April 10, 2009

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

Gentlemen and Ladies,

Thank you for the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") Legacy Loan Program ("LLP"). I have provided a few comments to the requested questions and have added two additional comments of my own:

Here are my independent comments:

A. The program as currently described contemplates that only assets offered at auction by going concern banks will be eligible for the FDIC/Treasury financing and co-participation. However, the FDIC is now regularly liquidating the assets of insolvent banks. The Legacy Loan Program should be made to include FDIC liquidation assets. This would substantially increase the number of bidders at FDIC auctions which should result in better pricing and correspondingly lower losses to the FDIC. Additionally, the FDIC can be certain that the program will be used at its auctions and that transactions will be consummated. This will provide useful information for the development of the program and provide both investors and sellers confidence to develop greater familiarity with the program.

B. The program contemplates an auction process. This will be cumbersome and will produce slow, and difficult transactions with many fails. Using the general structures described by the FDIC / Treasury a somewhat more efficient process would be for Sellers to submit assets for review by the independent valuation agent. Then the FDIC/valuation agent would give each individual asset a valuation, a leverageability level (with a sale/leveraging deadline/stale date) and a guarantee fee rate. Then any prequalified bidder can negotiate with the seller to buy the assets pursuant to a contract that includes Treasury/FDIC required provisions and get FDIC/Treasury financing and participation. This would remove the throttle of centralized auctions and allow the market to move more quickly to transfer assets. This would also allow smaller scale bidders to participate. This might also be a follow on strategy after some transactions have been completed through an auction process or it might run side by side with an auction process.

Here are comments in response to the questions posed by the FDIC:

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?

   Only legacy assets should be eligible for the LLP as TALF provides access to leverage for non legacy assets. As far as asset types go it should be available for all asset types on bank balance sheets.

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?

   Yes, allowing investors to do so will increase participation. The FDIC could limit the Investment Fund Manager from changing without its consent to protect against unqualified managers.

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?

   Making investors identities public may decrease participation.

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?

   -

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?

The sale method itself is not going to bridge any gap between what investors are willing to pay and what sellers are willing to sell for. Bank sellers who hold assets on an accrual basis are not going to sell at a discount no matter what sale method is employed. Leverage and guarantee provided to investors may allow investors to offer prices that will meet sellers expectations.

Furthermore, the types of assets that will be offered for sale through this program (commercial loans, residential loans, etc…) are highly varied, heterogeneous, and are likely to produce a disfunctional dutch auction process. A dutch auction is complex and for large volumes of assets, numerous sellers (many with limited experience selling whole loan assets in a bulk format) and numerous buyers it is likely to be prone to bottleneck and bog down and will very likely produce surprises, delays and embarrassments. A simple competitive bidding process pitting buyers against one another with limited negotiation opportunities, such as is used by the FDIC to liquidate assets of failed institutions would be most appropriate and most reliable to produce actual consummated transactions for the kinds of assets that are intended for this program.

Equity stakes should be sold on an entire equity stake basis only. Investors in a bidding entity, such as an exchange traded fund, a hedge fund or a partnership would already represent partial participants in an equity stake. For this reason introducing equity participation opportunities at the bidding level is unnecessary. But not only is it unnecessary it also introduces greater complexity which probably would not work on any significant scale (a lot of negotiation of each transaction would probably be required and many transactions would be delayed or would not happen as a result).

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

   Assets that are easiest to sell, where bid and ask are most likely to meet and which are thus most likely to produce closed transactions and thus confidence in the strategy.

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

Optimization is asset specific and pool size and characteristics should be tailored by asset to maximize investor interest.

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?

   All of its terms will be essential for investors to judge whether to participate and at what levels.

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?

    -

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? If so, what would be the appropriate level and how should that participation be structured?

    If any increase in the government's 50% participation in excess returns comes at the cost of private investors' 50% stake then that will have the effect of breaking the neat alignment of government and investors interests as currently contemplated in the program and will discourage investors from participating. This will also be very true of the terms that are set for the warrants. If they threaten to allow the Treasury to choose to take additional value then investors will discount their pricing to reflect this. Both will have the effect of driving the bid ask spread further apart and of increasing the likelihood of limited or no participation.

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?

Yes provided that they agree in advance to use a standardized non negotiable sale and servicing agreement that is reasonably acceptable to investors. Investors would be required to provide individual loan level prices so that proceeds can be fairly allocated.

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?

-

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?

Investment Fund Managers (e.g. Investors) should choose and manage asset managers. The FDIC should engage one or more oversight managers to monitor asset management by reviewing standardized reports and performing periodic site visits to confirm compliance with Treasury/FDIC requirements.

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 PPIF/Investor should acquire whole loans inclusive of servicing rights. The FDIC should articulate a list of key servicing provisions for each asset type that are required of all asset management/servicing agreements relating to PPIF acquired loans.

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 to both sellers and bidders. Generally transparency and a wealth of information will produce a more robust process.

Very truly,

William C. Buell VI