The comments contained herein are broken into three sections. Section A describes the primary shortcoming of the proposed Legacy Loan Program, that is, the moral hazard and bad credit risk associated with the FDIC's high leverage non-recourse financing. Section B then addresses the seventeen "requests for comment" proposed by the FDIC. Lastly, Section C discusses several additional critical recommendations to the LLP.

A. Moral Hazard and Bad Credit Risk of FDIC's "High Leverage" Financing

I am a banker who has been involved in the pricing and purchase of distressed commercial real estate debt for the last 17 years. As a potential investor in the Legacy Loan Program ("LLP") I am absolutely thrilled about the extremely aggressive financing offered by the FDIC, but as a taxpaying American who continues to get burned by this financial crisis and its costly bank bail-outs, I am very angered and disappointed. Although I basically agree with most of the terms of the LLP, including providing some financing to the PPIF's, I am in strong disagreement with the "extremely high leverage" (up to 6:1 or 86% loan-to-cost) of the FDIC guaranteed non-recourse financing. The rest of the LLP program actually makes decent economic sense although I have serious doubts that it will remedy the banks' financial problems and / or bridge the significant bid - ask spreads between selling banks and investors (i.e., I think most of the seller / buyer delta is in expected losses and recovery amounts and to a lesser extent the cost of capital / liquidity). However, the significantly over-market leverage at significantly under-market interest rates is a bad credit risk and a moral hazard for the following reasons:

1. This kind of aggressive debt financing is the exact same recklessness behavior that got us into this mess in the first place and will do nothing more than artificially re-inflate asset prices that need to come down to appropriate risk-return prices. Although there is currently little-to-no credit market for distressed debt financing, even in our drunken debt binge days there was never any distressed debt financing available at these aggressively proposed terms (i.e., at least not secured loans but that did not stop investment banks like Bear, Lehman, and Merrill from leveraging approximately 30:1 (3% equity) on an unsecured basis and look where they're at now). Although I presume that the extremely high FDIC leverage is being offered to maximize TARP funds without having to go back to Congress for additional money, it is bad credit risk and economically unsound lending practices. For an economy that has seen "average" residential price declines of 30% and regional price declines of 50%+/-, a 14% equity cushion is clearly not sufficient in any stretch of the imagination.

2. Depending on the private investor's equity interest (assuming 50% to 80% government ownership) and a 6:1 leverage ratio, the amount of investor capital would only be 3% to 7% of total capital, yet the investor will manage and control 100% of the assets. I could guaranty investor gamesmanship in fees / costs charged to the partnership, related party (favorable) transactions, and several other questionable practices that will ultimately minimize their true capital exposure in the deal (see B.14 below). At the end of the day, the private investor is likely to have very little real capital in the transaction given the excessive leverage and aforementioned gamesmanship. Thus, this capital structure does "not" align taxpayer interests with investors and is extremely advantageous to investors and selling banks. The investor will have very little capital investment and downside risk (given non-recourse loan), motivating them to bid (bet) higher in return for a greater proportion of the upside potential. Coincidentally, in the real / non-FDIC world, an investor contributing 93%+ of the capital would generally get 93% of the profits, with a "promote" going to the minority managing partner if "over-performance" of the PPIF.

During the RTC era of the early 90's, government provided financing to similar PPIF's approximated a 1.5:1 ratio (60% loan-to-cost) and last year Merrill Lynch sold approximately $30 billion of CDO's to Lone Star at 22% and only took back 3:1 leverage "market rate" financing (note: Merrill was motivated to provide high leverage financing to get the price up in order to minimize their losses). Given an already under-market interest rate associated with an FDIC guaranteed loan, it would be incompetent and irresponsible to provide over-market leverage of 6:1. **An appropriate leverage rate should probably approximate 1.5:1 (e.g., for land and construction loans) to no more than 3:1 (e.g., for completed cash flowing income producing properties) depending on collateral type and quality.** Don't be naïve, there is significant credit risk and moral hazard in financing distressed real estate debt at 6:1 and the aforementioned lower leverage provides a truly adequate cushion to taxpayers if values decrease more than expected. The FDIC is clearly not aligning taxpayer and investor interests and getting significantly under-compensated for the level of risk being undertaken.

