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April 10, 2009

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

Re: Comments to Legacy Loans Program

Dear Mr. Feldman:

Thank you for permitting this opportunity to comment on the Legacy Loans program. It is a great honor to participate in shaping the future of this program and we thank you for your efforts to rehabilitate the banking sector.

We have consulted with a number of our clients and friends, all of whom are significant players in the real estate market, for meaningful feedback on the Legacy Loans program. We have identified our primary areas of concern and we offer our comments on how we believe these issues should be addressed.

The program should be structured to appeal to a wide spectrum of investors. We believe that the size of the loan pools should be smaller to enable a larger number of investors to participate. Ideally, we would like to see loan pools of $25-150 million. These pools should also be divided along geographical lines and type of loan. Regionalizing the loan pools would reduce due diligence costs to investors.

The costs of performing due diligence on each of the loan pools will be high to potential investors. In order to reduce the burden on potential investors, and to ensure that they will participate, there should not be a minimum reserve price for the seller during the auction process.

A primary concern for investors is the length of time that the investor will be required to hold assets once they invest in the PPIF. We propose that the investors should be able to transfer their interests in the PPIF to ensure that the investments are relatively liquid.

Generally, the right to foreclose on a loan should not be limited in any agreement with the government. The private investor must have access to all of the traditional rights and remedies for protecting its interest in the event of a default or a non-performing loan. However, it should be noted that foreclosure rights will be limited in pools of certain loans, such as those secured by single family homes.

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Underlying assets should be sold to a PPIF free of any servicing requirements. The private sector should have freedom to select servicers to be retained on the basis of achieving economic targets. Providing complete access to servicing history is a crucial component of due diligence to be made available to purchasers. This is important not only to evaluate how loans a pool have been performing but also to enable the purchaser to determine whether retention of the same servicer is warranted.

Voting for major decisions should not lie entirely with the government. If the government has too much control, then investors may not invest with the program for fear that there will be non-economic reasons for decisions.

Private investors are also concerned about the equity structure as it is currently proposed. We would like to see a promote or a buy-out provision for the private investor integrated into any joint venture agreement.

Selling banks should be allowed to take part in the equity. Otherwise, banks may not have much incentive to participate if they are going to have to dramatically write down the assets on their books with no potential upside.

In regards to additional required equity, a primary concern is what kind of capital call provisions will be in an agreement between the government and private investors. Such an agreement would need to specify when additional capital would be required. We propose that the government should fund its percentage interest in regards to future capital calls or be subject to a 1:1 squeezedown.

There should be additional governmental incentives to purchase distressed senior housing and affordable housing.

Please find attached a proposed term sheet outlining the terms of a joint venture agreement between the government and private investors.

Very truly yours,

Herrick, Feinstein LLP

<u>PROPOSED TERM SHEET FOR JOINT VENTURE AGREEMENT
GOVERNING EACH PUBLIC-PRIVATE INVESTMENT FUND ("PPIF")
IN CONNECTION WITH THE LEGACY LOAN PROGRAM</u>

Form of Entity:	Each PPIF shall be a limited liability company or limited partnership.
Members of Entity:	The members of each PPIF (collectively, the "<u>Members</u>") shall consist of private investors or a private investor group including a sponsor ("<u>Managing Member</u>") and, if applicable, private investment capital partners, (collectively, the "<u>Private Investor Members</u>"); and the government, including the United States Treasury ("<u>UST</u>") and the Federal Deposit Insurance Corporation ("<u>FDIC</u>"), (collectively, the "<u>Government Member</u>"). Each Private Investor Member must be a financial institution, individual, insurance company, mutual fund, publicly managed investment fund, pension fund or other entity which satisfies the eligibility requirements of and is otherwise approved by the FDIC.
Purpose of Entity:	(i) To purchase certain illiquid loans and other assets from an insured U.S. bank or U.S. savings association that satisfies certain eligibility requirements of the Legacy Loan Program (the "<u>Participant Bank</u>"), as such assets shall be more particularly identified in the JV Agreement (hereinafter the "<u>PPIF Assets</u>"); and (ii) to hold, manage, sell, dispose, finance, refinance and otherwise deal with the PPIF Assets. The PPIF shall not engage in any business, and it shall have no purpose, unrelated to the ownership of the PPIF Assets and shall not acquire or own any assets other than the PPIF Assets or other assets related or incidental to the PPIF Assets.
Duration of Entity:	The PPIF shall dissolve upon the disposition of all of the PPIF Assets, unless terminated earlier pursuant to the agreement of all of the Members.
Principal Office:	The principal office of the PPIF shall be the office of Managing Member.
Initial Capital Contributions:	Private Investor Members and Government Member shall contribute on a 50/50 basis the required initial capital contributions of the PPIF through the Closing Date (the "<u>Initial Capital Contributions</u>"). The "<u>Closing Date</u>" shall mean the date of the transfer of the PPIF Assets from the Participant Bank to the

PPIF. The Initial Capital Contributions shall constitute the sum of (i) the equity required to purchase the PPIF Assets, (ii) the closing costs, including, estimated reasonable attorneys fees and expenses of the PPIF in connection with the transfer of the PPIF Assets from the Participant Bank to the PPIF and the issuance of debt to purchase the PPIF Assets, and (iii) initial working capital for the PPIF to cover debt service and operating expenses.

Private Investor Members shall also receive a credit in their capital account for the amount of due diligence expenses incurred by Private Investor Members up to a maximum amount of $____________. Private Investor Members and Government Member shall have an initial percentage interest of 50% in the PPIF.

