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Responses to Legacy Loans Program

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?

   The asset categories of residential mortgage loans, commercial real estate loans, and other loans secured by real property should be eligible for sale through the LLP. Assets should be non-performing, delinquent, or troubled, in some fashion – meaning thereby, causing increased capital requirements, undue stress on the operating capabilities, and/or the inability of financial institutions to appropriately provide loan-level work-out solutions.

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, subject to consent not being unreasonably withheld. The FDIC, Treasury, and the Lender should provide guidelines upfront that are not subject to material change.

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?

   The equity percentage by the government should be non-controlling, equal to or less than the amount contributed by private capital and entitled to all the rights and distributions of the private equity participant.

4. Is there any reason that investors' identities should not be made publicly available?

   What would the purpose be for disclosing their identities publicly? There is only downside to those investors in terms of public attitude that can be misplaced due to characterizations that may or may not be true. On the other hand, the results of the auction should be published consistent with the current practice of the FDIC auction.

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?

   Ensure a level playing field for all participants; be clear about the requirements, guidelines, and the nature of the involvement by the Treasury and FDIC. Their participation should be predicated on best practices that have been develop by HUD and the FDIC in their partnership sales of assets.

   Sellers of assets will be motivated by their analysis of maximizing value for their existing shareholders. Those sellers will pursue several paths to manage and/or dispose of the "troubled" assets of which this program will be on path. Additionally, in order to motivate sellers to bring assets to the PPIF, FDIC can leverage their stress test results that demonstrate that the reserves in certain banks are not sufficient or that these banks do not have the capability to manage the assets appropriately.

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?

   Keep it simple – allow the private equity to investors to bid pre diligence, select 2 or 3 finalist to perform detail diligence review, offer diligence reimbursement, costs will be offset by more competitive pricing on the final bid. This will also broaden market participation by encouraging smaller and in some cases more experience firms to bid versus larger firms who get a pass on experience solely because of size and stature.

   The concept of partial stakes will complicate the management of the assets. Consortiums should be formed pre-initial bid, if required.

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

   Assets should be grouped or segmented as much as possible, i.e. commercial real-estate secured loans by certain property types, residential mortgage whole loans, first-lien versus second-lien loan status, etc.

   For prioritization, the sooner PPIF addresses the residential whole loan mortgages in this program, the quicker experienced asset managers can help the underlying borrowers.

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

   $ 100 million and larger in unpaid principal balance and as homogenous as possible.

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?

   The debt structure should be known, both in terms of cost and duration, so that bid price reflects confidence in the cost of this capital component as much as possible. Uncertainty around this parameter will cause more volatility in pricing.

   The government must be careful with the application of leverage to distressed assets. There should be a separation of the two issues – under-capitalization of the selling entity and the true economic valuation of the distressed assets that the entity holds. Leverage should not be offered solely to raise pricing for an under-capitalized selling entity.

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?

    The advantage to structure the debt for public sale is that it will start the process of re-building the non-bank finance market. Further, it should provide more transparency and liquidity in the secondary market.

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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?

    The guarantee fee should remain the same and the amount of debt provided should change to adjust for the underlying risk profile of the asset pool to be sold.

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?

    No.

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. The auction process can ask for loan-level and/or pool-level pricing which can, in turn, be allocated back to the participating bank(s). The benefit of pooling assets from several selling banks is related to the smaller banks being able to benefit from the sharing the costs associated with the process.

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?

    Conflicts of interest need to be avoided; the partners need to ensure they understand their roles and the respective rights and obligations that arise from their participation. Subject to meeting certain conditions and covenants, private equity participants need to have the authority necessary to manage the assets and maximize the net present value overtime.

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?

    What are the requirements and qualifications to be a private equity bidder and/or participant? The FDIC, Treasury, and the Lender should receive periodic reports regarding portfolio performance. As long as the conditions and covenants of the guarantor, FDIC, and the Lender are not being violated, their roles should be limited to observation and reviewing the periodic performance reports.

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 private equity participant will own the servicing rights and determine the optimal structure under which those servicing rights will be utilized to optimize portfolio performance. The cost of servicing will be determined up-front at closing and will be paid from the cash waterfall of the portfolio. In the case where

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the private equity participant also owns a servicing organization, the contract to service the assets needs to be at arm's length and based upon market. Treasury, FDIC, and the Lender will have the right to cause servicing to transfer in the event certain performance tests are not met.

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 data from the independent valuation consultant should be made available to the selling institution. In addition, if a reserve price is set by the selling institution and the FDIC, then that reserve price should be made public to the bidders.