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To: LLPComments
Subject: Legacy Loans Program

We appreciate the government's efforts to deal with the current financial crisis and help restore liquidity such that free market capitalism may return. In response to the FDIC listed questions, here are our thoughts.

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 have a target purpose of restoring liquidity, not encouraging moral hazard with the inclusion of "any assets". Therefore, the program should focus on real estate loans including first mortgages, mezz loans, B-notes, and participations. There are billions of dollars waiting on the sidelines for investment in real estate. The sale of real estate loans will be the catalyst for other markets to free up. The offerings should be grouped by product type (such as hotel assets only), sold in smaller pools or single assets to maximize prospective bidders and pricing, and the borrower of an offered performing loan should have the first right of refusal to buy the loan from the selling bank.

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?

To preserve the free market system, initial investors should be permitted to sell or transfer interests provided the creditworthiness of the transfer is not diminished. Selling institutions should not be allowed to participate in the secondary market.

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's investment should not depend upon the type of portfolio. The equity should stay the same with a 50/50 arrangement with the government is acceptable. However, the relative risk of the investment will determine the LTV (up to 6:1) and pricing. Too high a percentage of loan or government participation diminishes the amount of "skin in the game" of investors. The goal is provide sufficient financing to maximize the number of qualified bidders to insure a competitive market bid process.

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

Investors' identities should be made public for a variety of reasons including: national security, secondary trading activity, and to insure diversity of investment participants such that all the loans are not "at risk" due to high concentration levels.

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 most critical elements of success to the program are to group the assets by product type (hotels, multifamily, office, retail, etc.). There are significant reasons for this: (i) real estate requires specialists in each industry segment to maximize value (particularly hotels) for the investors and the taxpayers who will participate in the profits; (ii) organizing the process by asset type will encourage a much greater number of industry specific bidders while still allowing the large funds to participate as well; (iii) mixed portfolios will reduce the potential bidders and depress the prices. It is also essential to allow the existing borrower to buy back their own loans. Loans may be included in the program at no fault of the borrower except for situations beyond their control, such as maturity in the midst of an illiquid market. The original borrower is arguably the best positioned to create long term value and investment returns for the taxpayers. The original borrower should first be allowed to purchase the loan at a stated discount to par at a threshold level determined prior to going to auction. If the existing borrower does not immediately acquire the loan within a short time period determined by the government, then the original borrower may participate in the loan auction process. This process will not only create liquidity more quickly since there will not need to be any due diligence or underwriting, but it also put assets in the hands of those parties best positioned and incentivized to create value for the government. The offerings should be grouped by product type (such as hotel assets only), sold in smaller pools or single assets to maximize prospective bidders and pricing, and the borrower of an offered performing loan should have the first right of refusal to buy the loan from the selling bank.

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?

First the stakes should be individual assets. Eventually as pools are assembled in the event there is a lack of individual bids, the bids must be for the whole pool since there was a previous opportunity to bid individually. The government should not be the matchmaker, but instead rely on the private marketplace to team up for a bid on an asset or pool.

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

The most risky asset classes and loan types should be separated and sold first to establish pricing for risk and also provide an opportunity over time to allow for prices to increase on other asset classes that are generally perceived as less risky. For example, condos and residential subdivisions should sell first then staggered sales of other commercial property types including multifamily, hotels, retail, office, and finally industrial. The bidding periods need to be brief in order to mobilize the bidders and capital markets. The offerings should be grouped by product type (such as hotel assets only), sold in smaller pools or single assets to maximize prospective bidders and pricing, and the borrower of an offered performing loan should have the first right of refusal to buy the loan from the selling bank.

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

Offerings should be individual loans by asset type (i.e. hotels), then if an asset is not sold it should be included at the end of a process in a larger mixed asset pool of similar situations in which no bid was received. Pools should be stratified based on loan (i.e. first mortgage vs. mezz). This helps to ensure that sector-specific investors can participate on investments consistent with investment criteria. While the goal of the program is to move assets quickly and at the highest prices possible, it should ensure full participation of the marketplace by right-sizing and selling different tranches of the capital stack, as opposed to the whole loan combined with subordinate tranches. The borrower of an offered performing loan should have the first right of refusal to buy the loan from the selling bank.

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?

Clarity of ALL the terms is essential in order to bid.

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?

Since the government is participating in the profits, the fee structure for the guarantee should be flat to simplify pricing and encourage the utilization of the loan guarantee.

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 will not be adding any value. Alternatively, it should be considered that once certain investment returns are achieved, a disproportionate amount of the returns should go to the investor as an additional incentive to create value for the taxpayers. The offerings should be grouped by product type (such as hotel assets only), sold in smaller pools or single assets to maximize prospective bidders and pricing, and the borrower of an offered performing loan should have the first right of refusal to buy the loan from the selling bank.

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?

No comment.

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?

By maintaining individual asset sales or very small pools it will likely prevent what occurred during the RTC program where it appeared that large institutions "took turns" to win portfolio bids. The larger the loan pools the greater the risk for a more managed and coordinated dialogue among the few institutions large enough to control the bid process within the government regulations. The offerings should be grouped by product type (such as hotel assets only), sold in smaller pools or single assets to maximize prospective bidders and pricing, and the borrower of an offered performing loan should have the first right of refusal to buy the loan from the selling bank.

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?

Investors should ultimately decide who is asset managing the investments. Government oversight of this will likely become too inefficient. However, there should be a large "qualified list" of potential asset managers, which should definitely include affiliates of the bidders – many of whom are highly qualified to asset manage and service the loans. Given in some instances the loans may become REO, it is important to take that into consideration when selecting the asset manager. This will encourage bidders to be "qualified to add value" rather than rely on a third party. Using a 3rd party asset manager to manage investments may be contrary to certain bidders' capabilities and investment goals. To the extent there are additional capital needs, the government may elect to fund, or otherwise be reduced in their ownership profit participation. This will enable bidders to adequately plan for future capital needs in their bid process. The fact that a bidder has asset management capabilities should not negatively impact the "passive classification" and therefore be subject to further government oversight (i.e. compensation limitations).

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 fee for this should be established up front at a set range. There should not be any profit participation, unless it comes out of the investor's portion – not the government.

No comment.

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?

Transparency is important to any process, and therefore the results of the consultant's analysis should be made public. However, the information will only be part of the process for bidders to underwrite since they will likely determine their own value. This independent valuation will also set the stage for the existing borrower to have a set price to buyback the loans and participate in the program. The value should also be made available to the selling institutions to help them determine as another data point whether they should sell. The valuation can be inconsistent with the selling bank's reserve price. The offerings should be grouped by product type (such as hotel assets only), sold in smaller pools or single assets to maximize prospective bidders and pricing, and the borrower of an offered performing loan should have the first right of refusal to buy the loan from the selling bank.