Legacy Loans Program – Program Description and Request for Comments

II. Request for Comment

The FDIC is requesting comment from interested parties on all aspects of the proposed LLP. In particular it has formulated the following questions for interested parties to consider:

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? **Any asset on anyone's balance sheet should be eligible for this program, not just legacy real estate assets. If the purpose of the program is to promote liquidity and to achieve as high a price as possible for the assets, leaving the program open only to the banks as sellers pose the following issue for mark to market entities who would purchase these assets :**

   If a private investor bought current, $1bil of prime 1st lien 2005 vintage mortgages at $80 in this LLP from a bank seller, and then another identical pool (for pricing purposes) trades at $60 within a short period of time from a non-bank seller (lower pricing due to the absence of leverage available via the PPIF), what would the mark on the $1bil of assets be ? Would it immediately have to be marked down $20 for a negative 25% return for the private investor ? Opening up the program to all sellers would prevent that from happening ???

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, the initial investor should be permitted to pledge, sell or transfer their interest in the PPIF. This will promote liquidity and a good secondary market. As to the question of the qualification of the subsequent investor, there is no credit risk stemming from the subsequent investor, and the assets have already been priced for the government, so the only remaining question is the management of the assets. The subsequent investor should be required to show that they can manage the assets properly. The new investor could demonstrate qualification by submitting an asset management plan using a pre-qualified loan servicer or their own servicer. This process would be similar to the ones currently used by Fannie Mae, Freddie Mac, and Ginnie Mae.**

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?

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

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? **As noted above, open up the buyer and seller qualification.**

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? **The answer depends on the expected size of each PPIF. If they are expected to be billions of dollars invested, partial stakes should be allowed.** 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? **The winners of the auction should be allowed to determine control for maximum flexibility and maximum participation.**

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

8. What are the optimal size and characteristics of a pool for a PPIF? **Depends on whether partial investments will be allowed, but a $25 mln to $100 mln investment for the private investor should be the target private investment size (including any leverage that might be available from TALF), such that the FDIC gets diversification in managers and the widest participation possible.**

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? **The full waterfall, including but not limited to timing of payments, allocation of losses, coupon, maturity of the structure. A full term sheet with the details of the structure should be provided.**

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? **The public issuance of debt will increase the timeline and the expenses of the program, which will be complicated enough without that.**

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? **Yes**

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?

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?

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 answers for 11-14?

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?

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? **Servicing should be paid for only out of the waterfall (i.e. if the servicer collects no money, the servicer receives no money) and servicing value and costs should be part of the overall asset, not valued separately.**

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? **Yes. All available data on a pool should be provided to the sellers and bidders.**

Comments on the LLP may be submitted until April 10, 2009.

You may submit comments by any of the following methods:

- E-mail: . Include "Legacy Loans Program" in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EDT).

Public Inspection: Please note that all comments will be posted generally without change (including any personal information) to the FDIC’s website (). Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.