United States Department of the Treasury Adopts Public-Private Investment Program

April 6, 2009

INTRODUCTION

On March 23, 2009, the United States Department of the Treasury – in conjunction with the Federal Deposit Insurance Corporation and the Federal Reserve – announced the Public-Private Investment Program. The Program is a part of Treasury's Financial Stability Plan, which was announced on February 10, 2009. The Financial Stability Plan outlined a broad approach to address the problem of troubled real estate-related assets via the formation of public-private investment funds. Under the Program announced on March 23rd, Treasury and private investors (potentially including publicly traded investment vehicles) will make investments in, and Treasury or the FDIC will provide funding to, multiple public-private investment funds ("PPIFs") that will purchase legacy assets, which will initially comprise real estate-related loans and securities. One goal of the Program is to draw new private capital into the markets for these troubled assets in order to reduce embedded liquidity discounts. This in turn is expected to free up capital and eventually lead to increased lending. A second goal, with respect to depository institutions that are selling assets into the Program, is to remove so-called toxic assets from their balance sheets so as to restore market confidence in them, enabling them to obtain debt and equity funding without government assistance.

The Program has two primary components:

- The Legacy Loans Program will involve purchases of pools of troubled loans ("Legacy Loans") from insured depository institutions by PPIFs that will be financed with equity from TARP and private investors and FDIC-guaranteed debt.

- The Legacy Securities Program will involve purchases of troubled securities ("Legacy Securities") from various types of financial institutions (not just insured depository institutions) by PPIFs that will be financed with equity from TARP and private investors and debt financing from Treasury. A second aspect of the Legacy Securities Program is to make such Legacy Securities eligible for non-recourse financings under the Term Asset-Backed Securities Loan Facility, an existing program that is financed by the Federal Reserve with subordinate financing from Treasury.

Treasury currently intends to allocate $75 to $100 billion of TARP funding for these two Programs and expects that roughly half of this amount will be devoted to each of the Programs.

Initially, residential and commercial mortgage loans will be eligible for the Legacy Loans Program, and securities backed by pools of such loans will be eligible for the Legacy Securities Program. However, Treasury and the FDIC have indicated that over time other asset classes may be included, such as consumer loans and securities backed by pools of consumer loans, as well as real estate that insured depository institutions have acquired through foreclosure.

LEGACY LOANS PROGRAM

Eligible sellers of loan pools under the Legacy Loans Program include any insured U.S. bank or U.S. savings association.[1] Banks or savings associations owned or controlled by a foreign bank or company are not eligible, although in its conference call on March 26, 2009 to discuss the Legacy Loans Program the FDIC staff said that it was still considering whether such banks and savings associations should be allowed to participate.

The FDIC will establish criteria as to which loans and other assets from depository institutions are eligible for the Legacy Loans Program. The FDIC has requested comment on whether loans other than legacy real estate-related loans should be included. On the conference call held by the FDIC on March 26, 2009, the FDIC staff stated that residential and commercial real estate loans (including construction loans) would be eligible initially, and that, over time, consumer loans, commercial loans and real estate acquired in satisfaction of a loan might be added. Loans and the collateral supporting the loans must be situated predominately in the United States. Treasury and the FDIC will agree upon minimum requirements that must be satisfied by the asset pools proposed by participant banks. Treasury and the FDIC will determine

1 For purposes of this program, "U.S. bank" and "U.S. savings association" means a bank or savings association organized under the laws of the United States or any State of the United States, the District of Columbia, any territory or possession of the United States, Puerto Rico, Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands.

which depository institutions will be allowed to sell assets into the Program and how much they will be allowed to sell after consultation with the depository institution's appropriate Federal banking agency.

The FDIC will provide oversight for the formation, funding and operation of multiple new Legacy Loans PPIFs that will purchase and manage pools of loans from participating banks. Private investors in Legacy Loans PPIFs are subject to approval by the FDIC and are expected to include an array of different types of investors, including, but not limited to, financial institutions, individuals, insurance companies, mutual funds, publicly managed investment funds, pension funds, private equity funds and hedge funds. Private investors may not participate in any Legacy Loans PPIF that purchases assets from sellers that are affiliates of such investors or that represent 10% or more of the aggregate private capital in the Legacy Loans PPIF.