Additional Capital: Any additional equity required by the PPIF shall be funded by the Government Member and the Private Investor Members (as a group) on a 50/50 basis.

Failure to Make Additional Capital Contributions: In the event that the Government Member does not contribute its share of required additional equity, then it shall be subject to pro rata dilution based on the total amount of capital contributions made to the PPIF. In the event that a Private Investor Member does not contribute its shares of required equity, then the membership interest held by all Private Investor Members shall be subject to pro rata dilution, provided that that the Private Investor Members may agree on a mechanism (i.e., burndown) to further penalize a Private Investor Member, so long as such mechanism does not effect the interest of the Government Member.

PPIF Debt: The PPIF will finance the purchase of the PPIF Assets by issuing debt guaranteed by FDIC (the "FDIC Guarantee").

Distributions: Cash flow from operations and proceeds from the sale of PPIF assets (after expenses, debt service and funding of the Debt Service Coverage Account) shall be distributed as follows:

(1) to Members until they receive a 8% annual preferred return on their investment;

(2) to the Members, pro rata, until each has received an amount equal to its unreturned capital contributions; and

(3) then (i) 20% to Managing Member and (ii) 80% to Members pro rata (subject to adjustment in the event that a Member fails to fund a mandatory capital contribution).

Management: Managing Member shall manage the PPIF. The Managing Member shall have control over the day-to-day operations of the

PPIF and shall have control over investment decisions. Extraordinary PPIF matters will require consent of members holding a majority of the interests.

Asset Management and Servicing Agreements:	Managing Member shall have the right to hire a third-party asset manager to manage the PPIF Assets and a third party servicer to service the PPIF Assets. The terms of the asset management and servicing agreements shall be subject to the parameters established by the FDIC and UST for the Legacy Loan Program. The asset manager may be an affiliate of the Managing Member.
FDIC Fees:	The PPIF shall be liable for all fees and expenses payable to Government Member in connection with the Legacy Loan Program, including, without limitation, the FDIC's fee for the FDIC Guarantee.
Indemnification:	Managing Member shall be indemnified by the PPIF for any act performed, or failure or refusal to act, by Managing Member for and on behalf of the PPIF within the scope of its authority under the JV Agreement, <u>provided</u> <u>that</u> Managing Member acted, or failed or refused to act, in good faith and reasonably believed that such act or inaction was in the best interests of the PPIF, and <u>provided</u> <u>further</u> <u>that</u> in each case the act or failure or refusal to act did not constitute willful misconduct, gross negligence, or breach of fiduciary duty.
Removal of Managing Member:	Managing Member shall be removed as Manager under the following circumstances (each a "<u>Removal Act</u>"): (i) the bankruptcy, liquidation or dissolution of Managing Member; (ii) Managing Member commits or willfully attempts to commit a Major Decision without Government Member or Private Investor Members' approval; (iii) Managing Member commits fraud, waste, misappropriation, gross negligence, or willful misconduct; (iv) Managing Member makes an intentional misrepresentation of a material fact; and (v) Managing Member is a Prohibited Person (hereinafter defined). In the event a Removal Act shall occur, Government Member shall have the right to remove Managing Member as Manager and appoint a replacement manager for the PPIF who shall be paid a fee for serving as Manager of the PPIF ("<u>Replacement Manager's Fees</u>").

Upon removal, Managing Member (or its successor in case of a bankruptcy, liquidation or dissolution) shall retain its economic interest but shall have no voting or approval rights (including the right to approve any Major Decisions); provided, however, Managing Member shall have the right to approve any change to the JV Agreement that would reduce its percentage interest or change the distributions provisions of the JV Agreement. Notwithstanding anything to the contrary, the Replacement Manager's Fees shall be deducted from any distributions that Managing Member is entitled to receive.

Transfers: No member shall have the right to transfer, pledge or encumber any part of its interest in the PPIF without the consent of the Managing Member (not to be unreasonably withheld); provided, however, that Managing Member may not transfer its interest in the PPIF without the consent of members holding a majority of the interests.

Voluntary Withdrawal: No member shall be entitled to voluntarily withdraw from the PPIF.

Reporting: The PPIF will be subject to customary reporting obligations and provide its members with customary inspection rights.

Representations and Warranties of Managing Member: Managing Member shall make certain representations and warranties in the JV Agreement, including, without limitation,

(i) representations regarding due formation, due execution and authority;

(ii) a representation that neither Managing Member nor any of its principals or affiliates is a Prohibited Person (hereinafter defined);

(iii) a representation that no litigation is pending or threatened against Managing Member or any of its principals or affiliates which, if adversely determined, would materially adversely affect Managing Member's ability to carry out its obligations under the JV Agreement; and

(iv) a representation that Managing Member is in compliance with all laws.

A "Prohibited Person" is a person named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism).

Private Investor: Managing Member shall have the right to buy Government

Members' Buy-Out Rights:	Member's interest in the PPIF ("Government Member's Interest") after a lock-out period of [*one (1) year*] from the Closing Date. The purchase price of Government Member's Interest shall be the average of the values given to Government Member's Interest by two (2) Qualified Appraisers. A "Qualified Appraiser" shall mean a qualified, independent appraiser who (i) is unaffiliated with Managing Member, (ii) has at least ten (10) years' experience in valuing assets similar to the PPIF Assets, and (iii) is on a list of appraisers approved by FDIC for the Legacy Loan Program.