TIERRA
DEVELOPMENT ADVISORS

Friday, April 10, 2009

VIA HAND DELIVERY, U.S. MAIL, AND ELECTRONIC MAIL

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

RE: Legacy Loan Program Request for Public Comments

Dear Mr. Feldman:

Pursuant to the request made by the Federal Deposit Insurance Corporation (FDIC) for public comment on the Legacy Loan Program (LLP), please find our comments attached hereto. Thank you for taking the time to review TIERRA Development Advisors' thoughts and opinions about the program as currently proposed. Having worked extensively with the FDIC and Resolution Trust Corporation (RTC) in the past, we believe we can provide unique insights into the ongoing development of the LLP and the Public Private Investment Funds (PPIF).

Founded in 2008 by key principals from California's former largest land brokerage firm, the TIERRA team has played an integral roll in over $1.0 billion in closed annual land transactions for nearly twenty years. Collectively our team has sold over $8 billion in land and managed in excess of $10 billion in real estate assets over the past two decades. TIERRA's unique competency is our knowledge of strategies used by investors to finance and value assets. We utilize the same underwriting methods and financial models that investors and financial institutions use in their internal underwriting. Likewise, we have specific submarket expertise in markets across the western United States, which enables us to distinguish assets' true "highest and best use" while maximizing value for the client.

We appreciate the opportunity to provide comments regarding the LLP and PPIF programs and look forward to discussing our analysis in further detail.

Regards,

Roland Chavez

President
TIERRA Development Advisors

CC: LLPComments@FDIC.gov

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TIERRA Development Advisors: Comments to FDIC Legacy Loan 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?

We believe that only securitized loans should be eligible for sale through the LLP program as the market value of securitized loans can be more easily obtained by evaluating the underlying asset. This most typically reflects loans for real property. Discounts on assets are derived from changes in market conditions but also from uncertainties associated with any voids in available data. As a result, we expect that non-real estate assets will be discounted more heavily due to this lack of information or underlying marketable collateral.

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?

Investors should not be expressly denied the possibility of selling or otherwise transferring these interests, but the FDIC should retain reasonable approval rights for any transfer in order to preserve the quality of any subsequent investors. If the FDIC hinders the marketability of the assets in the future then the assets will be more heavily discounted now to account for this illiquidity. By allowing investors flexibility to make appropriate business decisions at their discretion, the FDIC will avoid artificially depressing the current market value of the assets.

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?

As currently proposed, the government intends to provide a guarantee of roughly 92.5% federal financing, all of which is to be non-recourse. This number can grow to 100% financing provided certain (but as of yet undetermined) conditions are met. We believe that while these terms are very attractive to potential investors, the government is exposing itself to the very same over-leveraged investment positions that helped facilitate the financial disaster we are currently experiencing. We would recommend demanding increased equity contributions from investors to ensure their vested financial interests in the assets. Although exact numbers are speculative, we believe a program that more closely resembles the RTC is appropriate (75% Public /25% Private). This will increase investors' commitment to the projects while still providing leverage that vastly exceeds debt ratios available in the open market. The availability of debt at loan to values of 92.5% and higher combined with very incremental "money down" played a significant part in pushing our financial system to the brink of disaster. We believe that magnifying the size and scope of flawed "free-money" lending criteria exposes the government to larger risks than necessary, and would advise a more scrupulous path in determining equity commitments from investors.

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

The pros for releasing the names greatly outweigh the cons. Transparency is of the utmost importance in ensuring taxpayers tolerate the government intervention.

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?

At a minimum, the FDIC must accomplish the following five things in order to generate the highest competition for the assets, which in turn will generate the best value for assets and proceeds for the banks, thus ensuring institutional commitment to the program:

1. Segment the assets by asset type
2. Segment the assets by product type
3. Segment the assets by location
4. Divest the pools into smaller, more manageable tranches in order to increase the breadth and depth of the potential buyer pool.
5. Ensure and expressly guarantee that profits related to the LLP will not be affected by any future tax legislation such as proposed measures to recoup AIG executive bonuses.

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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 type of auction used greatly depends upon the ultimate goals of the FDIC and the type of assets being offered. If the prevailing ideology is the preserve the integrity of the asset value, then allowing investors to bid on partial stakes should yield a higher value. By creating more manageable investment commitments, the quantity of potential investors is significantly increased, leading to higher demand and competition for the assets. Many of the generally accepted sales techniques can be similarly effective (auction, Dutch auction, online bid, sealed bid, stalking horse, etc.), but they must be coupled with adequate due diligence and investigation periods prior to sale in order to ensure maximized realized value, otherwise assets will be discounted to account for the "worst case scenario".

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

The main "priority" needs to be increasing the buyer pool and generating free market competition for the assets to ensure a full market price. In terms of what assets to prioritize, we would recommend focusing upon secured, 1st position assets with underlying collateral that can most easily be commoditized. The more expeditiously a market can be determined for the securitization, the more seamlessly the securities can be valued and transacted.

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

As stated previously, pools must do all of the following:

1. Be consistent in asset type (i.e. real estate, student loans, auto loans, etc.)
2. Isolate individual product types within the asset class (for example, with respect to real estate categories could include commercial, industrial, residential, multifamily, land, etc.)
3. Whenever possible, assets need to be isolated and grouped based upon the geographic location of the collateral. This will expand the offerings to include groups with local market expertise as opposed to limiting potential investors to simply those with a national platform.
4. Asset pools must be organized into smaller, more manageable sizes to generate a broader range of potential investors and increase competition.

