April 10, 2009

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

Dear Mr. Feldman,

We the undersigned are pleased to have the opportunity to respond to the Request for Comment on the Legacy Loan Program under development by the FDIC and the Treasury. Specifically, our response addresses issues raised in a number of the questions posed in the Request for Comment.

- Question 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?

- Question 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?

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

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

- Question 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?

<u>Context:</u> It is well understood that the current crisis in the national credit markets was largely triggered by delinquency and defaults in the mortgage market, both for residential and commercial loans. Similar to the founding principles for the Resolution Trust Corporation (RTC), it is critical that the resolution of distressed assets under the Obama Administration is sensitive to both public policy and market principles. We recommend that the foundational principles of the RTC enabling legislation[1] be adopted, particularly for the recently announced Legal Loan Program:

- Maximizing returns while minimizing losses
- Minimizing the impact on local real estate

[1] For details see "Learning from Past: The Experience of the Home Owner's Loan Corporation and the Resolution Trust Corporation, Center for American Progress, July 2008.

- Maximizing affordable housing preservation

Adopting the principles of the RTC will have an important consequence particularly for local markets which have been hard hit by the mortgage delinquency or are at risk. For example, in Harlem, at the peak of the market cycle in 2006/2007, we witnessed the acquisition of large portfolios of affordable housing by private equity funds which had a strategy to quickly convert these units to market-rate rentals. This conversion strategy has suffered in the economic downturn. There is now significant unease in the community that these commercial loans are at risk of default and going forward, these portfolios may be sold in bulk to distressed debt buyers who have no sensitivity to the needs of the community.

The FDIC's current auction program is structured for the bulk sale of portfolios from a single failed bank, with the portfolios diversified by geography and product type. Both the size of the portfolios and complexity are a disincentive for the participation of emerging managers, particularly smaller minority- and women-owned enterprises ("MWBE"). Smaller firms are generally niche players who focus on discrete asset types or geography.

We recommend that the FDIC actively explores modifications to its auction structure to create the ability to bid on discrete pools. This approach can simultaneously achieve the important public policy missions of maximizing auction returns, stabilizing local markets and diversifying private sector participation. A potential approach to modifying the auction approach is as follows:

- Require selling institutions to breakdown auction portfolios into discrete sub-portfolios, preferably divided by asset type and geography. This approach should match how such institutions currently manage their assets and should not present an undue administrative burden.
- Allow bidders the option to bid on the sub-portfolios alone, the combined portfolio of the selling institution or both approaches.
- Auctioneer has the option to take the best bid for the combined portfolio or the best bid for each sub-portfolio.
- This structure maximizes the value achievable through the auction while creating opportunities for niche players.

We strongly recommend that specific attention be made for assets for sale in lower and middle-income census tracks in urban environments. Over the last decades important work has been done to create effective subsidy and financing programs to stabilize formerly distressed neighborhoods and set the pace for their revitalization. It would be a tremendous loss if high foreclosure in these neighborhoods retriggered urban blight. For example, we understand that one of the leading acquirers of multifamily residential assets in downtown Newark is at the brink of default and foreclosure for a majority of his portfolio. To avoid the foreclosure of these urban distressed assets leading to the reestablishment of blight in low and moderate-income neighborhoods, we recommend that a fast-track process be set up to segregate Community Reinvestment Act ("CRA") eligible loans and auction them in discrete portfolios in a manner that local for-profit and non-profit developers can quickly acquire and stabilize these assets by leveraging the multiple resources available for affordable housing and community development *at the federal, state and city level, including the additional resources provided under the economic stimulus plan.*

We also recommend that similar to the administration of the RTC, specific processes and oversight be implemented to enhance the participation of minority and women-owned enterprises in the auctions. One possible approach is to factor the diversity of the bidding team in the amount of government leverage offered to bidding teams. In addition, we recognize that there are valuable opportunities for small, minority and women-owned businesses to participate in ancillary services including accounting, appraisal, valuation, financial advisory and legal services. We request that the FDIC provides transparency on the bidding opportunities to provide these services as well as reporting on the diversity in contracting achieved by service type. It is particularly important that diversity goals be addressed within the Legacy Loan Program given that one of the current requirements within the Legacy Securities Program is that applicants have at least $10 billion of assets under management, which is a constraint to the direct participation of minority and women-owned enterprises in that program.

A key benefit of this approach of aligning community development efforts with distressed debt resolution is that it can accelerate the stabilization of neighborhoods that may be at the forefront of the subprime crisis. [2] Assets in low and middle-income communities are at risk of being overlooked in large portfolio acquisitions or sold at fire sale and land banked, thus further destabilizing communities already under stress. The creation of sub-portfolios in FDIC auctions, and specifically the segregation of affordable housing assets, enhances the ability of MWBE and community-based developers to directly bid for, or acquire in secondary trades, the assets in their communities. MWBE and community-based developers can tap community-targeted HUD funds, as well private capital from state and city pension funds, to reposition distressed assets for the benefit of the community while also strengthening the economy.

We commend the FDIC's efforts in developing the Legacy Loan Program and believe that the program can play an important role in stabilizing the financial markets and preserving neighborhoods. We appreciate your consideration of our recommendations.

Best Regards**,**

[2] For detailed analysis see "Transforming Foreclosed Properties Into Community Assets", New York University, Furman Center for Real Estate and Urban Policy, December 2008.

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