MIDLAND LOAN SERVICES

April 10, 2009

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

LLP Comments@FDIC.gov

Re: Legacy Loans Program: Response to Request for Comment

Dear Mr. Feldman:

The letter is prepared in response to the FDIC's request for comment from interested parties on all aspects of the proposed Legacy Loan Program. I am responding on behalf of Midland Loan Services, Inc. Since 1991, Midland has provided government regulators, financial institutions and opportunistic investors with services related to the acquisition, asset management, resolution and disposition of distressed commercial mortgage assets. Midland holds the highest U.S. special servicer ratings from both Fitch Ratings and Standard &Poor's. Midland is a wholly owned subsidiary of PNC Bank, National Association. PNC Bank is a wholly owned subsidiary of The PNC Financial Services Group, Inc. (NYSE:PNC).

In addition to being a loan servicer and SAMDA contractor for the Resolution Trust Corporation, Midland was the asset manager on the first RTC private-public partnership. This program was similar in structure to the proposed Legacy Loan Program PPIF. The RTC Multiple Investor Fund (MIF) transaction involved the acquisition of a blind pool of 465 non-performing real estate assets with a book value of over $1 billion from the RTC by a real estate investment advisor with Midland as the exclusive asset manager. Midland was responsible for all loan servicing, asset management, resolution and workout activities and the marketing and disposition of the entire real estate and loan portfolio. The transaction was very successful and became the prototype for other RTC structured transactions and private-public partnerships.

Midland is providing its comments only on selected questions for which it has relevant experience.

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?

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The success of the LLP will be dependent on its ability to attract investors. Performing, sub and non-performing commercial mortgages secured by income producing properties will be more attractive to investors than construction loans, land loans or acquisition, development and construction loans. Commercial mortgage assets will also have higher relative values and are easier to underwrite for both the FDIC and investors. Assets which are fully funded will receive much higher investor interest than those that have additional funding obligations.

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 broad and diverse participation from investors by thoughtfully packaging the assets, creating a high degree of certainty related to investors' efforts to acquire the subject assets, providing as much information around the assets as possible, and creating a structure and legal documents which encourage participation by sophisticated and well capitalized investors and experienced asset managers. If the investors are required to spend significant time and effort on due diligence, valuation and bidding without the certainty of a sale, there will be very limited interest at deeply discounted prices. The structures and legal documents which were fully accepted by the public in RTC transactions, including appropriate indemnifications for the participants, are critical to successful transactions.

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?

The ability to pool similar assets together will create the highest level of investor interest and best prices. Assets could be grouped by investor preference by asset type, property type or location. Many private transactions are structured into sub-pools for bidding purposes to allocate proceeds to the appropriate sellers.

15a. What should the relative role of the government and private sector be in the selection and oversight of asset managers?

The success of this program is ultimately dependent on attracting the best qualified and most experienced asset managers to participate. Many of these companies either have existing relationships with investors or their own investment capital. The FDIC should create acceptable criteria for servicers and asset managers as they have with their structured transactions to date. These criteria could include corporate and personnel experience, servicer ratings, assets under management, resolution experience and financial stability. The private sector investors should be able to select any servicer or asset manager that meets the broad FDIC criteria.

15b. 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?

The most important consideration is transaction structure to achieve an alignment of interests so there is every incentive to maximize recoveries and minimize costs. A servicing standard which is appropriate for the assets in each PPIF should be provided in the legal documents establishing the transaction. These standards have been well established in the public market for commercial mortgage servicing and asset management. The asset manager should receive the majority of their profit through successful resolution and liquidation of assets, and have incentives which align their interest with those of the investors and FDIC.

Asset managers should have delegated authority with approval rights based on objective criteria. Asset managers should prepare asset business plans and budgets which when approved provide them the ability to act in an expedited manner. Thresholds could be established above which the FDIC must concur for a particular action to be taken, but these should be limited to significant activities.

Standardized investor reporting and asset accounting should be established for oversight and audit purposes. SAS 70 reports or similar attestation/audit programs should be provided by the asset manager on an annual basis. Appropriate certifications by the asset manager and audit provisions should be required.

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?

The pools should be sold on a servicing released basis at whatever price the auction process produces. With few exceptions the servicing rights for these types of transactions have little to no resale value because these are liquidating pools with highly variable costs and revenues will be back-end loaded based on resolution or disposition activities. For servicing rights to have value sufficient to purchase, they must have a predictable revenue stream, no termination rights (other than for cause) and be granted by a bankruptcy remote entity. CMBS and Fannie Mae, Freddie Mac, FHA / Ginnie Mae servicing rights have secondary market value.

If the LLP transaction documents are drafted using the same form as the current FDIC structured transaction servicing agreement, it will be difficult to find a qualified servicer to bid on this servicing on a fee basis, much less pay for the right. These agreements do not have appropriate indemnities for the asset manager, provide for full release of prior owners and servicers (requiring the LLP asset manager to pay for the defense and bear the burden of lender liability claims), do not have an appropriate servicing standard, and require servicer advances without interest. These issues have been previously negotiated in the RTC SAMDA agreements, structured transactions such as the MIF, RTC N and S series transactions and in the FDIC RALA agreements.

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?

The more information that is provided to qualified bidders, the higher the bids. The independent valuation could also be used as a threshold or reserve price for the seller to require execution once that value is reached.

We appreciate the opportunity to offer our comments. We look forward to participation in the program as it progresses.

Sincerely yours,

MIDLAND LOAN SERVICES, INC.

Stacey M. Berger

Executive Vice President