



FDIC Legacy Loans Program – Investor Conference Call

April 9, 2009. The FDIC held a conference call this morning for potential investors in the Legacy Loans Program (LLP). The purpose of the call was to allow interested investors the opportunity to ask questions and provide verbal comments. Although the FDIC has encouraged small investor participation, it remains difficult to ascertain the size range of loan pools (will there be loan pools for sale under \$100 million?). On this call FDIC representatives stated, without further detail, the size of the loan pools offered will have to be “sufficient to make the transaction economically feasible.”

The bottom line is the details of the program will not be known for several weeks. In the meantime, here is a brief summary of what we learned from the call:

- Recall from our [prior Alert](#) [see below], the LLP involves Treasury and the FDIC establishing a series of funds with private investors known as a Public Private Investment Fund (PPIF) to purchase troubled and illiquid loans and other assets in sized pools from insured banks and thrifts, under criteria established by FDIC. This program will be for open institutions and will not include failed/FDIC received banks.
- While the comment period ends this Friday, April 10th, once the FDIC publishes rules for the LLP in the Federal Register there may be an additional statutory period for comments. FDIC staff noted that over the next few weeks more information will be forthcoming as to the program specifics, including bidder qualification and terms of the “deal documents.” However, if there is an additional comment period the commencement of the program could be months away.
- The FDIC expects the first assets sold in the program to include the “most toxic” commercial real estate mortgages (versus performing or other classes of collateral or REO). It has not been determined whether mezzanine loans will be part of the LLP program.
- A PPIF will buy loan pools with a combination of shared equity (with Treasury) and debt issued by the PPIF. It is yet to be determined whether the debt issued by the PPIF will include a note issued by the selling bank, publicly issued debt or a choice of one or the other. Comments provided by interested investors also suggest the use of third party lenders.
- In response to a question regarding funding asset management after closing, FDIC staff responded that the debt issued by the PPIF will be structured to match the cash flow attributes of the purchased loan pool. An FDIC staff person stated that

- the costs for assets managers will be “taken out of the waterfall for the fund [PPIF].”
- When the details of the LLP are released they will include reporting requirements and standards, loan modification standards and the oversight process for PPIFs and servicers.
 - The guarantee fee paid to the FDIC will be used to cover the operational costs and anticipated losses of the program, with the fee varying based on the risk of each portfolio.
 - The private investor in each PPIF will have control over decision making on asset management, within certain restrictions and covenants that are set forth in the deal documents. Those restrictions will be tailored to each asset class and will be disclosed to investors during the due diligence period well prior to the bid date.
 - There may be provisions for additional working capital through an open credit with the government on a case by case basis to fund continuing costs of managing and modifying assets.
 - The FDIC stated that all loans will be sold on a servicing released basis, with the PPIF or new servicer entering into a “sub-servicing agreement.” There was no discussion as to whether separate consideration or value would be placed on the servicing rights.
 - The due diligence, end-to-end timing and bid specifics have yet to be worked out. The comments provided to FDIC will help guide the program specifics. It was very unclear at this point whether the due diligence process would be similar to the open process we see on competitive bid pools offered by DebtEx and Eastdil Secured etc., or include pre-packaged due diligence provided by third party FDIC vendors. The FDIC said it was looking for advice in this area and would review comments on the same.
 - Independent valuation firms will provide cash flow pro-forma of each loan pool to bidders as part of the due diligence process.

To listen to the **FDIC Investor** call in its entirety, go here:

<http://www.vodium.com/MediapodLibrary/index.asp?library=pn100673>

Our **March Alert** is here: http://www.corpcounselgroup.com/pdf/CCG_CRE_News_March_2009.pdf

Contact me anytime to discuss this information:

Patrick Valentino, CCG Real Estate Team
Corporate Counsel Group LLP
505 Montgomery Street, 11th floor
San Francisco, California 94111
Tel: 415.567.8025
Fax: 415.520.9870
patrick@corpcounselgroup.com
www.corpcounselgroup.com

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