Private investors and Treasury will each provide equity capital for such Legacy Loans PPIFs. The initial target is to have Treasury provide 50% of the equity capital, but investors can choose to take less subject to a minimum to be determined. Treasury is generally required to obtain warrants in connection with any TARP investment, and under other TARP programs it has obtained warrants of the investee financial institution to acquire shares valued at up to 20% of the amount of Treasury's TARP investment. Treasury has not publicly stated how this "warrant requirement" will be satisfied in the context of Legacy Loans PPIFs.

The FDIC will provide a guarantee for the debt financing issued by the Legacy Loans PPIFs to fund loan purchases. The FDIC's guarantee will be secured by the purchased loans, and the FDIC will receive a fee in return for its guarantee.[2] The FDIC requested comments on whether such debt financings should be accomplished by the sale of FDIC-guaranteed securities to investors, with the cash raised then being paid to the selling institution, or through the delivery to the selling depository institution of an FDIC-guaranteed note (commonly referred to as "seller financing").

The FDIC will employ independent valuation firms to analyze potential asset pools and to assist the FDIC in determining the value of the asset pool and the level of Legacy Loans PPIF debt that it is willing to guarantee. Assessment of the supportable leverage of a given asset pool will include analysis of expected cash flows based on the type of interest rates, the risk of the underlying assets, expected lifetime losses, geographic exposures, maturity profiles and other relevant factors. The final determination of leverage will be made by the FDIC in its sole discretion with input from the

2 The guarantee fee (the rate of which has not been specified) will be charged based on outstanding debt balances and will be payable to the FDIC annually upon the anniversary date of the transaction closing date.

independent valuation firms. It is anticipated that leverage will not exceed a 6-to-1 debt-to-equity ratio.

Once an eligible pool of loans and the appropriate amount of FDIC-guaranteed financing have been determined for a Legacy Loans PPIF, the FDIC will oversee initial due diligence, supervise the preparation of required marketing materials and conduct an auction process. The selling bank will make information available to the FDIC and private investors to facilitate the bidding process. The nature of the diligence that potential investors will be allowed to undertake has not been publicly announced. The FDIC requested comment on the extent to which analysis of the loans prepared by the independent valuation firm that is hired by the FDIC should be shared with potential bidders or with the selling institution.

Private investors will bid, pursuant to an auction process the specifics of which have yet to be determined, to contribute equity to the Legacy Loans PPIFs. The FDIC requested comments on whether a particular PPIF should obtain capital from a single or multiple private investors.

The winning bid or bids for the non-Treasury equity stake in a Legacy Loans PPIF, together with the amount of debt the FDIC is willing to guarantee (based on the predetermined debt-to-equity ratio), will define the price offered to the selling bank.[3] Once the winning bid is determined, the bank will then have the option of accepting or rejecting the bid within the pre-established time frame.

If the asset pool is sold to a PFIF, the private investors will control and manage the assets until final liquidation, subject to reporting to and oversight by the FDIC. Chairman Bair stated several times in the March 26th conference call that the pools of loans would be sold with servicing released. In servicing the loans, the investors will be required to participate in Treasury's loan modification program. Each Legacy Loans PPIF will provide information to the FDIC. In performance of its oversight role, the FDIC will provide duplicate reports to Treasury. The Legacy Loans PPIFs also must agree to provide access, as needed, to information required by the Special Inspector General of the TARP and the Government Accountability Office. In addition, each Legacy Loans PPIF must agree to waste, fraud and abuse protections to be defined by Treasury and the FDIC, as well as make certain representations, warranties and

3 For example, if a bank was selling a pool of loans with $100 face value and the FDIC determined that it would be willing to leverage the pool at a 6-to-1 debt-to-equity ratio, the highest bid from the private sector would define the total price paid by the private investors and Treasury for the loans. If the highest bid was $84, Treasury and the private investors would each contribute $6 of equity and the new PPIF would issue FDIC-guaranteed debt for the remaining $72 of the price.

covenants not yet published regarding the conduct of its business and compliance with applicable law.

The Legacy Loans PPIF will also be required to maintain a Debt Service Coverage Account ("DSCA") (as stipulated in the FDIC Guaranteed Secured Debt for PPIF Term Sheet) to ensure that working capital for each Legacy Loans PPIF is sufficient to meet anticipated debt servicing obligations, interest expenses and operating expenses. Upon the sale of a pool of assets, a portion of cash proceeds will be retained until cash flow from the pool has fully funded the DSCA, at which point the escrowed cash will be released to the selling bank.

