From: Michael Clippinger [mailto:mclippinger@actualizeconsulting.com]
Sent: Thursday, April 09, 2009 8:46 AM
To: LLPComments
Subject: Legacy Loans Program

Thank you for providing the opportunity to comment on the proposed Legacy Loans Program. Below are responses to the questions you posed.

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 focus initially should be solely on legacy real estate assets. Removing real estate assets would have the biggest impact from the standpoint of the banks, and generate the most interest from investors. At some point in the future the FDIC could re-assess the need to selectively expand the program to cover additional asset classes.

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, provided that the subsequent investor is deemed to be eligible based on the program’s eligibility criteria. Limited transferability would be desirable, as it would increase marketability and ultimately provide a better mark on the assets.

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?

I would advocate minimal equity participation by the government as I am of the belief that the private market would support 100% of the equity in conjunction with financing provided by the government in the form of the guarantee on the debt financing. Providing low-cost debt financing in and of itself will significantly enhance returns to the equity provider, and thus result in broader investor participation. This approach would assure the highest level of integrity in the pricing process, while limiting the amount of risk that the taxpayer is being forced to take on.

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

No.

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?

The process needs to replicate a market process to the greatest extent possible, and with the least amount of intervention by the government. By simply providing financing for the buyers of the pools, the FDIC is providing the purchasers with the leverage it needs to generate a higher

return. This will in turn result in higher prices, as investors can pay more and still meet their ROE hurdles. More sellers will be motivated to sell as market prices start to normalize. Standardized due diligence procedures conducted by an independent third party should occur prior to the auction. The results of the due diligence should be made available to all bidders, who can use this information in formulating their bids.

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?
Investors should be required to bid on the entire equity stake of a PPIF.

Because the equity holder would want the ability to control how the assets are serviced and ultimately disposed of, having investors own partial stakes may be problematic. Multiple investors could bid in a situation where two or more investors pooled their resources and bid as a single entity, bound by an agreement that outlines their rights vis-à-vis the other investors at the outset. Ideally, this would occur outside the PPIF structure.

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

The FDIC should focus on residential and commercial mortgages. Performing pools are likely to be more liquid resulting in a higher likelihood of success for the initial auctions.

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

While smaller pools would generate potentially broader participation from both buyers and sellers, they would also result in a greater administrative burden due to the sheer volume of separate pools that the FDIC would be required to administer.

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?

Investors would need to know the term, rate, fees and any other structural features or credit enhancements that could potentially impact the amount or timing of any payment to the private capital investor. Will the equity investor receive any pro rata distributions each month to the extent that there is excess cash available after payment of principal, interest and guarantee fees?

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?

No comment.

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?

Ideally, the FDIC should adjust its guarantee fee based on the risk characteristics. To a certain extent, this is taken care of through adjusting the leverage, but I would also advocate higher fees for REO assets versus performing loans.

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, the government should limit its investment to guarantee fees and not participate in the equity.

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?

The program should permit multiple selling banks to pool assets for sale, subject to a pooling agreement. Typically, the pooling agreement would provide for proceeds to be allocated based on the relative value of their respective portions of the pool. However, to keep the process simple and clean, you may want this outside of the PPIF structure.

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?

No comment.

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 private investor should have ultimate control over the selection and oversight of the asset manager, and by virtue of their first-loss risk position are clearly incentivized to serve this function. To be eligible, however, the asset manager must meet certain criteria established by the FDIC. In addition to the oversight provided by the private investor, the FDIC, as the guarantor, must play an active role in the oversight of the asset manager through various surveillance and reporting mechanisms.

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?

The assets should be sold servicing-released. Bidders will separately value the servicing rights in formulating their bids, but this does not need to broken out as part of the bidding process.

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?

Data should be made available for everyone to review in order to promote full transparency. Bidders can do their own independent valuation as well, based on their own assumptions and analysis, and should be encouraged to do so.

Mike Clippinger
Actualize Consulting
(703) 231-3977
mclippinger@actualizeconsulting.com