

Sponsor: Treasury, FDIC, New York Fed

Summary: Purchase of toxic loans, securities and assets

- Two programs: Legacy Loans Program and Legacy Securities Program
- Purchases through Public-Private Investment Funds – each a PPIF
- **Treasury Details at:** www.financialstability.gov/html
- **FDIC Details at:** www.fdic.gov/llp/index/html.
- **TALF Details at:** www.newyorkfed.org/markets/talf.html.

Key Information

Announced: March 23, 2009

Asset Manager Applications: Due April 10, 2009

Legacy Loans Program Comments Due: Unknown

First Legacy Loans Program Auction: Unknown

Legacy Loans Program

Eligibility

- Eligible Sellers: Insured U.S. banks and insured U.S. savings associations
- Eligible Purchasers: Must pre-qualify with FDIC
- Eligible Assets: Currently targeted to mortgage-related whole loans – residential and commercial. Located predominantly in U.S.

Fees

- Administrative fee to FDIC
- Annual guarantee fee for FDIC-guaranteed debt to FDIC
- 5% deposit must accompany each bid (5% of bid value)

Other Matters

- Servicing: Retained or released to be determined by winning bidder
- Mortgage Modification: Residential loans subject to Making Home Affordable
- Compliance: FDIC oversight and Treasury oversight – extent unknown
- Affiliate Restrictions: Cannot purchase legacy assets from an affiliate of the purchaser (in pooled funds, cannot purchase from an affiliate of a 10% equity owner)

Structure

- Each investment (one large seller pool or pool of several smaller sellers) executed through a PPIF
- Treasury and winning bidder invest capital on a 50/50 basis
- Treasury also receives a warrant
- PPIF can issue FDIC guaranteed debt
- FDIC will set PPIF debt-to-equity ratio based on independent valuation. No more than 6:1
- PPIF's FDIC guaranteed debt may be consideration to seller for acquired assets or may be sold to third parties
- PPIF must maintain a debt service coverage ratio; PPIF will trap cash if necessary to satisfy ratio

Legacy Securities Program

Eligibility

- Eligible Sellers: "Financial Institutions" defined under TARP:
 - U.S. institutions subject to U.S. regulation (includes, at least, banks, savings associations, credit unions, security brokers or dealers and insurance companies)
 - U.S. branches of foreign financial institutions with significant U.S. operations should qualify
 - Institutions owned by foreign governments or central banks excluded with limited exception
- Eligible Purchasers: No apparent restrictions
- Eligible Assets: Residential or commercial MBS, issued prior to Jan 1, 2009, originally rated AAA or equivalent, secured by assets predominantly in U.S., backed by loans (not synthetic, not backed by other securities or derivatives)
- Asset Managers:
 - Able to raise \$500 million private capital
 - Experience in eligible assets
 - Minimum \$10 billion market value eligible assets under management
 - Operational capacity to manage eligible assets
 - Headquartered in U.S.
 - Must apply by April 10, 2009
- Affiliate Restrictions: Cannot purchase legacy assets from an affiliate of the purchaser (in pooled funds, cannot purchase from an affiliate of a 10% equity owner)

Structure

- Asset Manager hired by Treasury sets up a PPIF
- PPIF bids on securities
- Purchase price funded 50/50 by PPIF and Treasury
- PPIF can obtain a loan from Treasury (100% of Treasury's capital investment, up to 200% of Treasury's capital investment)
- PPIF can obtain TALF funding – terms to be released
- Asset Manager to set fees

Open Questions

- Are executive compensation restrictions applicable? If so, for whom? Releases indicate will not be applicable for "passive investors" (see our exec comp cheat sheet and client alerts)
- What is the timing – for more information? For first auction? For guidelines?
- Accounting impacts? Will bids set new "marks"? Will purchase prices set new "marks"?
- How will the Treasury warrant work? Potential dilutive impact to investment? Ability of purchasers in pooled investment vehicles to exit?
- Extent of government oversight?
- Legal formation of PPIFs?
- Compliance obligations for investors?

Next Steps

- FDIC conducting technical briefings
- FDIC to issue draft rule for comment
- Treasury to issue guidelines and FAQs
- Asset Managers to submit applications – initial results back to them May 1, 2009
- NY Fed to provide TALF updates