B. FDIC Requested Comments

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?

   Comment: Given the FDIC's finite resources and the fact that most legacy loan assets consist of residential and commercial real estate loans, the FDIC should probably focus on selling these assets first. The better the underlying collateral the better the chance of a sale execution between the selling bank and the investor. The bid / ask price delta on large land loans and many construction loans (especially "broken" projects) is going

to be significant and it will be difficult to bridge this price gap even with very aggressive financing terms. Given this fact, the FDIC / selling banks may first want to concentrate on selling loans that are backed by completed residential and commercial real estate projects. I also think that REO properties should be sold ASAP.

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?

   Comment: The initial private investor should probably be discouraged from selling their interest in the PPIF, they are the partner the FDIC & Treasury invited to the dance, and they should have the commitment to stay in the deal the 3 to 5 years it should take to unwind. Any subsequent transfer of investor interests should be at the FDIC absolute approval, not to be unreasonably withheld, and there should be a transfer fee paid to the FDIC as long as its loan is in place. The government should probably also have a right of first refusal on any bids for the private partner's interest.

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?

   Comment: See above "Moral Hazard and Bad Credit Risk of FDIC's High Leverage Financing." The FDIC should keep the participation at 50 / 50 and should look to lend (guaranty) at lower "market" leverage ratios thus assuring sufficient private investor capital in the transactions. The more investor "skin in the game" the better and reducing the investor equity participation minimizes the investor capital contribution. For example, in the case of an 80 / 20 partnership, the private investor would only have 3% capital in the deal and control 100% of assets. This structure is wrong and irresponsible and is clearly a terrible credit risk.

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

   Comment: Transparency should be maximized when government debt and equity is being invested in the PPIF's so the investor "and" primary principal(s) identity should definitely be made public (note: there will probably be a lot of SPE's and the principal names should also be included). The sale price, FDIC financing terms, and other PPIF structure terms should also be made public. The taxpayer is taking the most risk and they deserve the maximum transparency.

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?

   Comment: Based on other investor comments, investors are already drooling to participate given the extremely advantageous FDIC financing terms (note: some investors are even saying they do not need the 50% government partner, gee what a surprise given the leverage). The FDIC should also pose few restrictions on investor qualifications and open the program up to as many investors as possible. This will also allow an increase in competition which should thereby result in an increased selling price to the banks. Selling banks are also sufficiently incentivized to sell under these generous financing terms as they will be able to reap higher prices than in an auction where there is no such financing. The one thing the FDIC should try to do is to space the auctions so that they are somewhat evenly distributed over the next year or two. Although the FDIC should be motivated to clean up the toxic assets ASAP, bringing too many assets to the market at the same time may over-burden the market and force investors to limit the pools they bid on due to resource constraints.

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?

   Comment: A normal auction (i.e., non-Dutch auction) as proposed where the investor bids on the entire equity stake (and then takes a 50% ownership interest alongside the government) in the PPIF is appropriate and best aligns investor and taxpayer interests. A Dutch auction is nonsense (these are not auction rate securities) and does not fit well with the unique pool of assets that are going to be offered through the LLP program.

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

   Comment: The usual priorities by property types, geographic location, loan performance status, etc. should be used. On the commercial real estate side, land and construction loans should definitely be separate pools as these are bound to show the greatest delta between sellers and investors increasing the likelihood that they do not trade.

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

   Comment: I think you would want to keep pool size as small as possible to attract the maximum number of investors, but not too small where the negotiation and closing process is made very onerous for the Treasury & FDIC. Also, see #7 above for pool characteristics.

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?

