From: John McKinnerney [mailto:jmckinnerney@simmonsvedder.com]
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To: LLPComments
Subject: Legacy Loans

Comments are in red below:

1. Which asset categories should be eligible for sale through the LLP Seems like all category of assets should be available.? Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale Same as above, if we are trying to clean up the banks, then all asset types should be considered although you may want to have separate auctions for different types of assets (i.e. real estate, C&I, consumer, etc…)? Are there specific portfolios where there would be more or less interest in selling through the LLP I think the real estate loans may draw the most attention but I am not really sure about that. Some empirical data should exist at FDIC given recent sales of different asset types via auction of recently closed banks portfolios?

2. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF Seems overly cumbersome from the governments standpoint to provide this ability. Most private fund agreements do not allow much ability for this to happen? If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors? Very difficult, that's why you shouldn't do it.

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?

4. Is there any reason that investors' identities should not be made publicly available? I think it's fine to list the entity who wins the bid for loans just like you do now on the FDIC website.

5. How can the FDIC best encourage a broad and diverse range of investment participation? Keep the qualification process open to smaller groups. How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF? This is a very similar issue to the questions raised above in #3. You can either tip the process in favor of the bank so that higher initial bids for the assets are encouraged thus preserving bank capital or conversely you can tip the process in favor of the bidder which will ensure a better outcome for the taxpayer via their share of the profits earned by the PPIP. It seems to me that instead of trying to create a system that encourages false valuations for assets (thus proping up the banks), you should instead create the most competitive marketplace you can to ensure market prices for the assets and thus incent the PPIPs to bid and to then STRONGLY ENCOURAGE the PPIF's to manage and service the underlying assets to yield the highest potential outcome for the PPIF and the taxpayers. The "profit motive" will always incent better returns, gaming the initial bids will not.

6. What type of auction process facilitates the broadest investor participation? The one that is most open to participants. 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? Needs to be the entire equity stake of the PPIF. I would endeavor the make sure that the PPIF's are of a variety of sizes. Why can't this be done similar to the current FDIC sales? 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? This question is either misguided or completely idiotic. Please refer to answer at the end of question #5. If multiple investors are allowed to bid through a Dutch auction, or similar process, how should asset management control be determined? Asset management control should go to the entity that controls the PPIF. Again, you want to maximize

the outcome of the assets and the entity controlling the assets should be able and incented to do this.

7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions? From our perspective, assets which require servicing or management expertise that the undlerlying bank is ill equiped to provide. For example, real estate assets that need construction completion (A&D loans), those which need municipal approvals (land loans). It seems like the real estate loans are the best place to start givin that the banks are ill equiped to act as an owner and typically make decisions that erode collateral values, not help them. For performing loans, C&I laons, consumer debt, that may not be the case. You could argue the same for sub and non-performing residential loans..

8. What are the optimal size and characteristics of a pool for a PPIF? Should be $100MM and up and by region and loan type (NPL or Performing)

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? Need a copy of the Note and Deed of Trust and Loan Agreement for every loan in the pool. Provide same info as has been provided in prior FDIC sales.

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? Yes 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? Too cumbersome prior to closing. Would a public issuance of debt by the PPIF limit its flexibility compared to the issuance of a note to a selling bank? Seems like pubic issuance of debt will require additional scrutiny of outside parties of the collateral due diligence. Since the bank that is selling the assets already knows the collateral, it will be much simpler for the bank to provide initial debt. Why not let the Banks and FDIC issue public debt after the initial closing by the PPIF. Requiring public issuance of debt prior to the initial sale of the assets seems very cumbersome.

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?

12. Should the program include provisions under which the government would increase its participation in any investment returns that exceed a specified trigger level? I will hold my tongue here and suggest that the opposite should be required. If so, what would be the appropriate level and how should that participation be structured? PLEASE REFER TO THE STRUCTURED SALES YOU HAVE DONE RECENTLY AND DURING THE 90'S. A waterfall structure is the best method for assuring that the buyers (PPIF's) earn the most money for the participants in the PPIF, which obviously includes the FDIC/taxpayers.

13. Should the program permit multiple selling banks to pool assets for sale? Yes If so, what constraints should be applied to such pooling arrangements? Sale needs to be absolute, no reserves. How can the PPIF structure equitably accommodate participation by smaller institutions? Why exclude them in any way? Under what process would proceeds be allocated to selling banks if they pool assets? Pro Rata to UPB, that way you assure homogenous assets. If not, it could get very complicated. Not sure if it would work if the banks provide the financing too.

14. What are the potential conflicts which could arise among LLP participants? Not sure there are any as long as collusion is disallowed. What structural arrangements and safeguards should the FDIC put into place to address or mitigate those concerns? Obviously outlaw collusion.

15. What should the relative role of the government and private sector be in the selection and oversight of asset managers? Create a program that encourages the PPIF's to select the asset managers that they feel will best perfrom in managing the best outcome for each individual loan. By dictating who the PPIF's use (why can't they asset manage themselves?) you disincent the market to perform. 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? Prohibit "bad boy" acts like fraud embezellment etc.. but other than that stay out of the way. What value could the FDIC add other than preventing unlawful acts?

16. How should on-going servicing requirements of underlying assets be sold to a PPIF and paid for? If you are trying to get rid of "toxic assets" aren't you talking about non and subperfroming loans? These will typically require that one of the parties be ready to contribute significant dollars in the form of servicing carry costs such as property taxes, HOA dues, loan advances, insurance, maintenance, security etc… Who provides this is a good question. In the structured sales FDIC has done in the past this cost is borne by the buyer of the assets. Should value be separately attributed to control of the servicing rights? You are obviously assuming that these are performing loans and in that case, yes, maybe depending on the fees the servicer is able to charge. BUT, you are missing a very important element on the sub and non performing loans. Did anyone that participated on the recent FDIC structured sales (ANB, IMB etc..) participate in putting these questions together?

17. Should data used by the independent valuation consultant, as well as results of such consultant's analysis, be made available to potential bidders? Why not? Should it be made available to potential sellers prior to their decision to submit assets to bid? Why not? In both cases the appraisal instructions (conslutant instructions) will be critical. Will you let the banks influence the instructions to the Consultants? If so, why not let the buyers?

Let me make one final comment. It seems as though from the tone of the questions that you are trying to figure out how to incent purchasers to pay more for loans/assets than they are worth so as to raise cheap/free capital for the banking system that will cover the mistakes they made over the last several years. I suggest you do the opposite. Sell the loans for "Market", and with or without leverage, and incent the private sector to better manage the assets than the bank (which has always been the case). This will create an incentive for those that run the PPIF's to maximize returns which will obviously maximize dollars back to FDIC/taxpayer. I think it will be literally impossible to incent false bids to return capital to banks (via released Loan Loss Reserve's) and then incent the bidder to maximize profits to the FDIC to the taxpayer. You can't do both yet that is what all parties are trying to do. The banks don't want to take the losses needed to clean up the banking system, otherwise many would be insolvent, and the FDIC/Treasury/Taxpayer doesn't want to take the loss either. So the two parties are trying to figure out who that third party could be that would want to take those losses. Good luck finding that guy.

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