LEGACY SECURITIES PROGRAM

The Legacy Securities Program contains two distinct aspects: (1) the expansion of TALF for Legacy Securities and (2) the creation of Legacy Securities PPIFs.

Expansion of TALF for Legacy Securities

The Term Asset-Backed Securities Loan Facility was initially established by the Federal Reserve Bank of New York in 2008 to provide non-recourse financing to eligible borrowers that own newly-issued asset-backed securities. Currently under TALF, the Federal Reserve Bank of New York makes non-recourse loans secured by eligible asset-backed securities backed by auto loans, student loans, credit card receivables, equipment loans and certain other types of loans. If a TALF loan is not repaid at maturity, the Reserve Bank may sell the collateral securities to a special purpose vehicle created by the Reserve Bank in return for a senior note. Initially, the SPV will fund such purchases with the proceeds of $20 billion of subordinated debt issued to Treasury.

Under the Legacy Securities Program, TALF will be expanded to fund purchases of Legacy Securities. These securities are expected to include certain non-agency residential mortgage-backed securities issued prior to 2009 that were originally rated AAA, as well as outstanding commercial mortgage-backed securities and asset-backed securities issued prior to 2009 that are currently rated AAA. The applicable advance rates will be determined at a later date and will reflect the riskiness of the assets provided as collateral.

Lending rates, minimum loan sizes and loan durations for the TALF loans funding Legacy Securities have not been determined. These and other terms will be informed by discussions with market participants. However, the Federal Reserve is working to ensure that the duration of these TALF loans takes into account the duration of the underlying securities.

Legacy Securities PPIFs

Securities eligible for the Legacy Securities Program ("Eligible Securities") include commercial mortgage-backed securities and residential mortgage-backed securities issued prior to 2009. These securities must have been originally (but not currently) rated AAA or an equivalent rating by two or more nationally recognized statistical rating organizations without ratings enhancement. Eligible Securities must be secured directly by actual mortgage loans, leases or other assets, and not by other securities (other than certain swap positions, as determined by Treasury). The loans and other assets underlying any Eligible Security must be situated predominantly in the United States. Eligible Securities may be purchased solely from financial institutions from which the Secretary of the Treasury may purchase assets pursuant to Section 101(a)(1) of the Emergency Economic Stabilization Act. For that purpose, the term "financial institution" is defined to mean any institution, "including, but not limited to, any" depository institution, broker-dealer or insurance company established and regulated under United States law and having significant operations in the United States.

Treasury expects to approve approximately five fund managers with a "demonstrated track record" in purchasing and managing legacy assets. In order to be eligible to apply to be a fund manager, applicants must be pre-qualified based upon criteria that are expected to include (1) demonstrated capacity to raise at least $500 million of private capital; (2) demonstrated experience investing in Eligible Securities; (3) a minimum of $10 billion (market value) of Eligible Securities under management; (4) demonstrated operational capacity to manage the Legacy Securities PPIFs in a manner consistent with Treasury's stated Investment Objective[4] while also protecting taxpayers; and (5) headquarters in the United States. Applicants will be asked to describe any circumstances that would cause them to deviate from a long-term buy and hold strategy. An applicant must submit its application to Treasury no later than April 10, 2009. Treasury expects to inform preliminarily approved applicants on or prior to May 1, 2009. Following preliminary approval, applicants will have a limited period of time to raise at least $500 million of private capital and demonstrate committed capital before receiving final approval from Treasury.

Treasury will provide equity capital to each Legacy Securities PPIF to match equity capital provided by the private vehicle. The Legacy Securities Program contemplates that such matching will be on a one-to-one basis, but the fund manager may seek less Treasury capital, subject to a minimum that has yet to be determined. Investors in the private vehicle may be given voluntary withdrawal rights at the level of the private

[4] Treasury's stated Investment Objective is to generate attractive returns for taxpayers and private investors through long-term opportunistic investments in accordance with a predominantly long-term buy and hold strategy, but with consideration of other strategies involving limited trading.

vehicle, subject to limitations to be agreed with Treasury, including that no private investor may have the right to voluntarily withdraw from a private vehicle investing in a Legacy Securities PPIF prior to the third anniversary of the first investment by such vehicle.