   Comment: It is essential that the note terms be "specifically stated" before the bid and the FDIC needs to ensure they have all the necessary rights to enforce their position should the loan not perform. Thus, following are the parameters that investor should know prior to auction:

   - **Leverage of 60% to 75% LTC depending on collateral type & quality (see Section A above)**
   - **Loan Interest Rate Terms**
   - **FDIC Guaranty Fee Terms**
   - **Required Principal Payments - TBD from expected cash flows of independent valuation consultants.**
   - **Maturity Date. Five years should be more than ample, especially with lower proposed leverage.**
   - **The FDIC guaranteed loan should be paid off in full before any profit distributions to equity partners.**
   - **Monetary default not cured by private investor in 60 days results in foreclosure of their equity interest and cancellation of any private investor / PPIF agreements (e.g., asset management, property management, property sales, etc).**
   - **Some investors will undoubtedly overpay when they have very little capital at risk and there will be losses to the FDIC guarantees. Appropriate oversight and being able to enforce loan rights in case of default will be of utmost importance.**

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?

    Comment: Given the FDIC loan guaranty it appears that the banks and investors should be relatively indifferent to the above two alternatives. By its nature, a FDIC guaranteed loan should be very liquid and it should be able to be sold in the open market in and around the par value (although the Chinese and other foreign borrowers are probably not going to be rushing out to buy this paper).

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?

    Comment: The adjustment for overall risk will be realized by the investor in their final bid price. The FDIC should adjust for its credit risk by adjusting leverage "not" the guaranty fee. For land and construction loans the leverage should be 1.5:1 (60% LTC) and for stabilized income producing properties the leverage should be no greater than 3:1 (75% LTC). See above, "Moral Hazard and Bad Credit Risk of FDIC High Leverage Financing."

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?

    Comment: If anything, the "promote" that you are talking about should actually go to the investor if, through their better than expected asset management / performance, realize higher than expected returns. However, there are other complications and investor gamesmanship that start to be played with a promote structure, thus the FDIC should just stay with the 50 / 50 pari-pasu structure.

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?

    Comment: For multiple reasons, especially given potential take back financing, it will be much easier and cleaner if selling bank assets are not pooled together. However, to the extent that certain banks do not have many assets to sell and the balances are so small that economies of scale are lost, then loan may be pooled together. The most important feature will be separate asset bid prices for each asset and a loan amount that is pro-rated on each institutions selling price.

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?

    Comments: Following are the potential conflicts of interest from LLP and the respective safeguards / mitigants:

    - **Private investor selling assets to affiliates, friends, and family, at below market prices.**

- **Private investor taking out excess fees / costs for asset and / or property management, sales, etc.**
- **See #18 below (basically "Portfolio Swapping" of selling & investor banks).**

Most investors are probably going to set up SPE's as their investment vehicles in the PPIF's and affiliate transactions that benefit the private investor's will be hard to control and monitor. Any such "sweetheart" deals discovered by FDIC / UST should result in default and automatic termination of private investor interests as well as criminal prosecutions for fraud. The FDIC / UST could always put in covenants to protect against above, but strong monitoring and oversight will be needed to enforce.

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?

    Comments: The assets should be sold servicing released and in many cases the investor will bring their own asset management platform to manage the assets. However, given either self management or third party management, the following should be required by the government:

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?

    Comments: To the extent there is a third party servicer or the investor self manages and charges more than their actual costs, then a value for the servicing rights needs to be determined and paid for by the managing entity.

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?

    Comments: There is no reason to provide the independent valuation consultants analysis to investors as investors will be doing their own detailed due diligence and pricing (of course, any collateral appraisals should be made available to investors during the DD process). In addition, I am not sure why you would want to make this information available to potential sellers prior to the decision to submit assets and following are the circumstances where the independent consultants valuations should probably be used:

    a When a selling bank refuses to sell despite the fact that the winning bid price approximates the independent consultant's valuation. In the case where the selling bank also received TARP funds, the government should use whatever leverage possible to motivate the bank to execute the sale and get the bad loans off the books (also see #19 below).

    b. When the winning bid price is materially higher than the independent consultant's valuation there is the greater probability that the investor is over-paying and thus, the greater probability of FDIC loan loss. In these cases, the FDIC leverage should be reduced to an appropriate leverage based on the independent consultant's valuation.

