To: FDIC

From: Phin W. Stubbs
pws.cos@mac.com

PWSTUBBS • BELLWETHERHOLDINGS • PSIFUNDS
325 North St. Paul Street • Suite 4040 Dallas, Texas 75201 • T 214 760 7800

Subject: LLP Comments

Legacy Loans Program – Program Description and Request for Comments

II. Request for Comment

The FDIC is requesting comment from interested parties on all aspects of the proposed LLP. In particular it has formulated the following questions for interested parties to consider:

1. Which asset categories should be eligible for sale through the LLP? Any assets and categories that meet the following (generally, nontraditional) criteria at a minimum: a) those Participant Bank (as defined in LLP Terms Sheet) assets that were previously originated (per practices prior to the downturn) with the expectation of sale or securitization, i.e., expected liquidity; b) those that are currently illiquid; c) those that are management intensive and held by banks ill-prepared to manage; d) those that are subject to loss of yield/income based upon continuance of the non-fluid financial markets and economic downturn; and e) those that are currently sub-performing, non-performing or troubled This could include all categories such as business credits, real estate secured, consumer, auto, etc. Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale? No - all assets. Are there specific portfolios where there would be more or less interest in selling through the LLP? FDIC should stipulate in an effort to move the assets to private professional market makers, not shackled by regulation –non Participant Banks would have to be (essentially, *better be*) squeaky clean.

2. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF? Yes, especially if the pools are of diverse collateral-types and sales consist of assets >$1 billion.

3. If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors? Expertise in any given area needs to be defined by the FDIC –only the best— and should carry the greatest weight. All other prior successful practices developed by FADA and RTC

would apply (i.e., thorough marketing and wide exposure, etc., of sub-pools).

4. What is the appropriate percentage of government equity participation, which will maximize returns for taxpayers while assuring integrity in the pricing by private investors? [0% to X%]: Facilitate the process by leaving all pertinent business terms open to market clearing. Taking the assets off ice (away from Participant Banks and into the hands of market leaders) would rapidly repay taxpayers. How would a higher investment percentage on the part of the government impact private investment in PPIFs? Remain flexible and open to market bids including bidder ability to eliminate the equity component and instead, bid for a higher amount of debt and/or profit-participating government debt *(to this end consider government profit participation as a percentage of the gross resale price, payable vis-à-vis terms of the resale as cash is received)*. Government as partner rather than facilitator may be viewed as a wildcard and as such could severely hamper values. Although PWStubbs / Bellwether Investments is not a bidder for the >$1 billion pools and its interest is limited to sub-pools of certain, specific distressed debt instruments <$200 million, it would not be able to assess or predict the risks associated with a government partnership. Thus, (in theory) its bids would have to be based upon down payments as, essentially, rental deposits in exchange for riskless fee-driven management contracts, i.e., no real risk capital. Perhaps this attitude is widely shared among larger players. Should the amount of the government's investment depend on the type of portfolio? The market would speak to this issue through well thought through and flexible bid parameters that encourage market bids.

5. Is there any reason that investors' identities should not be made publicly available? No.

6. How can the FDIC best encourage a broad and diverse range of investment participation? Through strategic pooling of asset classes and allowance to bid flexibly, on all basic business terms. How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF? Participant Banks should already be encouraged relative to the recent FASB pronouncement --holding assets for investment vs. sale— although additional incentives may be necessary (*whatever it takes*, applies).
7. What type of auction process facilitates the broadest investor participation? Absolute and compelling low reserve auctions (with previously described open bid parameters) as experienced at FADA and RTC. 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? Bidding on the entire equity stake should be allowed. 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? I believe these issues will unfold –more naturally--after initial market experience is gained. If multiple investors are allowed to bid through a Dutch auction, or similar process, how should asset management control be determined? Same as the previous comment.

8. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions? See comment number 1, above.

9. What are the optimal size and characteristics of a pool for a PPIF? >$1 billion with categorizations tailored to private management expertise and market makers.

10. 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? This would be highly dependent on the pool of assets being offered. In cases of greater certainty the interest rate, amortization and term could be set forth with confidence. In highly toxic cases, bids should be allowed to include a range of offer types including coterminous amortizations and balloon dates (consistent with the underlying assets), interest rates to the lender as a percentage of cash flow and other creative but necessary terms in order to draw private expertise (as top priority).

11. 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? Initially, those Participant Banks, which have received TARP funds, should be required to take a note from the PPIF. Moreover, sale price balance would be achieved. Upon market stabilization, Participant should/could be pressured to sell the notes. 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? This should be anticipated but allowed to unfold based upon future events. Would a public issuance of debt by the PPIF limit its flexibility compared to the issuance of a note to a selling bank? Yes, especially now and with troubled loans.

12. 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? Yes –and should generally be a matter for market bid.

13. 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? This should be left to market bids.

14. Should the program permit multiple selling banks to pool assets for sale? Yes, Participant Banks could arrange for multiple banks pooling (and participations among them) in order to spread sales and PPIF note risks, at will. If so, what constraints should be applied to such pooling arrangements? None, so long as the pools are determined to be attractive to investors in accordance with FDIC asset class (and private expertise) targets, prior sales and lessons learned. How can the PPIF structure equitably accommodate participation by smaller institutions? Through FDIC descriptions of upcoming asset class sales and bid parameters, etc. Under what process would proceeds be allocated to selling banks if they pool assets? Ratably, as far as the FDIC should be concerned. Perhaps disproportionately, in accordance with participation agreements that may develop among pooling Participant Banks.

15. What are the potential conflicts which could arise among LLP participants? None, per previous comments. What structural arrangements and safeguards should the FDIC put into place to address or mitigate those concerns? See previous comments.

16. What should the relative role of the government and private sector be in the selection and oversight of asset managers? Roles and oversight would change and unfold with market response to open bids. 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? Develop a peer management system.

17. How should on-going servicing requirements of underlying assets be sold to a PPIF and paid for? This issue is highly dependent on asset classes and Participant Bank existing customer relationships –as much as possible; this should be left to market bid. Should value be separately attributed to control of the servicing rights? Initially, no.

18. Should data used by the independent valuation consultant, as well as results of such consultant's analysis, be made available to potential bidders? Yes. Should it be made available to potential sellers prior to their decision to submit assets to bid? Yes.

Phin W. Stubbs