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 FDIC should provide terms sheets in advance which clearly outline any and all terms. This is vital to ensure that all investors clearly understand the exact terms in advance of bidding. This also ensures that all bidders are utilizing the same underwriting criteria.

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?

There are significant issues with both, with one scenario being more favorable to the government and the other yielding results more favorable to banking institutions.

Banks take a note from the PPIF.

To financial institutions, the primary advantage of this structure is that the currently undetermined value of assets will now achieve a "price discovery" and the outstanding balance will be backed by the AAA equivalent credit guarantee from the federal government. This clarifies the uncertainty of otherwise marking the assets to market and should help the institutions clarify their ratios, potentially leading to additional lending as they are more confident in their solvency. However, it is important to note that this creates absolutely zero new liquidity for the banks, and may in effect "backfire". Consider the possibility that the price discovery for the assets leads to a perceived market value that is LESS than the value currently attributed to the assets' value on the books of the institutions. This could, in effect, force all institutions to "write down" the assets to the new established market price, causing more solvency problems than had the program not been implemented at all. There are multitudes of accounting practices that may mitigate some of this risk (i.e. distress sales are typically excluded in ”mark to market” calculations) but nonetheless the program could still generate potential catastrophic results for bank solvency. This is compounded by the fact that no cash is actually infused into the institutions. In effect, the only tangible effect to banks is that they have clarified an uncertainty on their balance sheet, whether good or bad. From a government perspective, this situation is ideal as it puts little pressure on currency (from an inflationary perspective), will not draw as much public outcry over increased ”bailouts”, and not require additional Treasury Bills to be sold.

Public Issuance of debt by the PPIF

From the financial institutions perspective, this is likely to be the preferred method. We assume that the PPIF will float T-Bills in the open market to generate the cash for the acquisitions, and as such the banks would receive ”all-cash” payment for the assets, significantly improving their solvency and financial position. This not only clarifies their balance sheets by fixing the prices, it provides much needed liquidity. This newfound liquidity can either be utilized by the institutions to safeguard their solvency ratios, or may be utilized to facilitate new lending in the open market. We will also note that while this situation can lead to the same problem as outlined above (PPIF value is lower than the book value, forcing further write-downs), because they are trading for a cash position, it will not pose as significant of a solvency risk. However, looking at this from the government’s perspective, floating additional Treasury Bills is likely to continue to devalue our currency and put further pressures on inflation, especially when coupled with deficit spending and other recent note sales by the Treasury.

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?

If the government is insistent upon providing non-recourse debt up to 92.5% leverage (something that we believe strongly to be excessively risky), and securing this debt by issuing credit default swaps to themselves, then they must absolutely require an adjusted premium based on the risks associated with the underlying assets. We will however take this opportunity to identify the inherent problems in the above. All of the above characteristics essentially combine to turn the federal government into Lehman/AIG 2.0, since the federal government will be providing over-levered, non-recourse debt secured by nothing but its own collateral, then issuing credit default swaps from the FDIC to its nearly wholly owned subsidiary (PPIF), all the while commanding risk adjusted insurance premiums in exchange for assuming 100% of the risk should the asset or investment pool lose money or otherwise be devalued or ”fail”.

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?

We would recommend that the government command a preferred return on its equity contribution which would provide for a tiered return metric for the government and investor sponsor. However, we recommend utilizing a structure that provides increased compensation to investors as the projects achieve higher returns, and likewise lower returns for investors should the asset fail to reach certain return metrics. Terms can be negotiated, but as a simple example: the government would receive 80% of the profits (20% to investor) up until the government had achieved a 10% return. Thereafter, profits may be split 50/50 until the investor has ”caught up” to the government’s yield, with all profits exceeding that split at some predetermined rate (50/50, 60/40, 70/30, etc.) This has been grossly oversimplified for ease of communicating it in one paragraph, but any real estate professional, investment bank, or lending institution can provide detailed demonstrations of how to create preferred returns for equity participants.

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?

As we have suggested, we believe that banks, the government, and investors will achieve the highest and most consistent returns if assets can be broken down into sub-pools that are isolated to be asset, product, and geographically specific. To any extent this can be facilitated through the pooling of banks, we believe it is in the best interest of all parties. We would recommend that the PPIF let each bank agree upon how to distribute proceeds between each other as they should be able to identify what will work best for them.

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?

We recommend you consult professional legal counsel in regards to this 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?

The most effective means for the government to not only protect asset value but also remain "hands off" on a daily basis is to ensure that investors are strongly financially committed to the projects and have the localized expertise in that asset class to successfully achieve the long term goals of the entity. The greater the equity contributed by the investor, the less the government will be forced to be involved.

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 banks should be afforded the rights to decide on a case-by-case basis (in advance) if they wish to divest of servicing rights.

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?

We believe that both bidders and sellers should be privy to all information pertinent to the assets well in advance of the auction or sale. With more information, investors are less likely to discount for potential unforeseen challenges and can make appropriate business decisions on the assets. There is zero sense in overcomplicating things and artificially reducing your bidder pool by not utilizing all reasonable efforts to deliver all available due diligence information.

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