Treasury equity capital will be drawn down in tranches to provide for anticipated investments, subject to limitations to be agreed with Treasury. Except as otherwise agreed, Treasury equity capital may only be drawn down at the same time and in the same proportion as private capital is drawn down. Treasury will receive warrants as required under TARP. The terms and amounts of such warrants are not specified, but will be determined in part based on the amount of debt financing taken.

In addition to equity matching by Treasury, each fund manager will have the option to obtain for its Legacy Securities PPIF non-recourse loans from Treasury in an aggregate amount of up to 50% of a Fund's total equity capital, secured by the Eligible Securities held by the applicable Legacy Securities PPIF. Such debt financing will not be available for any Legacy Securities PPIF in which the private investors have voluntary withdrawal rights. Treasury will consider requests for debt for Legacy Securities PPIF in the amount of up to 100% of the PPIF's total equity capital, subject to further restrictions on asset level leverage, redemption rights, disposition priorities, and other factors Treasury deems relevant. This debt will have the same duration as the underlying PPIF and will be repaid on a pro-rata basis as principal repayments or disposition proceeds are realized by the PPIF. These loans will be structurally subordinated to any TALF financing extended by the Federal Reserve Bank of New York.

Proceeds received by a Legacy Securities PPIF will be divided proportionately between Treasury and the applicable private vehicle based on relative equity contributions. Treasury expects to define final terms and conditions for the Legacy Securities PPIFs prior to fundraising. Such PPIFs will be managed by the fund managers, not Treasury, but fund managers will be required to present monthly reports to Treasury on Eligible Securities purchased, Eligible Securities disposed, current valuations of Eligible Securities and profits/losses on Eligible Securities included in each Legacy Securities PPIF. Prices of Eligible Securities for reporting purposes must be tracked using third party sources and annual audited valuations by a nationally recognized accounting firm. Treasury will also retain the right to cease funding of committed but undrawn Treasury equity capital and debt financing in its sole discretion.

Fund managers will be subject to restrictions with respect to affiliate transactions. No fund manager may purchase Eligible Securities from sellers that are affiliates of such fund manager, any other Program fund manager or their respective affiliates, or any private investor that has committed at least 10% of the aggregate private capital raised by such fund manager. In addition, private investors may not be informed of potential acquisitions of specific Eligible Securities prior to acquisition.

Like Legacy Loans PPIFs, fund managers must also agree to waste, fraud and abuse protections for the Legacy Securities PPIF to be defined by Treasury as well as provide access to relevant books and records of the Legacy Securities PPIF for Treasury, the Special Inspector General of the TARP, the Government Accountability Office and their respective advisors and representatives.

FEES

In addition to the guarantee fee discussed above, under the Legacy Loans Program, the FDIC will be reimbursed for all expenses related to conducting auctions of asset pools. The FDIC will also receive ongoing administration fees from the Legacy Loans PPIFs for oversight functions performed by the FDIC. Under the Legacy Securities Program, fund managers may charge private investors fees in their discretion, which Treasury will consider in evaluating applications by private asset managers. For Treasury equity capital, Treasury will accept proposals for fixed management fees to apply as a percentage of equity capital contributions for invested equity capital.

These fees, along with Treasury's share of PPIF expenses, will be paid solely out of distributions with respect to Treasury equity capital. Any fees paid to a fund manager or its affiliates in connection with a PPIF other than management or incentive fees charged to Treasury or private investors should accrue to the benefit of Treasury and private investors on a pari passu basis based on equity capital commitments.

The FAQs for both the Legacy Loans Program and the Legacy Securities Program state that executive compensation restrictions will not be applicable to passive private investors in PPIFs. With respect to fund managers receiving fees from PPIFs, both Treasury Secretary Geithner and FDIC Chairperson Blair have indicated that these existing executive compensation limitations likewise should not be applicable. The situation with respect to financial institutions that sell assets under the Legacy Loans Program or Legacy Securities Program has not been specifically addressed in the materials posted by Treasury and the FDIC to date, although in the FDIC conference call on March 26, 2009, Chairperson Bair opined that the application of the executive compensation restrictions in this context, where banks are selling assets at market, appeared to be inappropriate.

CONCLUSION

The Legacy Loans Program and Legacy Securities Program provide an important framework to attract private capital into the market for distressed legacy real estate-related assets, facilitate price discovery and eventually free banks currently holding these assets to increase lending. Although some details remain unsettled, the amount of public financing offered under the Program presents the potential for attractive investment opportunities for private investors, as well as much needed guidance on Treasury's plan to restore health to the financial system.

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