C. Other Critical Comments

18. Bank's Selling Legacy Assets Should Be Prohibited from Buying Legacy Assets. Am I missing something or is the government actually thinking about the possibility of letting banks who have gotten us into this mess, who have already loaded their balance sheets with toxic assets that their looking to sell, become approved investors in the Legacy Asset programs? One recent article in the press states that two of the most distressed banks, Citi and BOA, are actively buying such assets now while another article states that Goldman, Morgan Stanley, and JP Morgan are looking to participate as investors. It appears that the FDIC has enough common sense to prohibit a bank or any of its affiliates, SPE's, etc., from bidding on that bank's Legacy Assets. The conflicts of interest and gaming in this situation are obvious even for the ignorant and naïve. However, no banks' selling, or contemplating selling Legacy Assets, should be able to bid on another portfolio of Legacy Assets. The gamesmanship should be obvious in this situation also. For example, CitiGroup's Vikran Pandit runs into BOA's Ken Lewis on the street and tells him, "gee Ken, I see you guys are selling $50 billion of Legacy Loans, what a coincidence, so are we. We both know our assets are probably worth about $15 billion each or about $30 billion combined, but guess what, if we bid $40 billion for each other's assets or $80 billion combined (i.e., Citi bids BOA's assets and vica versa), the government will fund $74 billion ($68 billion FDIC loan and $6 billion Treasury equity) and we only have to come up with $6 billion. Are you starting to catch my drift yet Kenny baby, wink, wink? We get a net $74 billion for assets worth $30 billion and we don't even have to pay a penny on the FDIC non-recourse loan." I see says Lewis, "instead of colluding to rip off bond holders, we'll be colluding to rip off the US tax payer $44 billion, God love America and the God love the FDIC Vikran." Although market leverage financing of between 60% to 75% would help mitigate any loss to the taxpayer in such a scheme, **bank's selling Legacy Assets should be strictly prohibited from buying Legacy Assets in the first place, including Goldman, Morgan Stanley, JP Morgan.**

19. Bid Prices Should "Unquestionably" Set Asset Marks for the Unsold Assets. How in the world can the FDIC rationalize that competitive bids from a dozen or so investors assuming extremely advantageous financing terms, should not set an asset mark for at least those assets bid upon (note: should probably also be used as indicators for marks on at least the banks remaining non-performing assets)? The FDIC is a regulator who should be putting a stop to these games and not encouraging them by continuing to play hide the problem. This is a blatantly wrong policy that will encourage banks to sit and do nothing with their toxic assets which the government keeps telling us are the main culprits behind this banking crisis. The banks should be motivated to get their toxic assets off their books, and making them write them down to a "clearly substantiated" price would help in this matter. Not requiring the banks to sell to the highest bidder or at least marking their assets down to the high bid price goes against everything this program is trying to accomplish, that is, getting the toxic assets of the bank's books. Why does the FDIC, UST, and Fed make me now think I am getting fed a bunch of BS on this whole bail-out plan?

20. Transparency of Program's Performance / Defaulted Investors Prohibited from Bidding. We Americans are sick and tired of the large bail-outs that are going to the same financial institutions that got us into this mess through their greed and incompetence. The government's transparency and accountability to date has been very poor (including the Fed's) and they owe much better to the American people who are footing this bill. At the end of the day, the government's true capital exposure (i.e., Treasury equity contribution and FDIC loan guarantees) will probably exceed a trillion dollars and the taxpayers need to be kept abreast of the performance of the LLP program and how much it is truly costing them. Annual financial statements should be provided showing both the government investment and FDIC guaranteed loan amounts. Investors who have defaulted on the FDIC loans should be flagged and made public and should probably be prohibited from bidding on future loan auctions. Strong FDIC and UST oversight cannot be overemphasized and will probably make the difference between success and failure of this program.