TO: Mr. Robert E. Feldman, Executive Secretary

FR: Alisa Freundlich, Highroad Investment Group, LLC

RE: Legacy Loan Program Comments

DATE: April 8, 2009

The following comments are being provided to assist the FDIC and United States Treasury (UST) in the development of the Legacy Loan Program. I commend the UST and FDIC for opening this process up for public comment and hope that the public comments will be reviewed and implemented insofar as they help with this process.

By way of background, I have worked as a real estate and finance attorney for over 20 years in California. During the early 1990's, while in private practice, I represented the RTC on numerous asset (REO) sales so I am knowledgeable about this process. I now run a privately held real estate investment company. In full disclosure, our Company is a woman owned company that would be interested in participating in this program if it is properly structured and executed. As we all know, "the devil is in the details".

As a general comment, most real estate and private capital groups will buy loans based on the underlying asset type and geographic region. Therefore it is essential to structure pools with like assets and by region. Further, if the FDIC and UST truly want to encourage participation by minority and women owned businesses as well as other private investors, the asset pools need to be broken down to a level well below the $1 Billion currently contemplated in the survey questionnaire.

There has been some speculation in the media that banks and investment banks (who received government bailout funds) are working on setting up investment arms to purchase each other's assets using government financing. Given the current climate of anger toward the banking community one would anticipate that if this were allowed it would further fuel the public fire and outrage. Just as the current FDIC auction process does not allow bids to be accepted from those who have defaulted on loans with FDIC insured institutions, it would be advisable for the government to prohibit banks, insurance companies and investment banks that received funds through TARP, the Capital Purchase Plan (CPP) or any other government bail out (AIG) from bidding at these auctions. If the public was incensed over AIG bonus money imagine how they will react to a bank that received public money investing in a PPIF program.

Set forth below are brief responses to the questions posed on the FDIC website as well as some other questions which need to be raised in connection with development and structure of the PPIF program.

1. Which asset categories should be eligible for sale through the LLP? ***Real estate secured assets should be eligible as well as credit cards and other loans. In order to maximize value it is essential to structure assets in pools by asset type and break the pools down by geographic location. In terms of real estate loans, real estate is a local business. Investors will buy according to their asset type and/or region. Large national pools of mixed assets (residential, industrial, commercial) will not trade at their highest value.*** Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale? ***Initially focus on the real estate assets.*** Are there specific portfolios where there would be more or less interest in selling through the LLP? ***There will be more interest (value) in smaller pools organized by asset type and geographic location. If the selling bank has a minimum bid price it should be disclosed to potential buyers as the beginning of the bid process. It is not fair to offer assets and have investors incur due diligence costs without this information. If the underlying assets have environmental issues or other problems this must be disclosed by the FDIC and selling banks.***
2. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF? ***There should be limited ability to transfer or sell the managing partner interest of the private PPIF interests – only in the case of a corporate merger or transfer to an estate upon death for example. However, the PPIF should be able to raise capital by admitting other limited (non managing partners). I assume the FDIC will select eligible bidders based on ability, character and track record (not just price) so it is important that the "managing investor" be committed.*** If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors? ***Transfers of minority (non manager) interests should not be of concern.***
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 government has announced a 50/50 equity arrangement whereby the government will fund 50% of the equity for a 50% equity participation. Will this be a requirement or can a private investor group fund all the equity***

and keep 100% and still get an FDIC loan?

4. Is there any reason that investors' identities should not be made publicly available? ***The public has a right to know the names of the purchasers as well as the price paid. It seems that you cannot have transparency without this. However, it is reasonable to keep minority investors names and contact information private.***
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? ***See answer to #1 above. Sellers should be highly motivated since they are able to sell assets with 85% financing guaranteed by the FDIC.***
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? ***Assets should be broken down by property type and geographic area. To the extent that pools are smaller, the government will have more bidders. Investors should be prequalified based on experience with asset types as well as financial capacity. Auctions should be done by sealed bid with the pool going to the highest bidder. This was done successfully on the RTC sales. If this first bidder does not perform it can go to the next highest. Any Seller reserve price (minimum bid) needs to be disclosed before due diligence starts.***
7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions? ***Loans backed by commercial or residential real estate that are salable. It is essential that the government be able to set the minimum bid values low enough to get the private sector interested. Having a bunch of failed sales will cause the public to lose confidence.***
8. What are the optimal size and characteristics of a pool for a PPIF? ***Pools must be organized by asset type and geographic region. Ideally to encourage more bidders, pools should be smaller in the range of $100Million. Assets with environmental problems or other issues relating to lien perfection/fraud, etc. should be***

disclosed or preferably excluded.

