From: Len Mills [mailto:len.mills@odinim.com]
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To: LLPComments
Subject: Legacy Loans Program

Please find our comments and questions on the Legacy Loan Program below.

Thank you,

Len Mills

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Our Company

REX&Co has facilitated equity-sharing arrangements between homeowners and institutional investors since 2004. Equity-sharing arrangements – such as Hope for Homeowners and other products -- can provide for greater efficiency and flexibility in a variety of home financing situations including initial home purchase, refinancing and mortgage modifications. REX&Co envisions that the FDIC's Legacy Loan Program will provide banks and homeowners an opportunity to restructure their existing, troubled mortgages by attracting new capital from broad array of new Private Investors.

We are pleased to offer our responses to the FDIC's questions and to ask additional questions.

Our Responses to FDIC Request for Comments

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?

Start with commercial and residential real estate loans. These are likely to be the most troubled on Participating Bank's balance sheets and hence will provide for more cleansing and thawing of credit markets. These assets are *also more likely to be accessible for Private Investors to evaluate and submit meaningful bids. Other assts could be considered later.*

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. In general, the PPIF program should foster buy-an-hold investment strategies. But the ability to transfer or sell those positions to "like" investors will provide for some liquidity to the Private Investors. Since the US Treasury retains an equity stake, they should be able to approve this sale or transfer, perhaps using the FDIC as their agent. The same Private Investor eligibility requirements that are used in the initial Investor approval should be applied on any subsequent sale or transfer. However, these requirements should be appropriately modified and interpreted to reflect the change in circumstances of the PPIF over time. (Minimum investment size may decline for example).

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 percentage of government equity participation should strike a balance between (a) the needs to the private investor to control and manage the PPIF assets and (b) the government's risk exposure. For simplicity, a constant 50% split seems to be the generally appropriate balance between these two considerations. Rather than altering this split for individual PPIFs, the Treasury/FDIC should instead alter the degree of leverage and/or FDIC guarantee fees on specific Eligible Asset Pools. The degree of available leverage and FDIC fee schedule should be set before the Private Investors submit bids to insure integrity and transparency in pricing.

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

No, the identity of Private Investors should be made publically available. However the details of their investment objectives and strategies should not be made publicly available. These objectives and strategies should be reviewed by the FDIC, but not publicly disclosed. Private Investors will need such assurances from the Treasury/FDIC.

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?

Private Investors will need appropriate detail over asset composition and available funding (e.g. leverage and FDIC guarantee fees) on the pools that they are bidding on. Eligible Pools should consist of loans that are reasonably similar (e.g. commercial vs. residential), but the pools should also be reasonably sized for the Participating Bank(s) and Private Investor(s). Pool sizes of $25-$50 million would seem appropriate for this program.

As with pooling across Banks, Private Investors should be allowed to form "groups" prior to submitting bids in order to develop common investment objectives and strategies for the relevant pools. Allowing Private Investors to form groups will encourage a broad and diverse range of new investors. Such groups of Private Investors should be allowed to win the entire package. Of course, the FDIC and their financial managers overseeing the auctions will need to take precautions and controls to insure that the auction process remains competitive; for example, a minimum number of submitted bids could be established for each Eligible Asset Pool.

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?

Given the likely small size of the Eligible Asset Pools and to firmly establish management control of the assets, the FDIC should require investors to bid on the entire stake. Small Private Investors should be allowed to form groups prior to submitting bids in order to facilitate bidding on the entire Eligible Asset Pool. The FDIC should maintain a voluntary list of Private Investors to help Private Investors find each other.

With this auction structure, the Participating Bank(s) should be allowed to set a reservation price and perhaps minimum number of bids (with FDIC's assistance). The reservation price and any other requirements should be announced before the bid and the Participating Bank(s) should be required to accept any bid that meets these requirements.

The FDIC should also pursue a regularly schedule for these auctions to allow Private Investors to gauge deal flow and to establish their own systematic infrastructure in preparing their bids.

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

In order to provide the most cleansing to the bank balance sheets and remove the most uncertainty for bank capital, the FDIC should initially focus on the most troubled loans. However, the loans should be sufficiently understandable to most Private Investors. Thus loans that are currently troubled, but have historically been considered liquid should be a priority for the FDIC. In contrast, loans that are troubled but have never been liquid should not be a high priority to clean from bank balance sheets.

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

A PPIF pool size of $25 - $50 million strikes the appropriate balance in reaching a broad array of Participating Banks and Private Investors while achieving sufficient economies of scale in the auction and administrative processes.

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 guarantee fee, rate and maturity. Fixed or floating. Also, since Eligible Asset Pools are likely to include mortgages with declining and uncertain principal schedules, the notes should include callable or fixed redemption features that facilitate asset-liability management by the Private Investors.

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?

Issuing a guaranteed note to the selling Participant Bank(s) meets the objectives of cleansing the balance sheet of the legacy assets and would be foster the participation by a broad and diverse array of Private Investors. Publicly issued debt for many small PPIFs seems difficult to achieve. However, the Participating Bank should be allowed to subsequently sell the FDIC guaranteed note. To facilitate these subsequent sales, the FDIC should foster as much uniformity as possible in the FDIC note structures.

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?

Yes, both the guarantee fee and the degree of leverage should be based on the risk characteristics of the underlying pool. However, pass-through rates and other terms on the FDIC guaranteed notes should be as uniform as possible to promote the liquidity of these notes.

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 provisions would add complexity and cut into the participation by Private Investors. Such features will discourage Private Investors. Equity warrants owned by the Treasury are already part of the announced program.
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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 selling banks should be allowed to pool. Participations will need to be defined in advance of the auction and should not be allowed to change once the auction is completed. The participations will likely need to be facilitated by the FDIC and its independent third-party valuation firm. Asset type, maturity structure, rate structure, credit indicators, etc should be considered in the pooling 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?

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 FDIC should engage in a formal review process in the selection and oversight of asset managers. However, the asset pools will be smaller in the Legacy Loan portion than in the Securities portion of the PPIP. Hence, if the program is successful in attracting a broad and diverse array of Private Investors, the risk to the government's investment will be inherently diversified. Consequently, the selection of managers should be confined to a review of the asset managers' objectives and proposed strategies rather than strict assets-under- management (AUM) and/or experience criteria. Adherence to AUM and/or experience criteria will limit the number and *diversity of Private Investors. The FDIC's goal of fostering participation by banks of any size in the LLP should be matched by its goal of fostering Asset Managers and Private Investors of any size.*

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?

Yes, the loans in the Eligible Asset Pool should be sold with servicing released. Servicing value should be part of the bid. The Asset Manager of these troubled loans will need control over the management of loan servicing.

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. Transparency in the data and other information is important for both buyers and sellers and will foster broader participation. Some of the conclusions reached by the independent valuation consultant that are used by the FDIC in its determination of leverage and fees could be withheld from buyers and sellers.

Our Questions

Similarly to the concept of Participant Banks pooling assets, can Private Investors from “groups” before submitting a single bid on an asset pool? Would there be any minimum or maximum number of participants to a group? Would there be any requirements with respect to the type of governance structure within the group?

Similarly to the contemplated servicing rights, can a group Private Investors select an Asset Manager of the PPIF either internally amongst themselves or will they be required to hire an external Asset Manager?

Are the administrative expenses of the Asset Manager taken out of revenues before the profits are distributed to the Private Investors and US Treasury?

Describe the FDIC’s oversight of the PPIFs and their Asset Managers?