From: Ellen Harnick [mailto:Ellen.Harnick@responsiblelending.org]
Sent: Tuesday, April 07, 2009 5:59 PM
To: LLPComments
Cc: Ellen Harnick; Debbie Goldstein; Mike Calhoun; Eric Stein
Subject: Legacy Loans Program -- comment

April 10, 2009

Via email: LLPComments@FDIC.gov
Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429.
Attention: Comments

Re: Response to Request for Comment on the Legacy Loan Program

Dear Mr. Feldman:

The Center for Responsible Lending is pleased to respond to the FDIC's Request for Comment on the recently announced Legacy Loan Program (LLP or the Program). Our response focuses on ensuring that the Program furthers – and at all events *does not undercut* – the Administration's efforts to avert preventable foreclosures through loan modification. We address your questions that bear upon this concern.

The foreclosure crisis will be brought under control only when a significant proportion of failing loans are rendered sustainable. Absent modifications on a substantial scale, legacy mortgage loans and related assets will continue to lose value with ongoing defaults and declining home prices. This will prove costly to the holders of these assets – increasingly, the taxpayers – and homeowning families' financial position will further deteriorate. The Administration's Financial Stability Plan appropriately prioritizes loan modification, and LLP should complement the Administration's Home Affordable Modification Program (HAMP) and encourage participation for qualifying loans. Certainly, it must do nothing that would undermine loan modification efforts.

Accordingly, we have the following recommendations for the implementation of LLP:

- All loans and related assets sold or acquired through LLP should be subject to HAMP, and all institutions that sell loans or other assets through the Program should be required to participate in HAMP just as all banks receiving investments under the Emergency Economic Stabilization Act must do. This means four things:
    - All entities that acquire loans through LLP (and any subsequent owners of such loans) must offer a HAMP modification, or offer or consent to any

proposed a Hope for Homeowners (H4H) refinancing, for those acquired loans that qualify.

  - All entities that acquire securities through LLP (and any subsequent owners of such securities) backed by residential mortgage loans must consent to a HAMP modification or a H4H refinancing for the related loans that qualify, if presented with that option.

  - All entities that sell assets through LLP must: (a) offer HAMP modifications, and offer or consent to any proposed H4H refinancings, for all loans in their portfolios that qualify; and (b) consent to a HAMP modification or H4H refinancing of all qualifying loans that back securities they own.

  - All entities that acquire servicing rights through the LLP must participate in HAMP with respect to the loans at issue, except to the extent prohibited by contract.

- FDIC should provide strong oversight over the servicing of loans acquired (directly or as securities) through LLP, or subject to servicing rights acquired through LLP, to ensure that consumers are treated fairly. FDIC should establish an effective mechanism for receiving and addressing consumer complaints concerning entities participating in the Program.

We have the following responses to those of your questions that bear up on these principles:

Question 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?***

Priority should be given to residential real estate assets. These are the assets at the source of the crisis, and fixing the loans underlying these assets is essential to our economic recovery. Provided that the Program is structured to incent the modification of failing home loans, and require the participation in HAMP as described above, it should be structured to maximize the participation of legacy residential real estate assets.

Question 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?***

Interests should be transferable only subject to the obligation to service and modify loans, and consent to the modification of loans backing legacy securities, as described above.

<u>Question 4.</u> ***Is there any reason that investors' identities should not be made publicly available?***

Full transparency is essential to ensure that homeowners can identify the ultimate owners of their mortgage loans, and that policymakers and independent analysts can meaningfully evaluate participants' performance under the Program.

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

As discussed above, residential mortgages and related assets should have first priority, particularly whole home loans, which can be readily modified.

<u>Question 15.</u> ***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?***

Recent experience teaches that strong government oversight is essential for all matters relating to the protection of the consumers in the underlying mortgage loans. Conflicting market incentives make this an area in which the private sector cannot maintain appropriate standards without consistent government oversight and enforcement. Such enforcement will prevent a race to the bottom, help minimize preventable foreclosures, thereby securing the value of the related mortgage assets.

We would be happy to provide any further information that might be helpful.

Respectfully Submitted,

Deborah Goldstein,
Executive Vice President

Ellen Harnick
Senior Policy Counsel