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Subject: Legacy Loans Program

The following are answers to some of the questions raised in the FDIC's call for comments regarding the Legacy Loan Program and planned Public-Private Investment Program (PPIP). The respondent is a commercial real estate appraiser, broker, and consultant who has over 30 years of experience in the real estate business:

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 program should focus on real-estate related assets including loans and REO properties. Why? Because the value of the underlying assets is more easily quantified and more desirable to mainstream investors. Portfolios that include a variety of product type (say, residential loans and commercial property loans), pools that include assets in diverse markets (such as home loans in California and Texas), or portfolios of non-complementary assets (like hotel loans and restaurant properties) would likely be heavily discounted and the pooling of such assets should be avoided. However, pools that include properties of similar quality and asset class (i.e. residential subdivisions/land developments in the Southwest, or a grouping of hotel/motel loans in primary U.S. market areas) that require uniform reporting, comparable management expertise, and similar investment strategies should attract a significant premium.
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?
The initial investors should be able to pledge, sell or transfer their interests in the PPIF but the the FDIC's guarantee should not extend to subsequent investors. Any sale of an investor's interest should result in the release of liability by the FDIC.
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? A 50-50 equity split, as currently planned, appears to be a reasonable arrangement. Under this scenario (and assuming an 86% debt ratio), an investor could control a $100M portfolio for a modest $7M capital investment. A higher percentage investment percentage on the part of the government would result in unneccessary investor speculation and a significantly higher default rate on these loans/assets.

4. Is there any reason that investors' identities should not be made publicly available? No, the investors' identities should be made public because the plan is essentially being funded by the U.S. taxpayers.

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? By "investment participation", I assume you mean bank participation in the program (not investor participation in the purchase of the asset pools). Consequently, I would recommend structuring pools of "like assets" (home loans pooled together, income-producing properties together, land together, self liquidating assets i.e. residential subdivisions together). The asset pools must be

appropriately valued based on current market conditions in order to reflect realistic price expectations and fewer defaults (we don't want these properties coming to the market again). Individual banking institutions can then make informed decisions on whether to participate in the program and the likely results of their participation. If they choose to market their assets outside the program, they should have free reign to do so (although I think the prospects of this are limited given the attractive lending program provided in the PPIPs)

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? Each pool should be sold to the highest bidder with no provision for selling partial interests to individual investors. Any auction process allowing a "reserve price" for the bank(s) should be considered.

7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions? Owner-occupied residential real estate should come first. After that, any toxic real estate loans, including both whole loans and securitizations backed by loan portfolios. I would think that REO properties should also be "high on the list" as these assets are already a lead weight on the bank's balance sheet. Allow investors to re-capitalize and re-energize these properties and get them back on the market for sale or lease.

8. What are the optimal size and characteristics of a pool for a PPIF? I would think the pool sizes should range from $10 million to $100 million, or more. The pools should be structured to allow individual investor participation as well as that of the larger institutions (private funds, pension funds, mutual funds). I would strongly suggest that the pools be aggregated with "like kind" properties. That is, West Coast residential loans should not be pooled with midwestern commercial building loans. Rather, pools should be aggregated with similar quality assets in comparable markets. For example, Texas real estate should be combined with other Texas real estate, California loans with other west coast loans.

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? Typical terms and conditions including the interest rate (whether fixed or variable and, if variable, what it is based on), amortization, term or call, pre-payment provisions, etc.

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? If the plan is to clean-up the balance sheets of the banks and free-up capital, I don't see any advantage for the banks to take back notes from the PPIF. The issuance of debt "publicly" is an interesting concept but is well outside my area of expertise so I will leave it to those more qualified to respond.

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? Absolutely, this would depend on the quality of the loan and/or underlying assets and the risk of default. This is

why it is so important to pool complementary assets so that the FDIC fee for loans/real estate can be tied to the risk involved.

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? In theory, this is a wonderful concept in that the government (ultimately, the taxpayers) would be compensated for their equity participation, loan guarantee and financing. After all, it is the government financing and the low equity investment that make the pools valuable/desirable and will make the program successful. I could see some sort of staged participation in profits above a pre-determined trigger level. I'm just unsure as to how this would be overseen and administered (does the FDIC make the determination or an independent auditor?) By limiting the investor's upside, you will certainly diminish the price paid for the pool.

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? I think you would have to allow this practice. Without it, smaller banks may not have enough loans/assets to make up an attractive pool. The allocation of proceeds to the selling banks is a key question - that is why it is important to pool assets of similar quality and potential for appreciation. In short, good assets can't be "dragged down" by inclusion in a pool of "bad" assets". Smaller banks should be encouraged to consult with experienced asset/portfolio managers to insure that their assets are rated properly which will determine their ultimate recovery.

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? Absolutely you'll need reps and warranties to protect the banks who are liquidating their assets/loans. Do not allow banks, bank holding companies or bank officers to buy their own assets or those of other institutions.

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? There should be continued oversight of the assets as long as the loan is guaranteed by the FDIC. Asset managers should be highly qualified (experienced) in the assets they are dealing with. The accurate rating of assets is critical, as is the quality of the due diligence.

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? In my opinion, the purchaser should take on the servicing rights, but there may be instances where the bank manages the debt for the investor for a fee. It should be left up to the investor to make that determination.

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? Absolutely, but make no warranties or guarantees regarding such information (the independent valuation consultant should demand this). Provide as much information as you can at the outset so that potential investors can make timely decisions. Be absolutely transparent

about all issues of the underlying debt or asset.

Another question that I have is "Will the assembly of the pool assets have to be done through the FDIC, through an originating bank or can non-bank companies (experienced in various property/loan types) be able to originate the pools? I believe that if banks have some control in the the creation of the pools, then they will be much more inclined to participate in the program. HOW assets are "sliced and diced" into the PPIP asset pools will have a significant impact on their pricing and the bank's recovery rate. In my opinion, the only way to do this (and to avoid deep-discounting of good assets) is to control the creation of the pools and the assets placed in them.

Thankyou for allowing me to provide my input.

Joseph Dengel