous for the debt to be issued to the selling bank rather than the PPIF issuing debt into the market. Issuing debt into the market will complicate the process by adding another level of complexity to the transaction with respect to initial and ongoing disclosure requirements of the makeup and results of the PPIF arising from the debt issuance. Additionally, it will create friction in the form of fees to be paid to intermediaries to underwrite and distribute the debt, and most importantly soak up liquidity in the public markets that could be used by that investor base to invest in RMBS or TALF related securities directly. Therefore, we believe capital enhanced notes issued to the selling banks that would be paid back by the PPIF cash flows would be the most efficient way to finance these sales.

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?

    Yes, we believe such a guarantee should be risk based and reflect the underlying risk embedded in the assets being sold. This would ensure the sellers of the riskiest assets into a PPIF are being appropriately charged for accessing this liquidity - in essence it should be a risk based pay as you go plan.

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?

    We believe if the Government wants to participate in the upside of a PPIF it is simplest for them to either participate by contributing equity upfront when the PPIF is created or by attaching warrants to the FDIC guaranteed debt. Notwithstanding the success the FDIC has had with certain of its closed bank transactions whereby its are returns geared to a specified trigger, we believe a straight equity participation or warrants attached to the debt would be a simpler and better means to ensure alignment of interests.

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?

    It is simpler to do large single party bank sales into a PPIF initially in order to ensure strong participation from well capitalized investors who will be needed to make the program a success. Additionally, starting the program with large single party sellers will ensure the program develops naturally and any issues that may come up may be more easily resolved in single party deals, with essentially less moving parts. Down the road we believe the FDIC should pool assets from smaller sellers in order to ensure there is critical mass to attract the participation of well capitalized investors. Asset pools for sale must be sized appropriately so that the return on the pool can cover an investor's costs of participating in the program. Accordingly, the assets should be sold in sizes whereby participating investors are investing between $100 and $200mm in any given PPIF. To allocate proceeds to selling banks if they pool assets, investors should be made to supply asset by asset pricing. The large, well capitalized investors who will be participating in this program will have the ability to provide this type of pricing which will be critical for allocation of proceeds as well as policing liability under any future breach of representation and warranty claims.

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?

    One potential conflict that could arise among LLP participants would be having banks that are both buyers and sellers into the program. We believe the program should exist to ensure banks are moving assets and risks off their books and into the private investment community, not simply moving the risk around within the banking system. The plan's goal should be to help banks sell rather than acquire assets through the use of leverage which would increase their risk profile, and magnify risk in the system. We feel that it is necessary to establish rules to prevent banks from "gaming the system" and opportunistically taking advantage of the PPIF program in ways other than those intended. Rules need to be established to avoid collusion among banks and quid pro quo-type situations where banks buy off of each other's balance sheets in a reciprocal arrangement using government leverage, etc. Additionally, banks should not be allowed to buy assets prospectively outside of this program, and then access the PPIF's in order to sell the assets with leverage at a potentially higher price and at the same time moving the risk of the asset to Treasury and the FDIC, while taking a profit on the buy/ sell transaction. One way to avoid this would be to establish a rule whereby only assets on banks' balance sheets as of January/ February, 2009 would be eligible for sale into this program.

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?

    We believe that all asset sales should be conducted on a servicing released basis in order to maximize both sale proceeds to the Government as well as a recovery proceeds over time. At the same time home ownership retention must be maintained wherever possible and the borrowers' rights protected. Accordingly, sophisticated private investors will be best positioned to choose the servicer they believe capable of optimizing these competing goals. Therefore the private sector should be responsible for the servicer selection for any specific PPIF.

    The servicer should be qualified and experienced in servicing assets such as these, and be well versed in loss mitigation and asset disposition, and capable of making economic decisions at the loan level. This will enable the assets to be serviced pursuant to a well defined loss mitigation/ loan modification program, along the lines of the plan the FDIC had instituted in IndyMac, and as further promulgated in the Home Affordable Modification Program Guidelines. We believe modifications should be used as a tool to create a stepping stone for the borrower to clear up prior delinquencies, and ultimately move into a market rate loan. To enhance value to the Government, we would recommend certain adjustments to the FDIC plan such as, but not limited to, the following:

- using a discount rate in any NPV calculation that more closely approximates the market rate for these assets
- addressing re-default risk in the context of pricing the modification
- considering the back-end debt to income ratio when making a modification decision

The investor through its servicer should make available all data in a pre-specified format for the Government's review, and it should include, but not be limited to:

- asset by asset cash flows, and any necessary reconciliations
- net present values at the asset level
- pool and loan level information
- performance metrics
- any and all modification and loss mitigation statistics required

Any reasonable incentive fees paid to the servicer under this plan should be borne ratably by both the private investor and the Treasury based on their respective ownership stakes in the pool of assets. While primary servicing of the assets should be the responsibility of the private investor, we believe the Government should be responsible for selecting an oversight manager who will review the work product of the investor and its servicer on a regular basis. This will ensure a proper segregation of duties and provide for an arm's length review of the private investor's servicer in any given PPIF. The oversight manager should be responsible for reviewing the information described above. Any cost of such oversight manager should be borne by the Government, or if to be borne by the PPIF, then disclosed up-front so that its cost can be properly reflected in the initial valuation of the assets.

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?

    As discussed in no. (15) above, we believe the on-going servicing rights and obligations related to an asset in a PPIF should be sold along with the asset – i.e. the asset should be sold on a servicing released basis, and this value reflected in the price paid by the investor. The investor will then have the right to either service the asset themselves or hire a qualified sub-servicer that can perform the duties described in no. (15) above. The sub-servicer will be paid an appropriate incentive fee for performing the servicing, but the ownership of the servicing asset should still vest with the initial private investor in the PPIF, and the cost of such incentive fees borne ratably by both the private investor and the Government. Since assets being sold to PPIF's will generally be distressed assets the servicing rights will be an integral part of the value of the overall asset, and not easily valued or sold as the case may be with traditional conforming mortgage loan servicing rights. Therefore, value cannot be readily ascribed separately to the control of the servicing right as it will be too difficult to break down the value of the overall asset into its component parts – i.e. the servicing rights and obligations versus the underlying cash flows.

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?

    Yes, we believe such data should be shared by all potential parties to the PPIF. Since there is currently a wide gulf between the bid and offer price of various assets, any data which helps drive price discovery will be valuable. If the Government does not want to share such data with potential investors in a raw form, it should still be used by the seller and the Government in setting a publicly disclosed reserve price for the assets which will help make the sale and auction process much more efficient as discussed in no. (5) above.

Please feel free to contact me at the below number if you have any questions or comments. Thank you for your consideration.

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