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? ***It is essential for the FDIC to offer a fixed rate note with a sufficient maturity (5 – 10 years) to allow the buyer to restructure the underlying loans or assets. If the underlying loans are not performing and there is no cash flow it makes sense for there to be some deferral of interest payments in the first few years.***
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? ***For the sake of consistency and ease of conducting auctions, all loans to the PPIF should be standardized and streamlined through the FDIC. All assets should be sold by the FDIC and debt should be handled by the FDIC as servicer of the PPIF program. It makes no sense to do this any other way and would only add confusion in the marketplace. What are the loan terms to be offered by the FDIC?*** 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? ***Private investors are not in the business of issuing public debt. This would seriously delay and interfere with a speedy auction process.*** Would a public issuance of debt by the PPIF limit its flexibility compared to the issuance of a note to a selling bank? ***Defaulted loans and broken construction deals and not the type of assets that can be used for a public offering – this just does not make sense.***
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? ***This absolutely makes sense. The selling bank should pay the guarantee fee. The FDIC might consider taking the fee up front out of the proceeds of the sale rather than annually.***
12. Should the program include provisions under which the government would increase its participation in any investment returns that exceed a specified trigger level? ***Typically the participation to the managing partner goes up when the investment returns exceed a specified trigger or hurdle rate. This is seen as creating an incentive for the manager.*** If so, what would be the appropriate level and how should that participation be structured? ***It would be very problematic for the FDIC to have different deals with different partners. I suggest that the base equity split should***

be based on the ratio of equity capital contributed by the UST versus the private Investor. If the equity Is 50/50 the participation is 50/50. If the investor puts up all the equity – there would be no participation. If the government wants to incentivize the private investor, they may offer an "equity kicker" above a certain hurdle rate. For example after an 18% annual IRR, the split could go 60/40 (60 to private investor). This is often used in private equity deals.

13. Should the program permit multiple selling banks to pool assets for sale? ***Definitely assets should be pooled and sold by the FDIC in the most productive manner possible*** If so, what constraints should be applied to such pooling arrangements? ***Pools should be divided by asset types and geographic region. It is essential that any assets with environmental contamination be disclosed and sold with special disclaimers.*** 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? ***Assuming proper appraisals are obtained on each underlying asset, sales values can be apportioned based on appraisals. To obtain the highest sales price, assets from different banks can also be sold individually on a "one off" basis as part of a specialized offering.***
14. What are the potential conflicts which could arise among LLP participants? ***Private Investors need to have the ability to manage the assets and restructure the underlying loans with the borrowers. What process will be in place to allow the Investor to restructure the underlying loans, negotiate early payoffs, foreclose on a loan and restructure the underlying asset. If every move requires government approval it will not work. If there are additional amounts that need to be funded will the UST want to fund their 50% or be diluted? To the extent that underlying loans are sold or paid off – there needs to be release prices on the FDIC debt.*** What structural arrangements and safeguards should the FDIC put into place to address or mitigate those concerns? ***Treasury should structure their interest as a limited partner so they are not managing the investment but they do receive regular reporting and require that the Managing partner/ Investor act as a fiduciary.***
15. What should the relative role of the government and private sector be in the selection and oversight of asset managers? ***Private investors should be selecting the asset managers and loan servicers subject to objective criteria established by the FDIC.*** 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 government should be getting standardized quarterly reports from all of its Investor partners but leave the day to day operating to the outside investor.***

16. How should on-going servicing requirements of underlying assets be sold to a PPIF and paid for? ***Loan pools should not carry mandatory servicing rights that accrue to the selling bank. It is important for the Investor to be able to manage this process and negotiate for the best rate possible.*** Should value be separately attributed to control of the servicing rights? ***No, selling banks should not control the 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? ***Absolutely yes, otherwise there are issues of fraud and concealment.*** Should it be made available to potential sellers prior to their decision to submit assets to bid? ***Absolutely yes, isn't it part of the valuation process? If a seller does not agree with the independent valuation, then the assets should not be put out for auction.***

18. Additional questions:

Will the FDIC favor investors who do not require the 50% equity co-invest from Treasury in selection of bidders?

How will the FDIC determine who is an "eligible bidder"?

Will the UST/FDIC provide a standard form of sale for comment – what will be the reps and warranties? Sales terms?

Will the FDIC provide a standard form of their loan agreement with the PPIF's for comment?

Will the UST provide a standard from of PPIF operating agreement? How will the UST warrants work?

What will be the process for due diligence? If there is a problem with an underlying asset which is not disclosed will there be a right to put this asset back? If so, there needs to be an adjustment mechanism in the FDIC financing.