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April 10, 2009

VIA E-MAIL

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

Attn: Comments

Re: Legacy Loans Program (the "Program")

Dear Mr. Feldman:

Thank you for the opportunity to comment on the Program. Haynes and Boone, LLP is a Texas based law firm with approximately 500 lawyers, in offices in the major cities of Texas, New York, Washington D.C., San Jose, Moscow and Mexico City. We have the following comments based on the list of issues raised in the Federal Deposit Insurance Corporation's (the "FDIC") request for comments.

1. **Which asset categories should be eligible for sale though the LLP? Should the program initially focus 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 an initial focus on legacy real estate is appropriate under the current economic circumstances. However, if the purpose is to stimulate the markets, all assets held by banks should be eligible for purchase by investors under the Program. In our view, any answer to the third question would be speculation. However, since real estate assets are less susceptible to determining a "market value" in the current environment, it would appear that the initial focus should be on those.

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, because pledging, selling or transferring their interests may be the best way to maximize return on investment (for both the private investors (50%) and the Government (50% plus warrants)). The parties can address subsequent investor criteria in future documents, however, in our view any provisions affecting subsequent transfers of interests must be mutual to encourage

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greater participation. We suggest that the strongest, and probably the only, criterion should be the subsequent purchaser offering the best price. As the market improves, the need for criteria for new purchasers may be less important.

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 the Treasury Department and the FDIC proposed, the appropriate percentage should be no more than 50/50 (with the Treasury Department also holding warrants) regardless of the type of portfolio. If the Government held a higher percentage we believe it would be a disincentive for private capital to participate. We believe there will be an institutionalized reluctance by private investors to partner with the Government, and that will be exacerbated if the Government controlled future decisions.

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

While we see very little reason for the funds names not being made public, we believe that if the identity of investors' were kept private, it would attract more investors, which is a goal of the Program according to Chairman Bair's comments.

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?**

We do not believe limiting investment to a few highly capitalized funds will best satisfy the Government's desires. We think the Government can limit the size of an investment based on the size of the funds, but the Program should be open to all. We think sellers might be motivated if they get regulatory forbearance on their capital if they sell assets.

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?**

Allowing investors to bid on partial stakes may encourage more investors to participate. Conversely, requiring a bid on the entire equity stake may exclude some investors. Asset management can be worked out by the winning bidders. We would suggest that packages in the amount of $100 million be put together, with each package being all home loans, all commercial loans or, when necessary, a mixture. We would open up the bidding on a package through an auction process with no minimum.

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

See the response to 1 above. Auctions should probably focus on home loans and then commercial loans, in that order.

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

We believe packages of $100 million based on initial valuations seems reasonable.

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?

Investors will need to know default terms, payment terms, any covenants, negative covenants, representations and warranties, non-recourse terms, percent required to make decisions, procedure in case of deadlock, and the terms of the guarantee.

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?

We believe the selling bank can get a guaranteed note from the buyer. We do not think the buyer should be allowed to offer the debt publicly as that will slow the process and create reporting and other requirements which investors would be uncomfortable with in our opinion.

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?

While we understand that the FDIC has said publicly that the fee will be adjusted based on the risk characteristics of the underlying pool in order to fund the Program, we believe that this variable fee approach may deter potential buyers. The FDIC should be very transparent in explaining how the fee is calculated for pools prior to the bid process.

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. Such a notion would be contrary to the goal of encouraging private capital to participate. In fact an argument could be made that exactly the opposite might encourage more participation in the Program. Potential buyers have many alternative investments to choose from and for them to want to participate; they will want the ability to make a profit based on their investment, not a return that declines as the success of the investment increases. We also believe that if the private investor thinks that decisions will be made by government agencies subject to political pressures and lengthy review procedures, they will not participate.

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?

The Program should start out simply by pooling the assets of individual banks, which will simplify the process for getting small banks involved. Once the process is established, the FDIC can consider more complex pools if there is a demand 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 do not foresee conflicts among LLP participants who are involved with separate pools. The conflicts we foresee are between the private investors and the Government (the FDIC and possibly Treasury). These disputes need to be resolved quickly by some form of mediation. Because the Program is not subject to a rulemaking, we believe that the FDIC and Treasury should clarify that they are not entitled to *Chevron* deference in their decisions related to the Program.

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?

We believe that the private investor will want the right to select asset managers, subject to the Government's right to object for good reason. Moreover, if the Government exercises its oversight role by not micromanaging the operations, the Program has the greatest chance for success.

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 servicing is part of the package that the investors are bidding on, so it is part of the bid. The goal here should be simplicity to get this Program started. The timing of the servicing transfer and the associated subservicing fees can be addressed in the bid.

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 and yes. Remember that a stated goal of Chairman Bair concerning the Program is transparency and disclosing this information will help everyone establish the price for these loans.

Sincerely,

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