DechertOnPoint

April 2009 / Issue 17 (updated)

A legal update from Dechert's Finance and Real Estate Group

An Analysis of the Department of Treasury's Public-Private Investment Program

The Public-Private Investment Program (the "PPIP"),[1] the latest component of the Financial Stability Plan,[2] was announced by the U.S. Department of Treasury (the "Treasury") on March 23, 2009. The PPIP is part of the Treasury's ongoing effort to improve the stability and functioning of the financial system and to spur lending and the flow of credit. The PPIP is targeted at "legacy assets," predominantly comprised of residential and commercial mortgage loans held directly on the books of banks ("legacy loans") and securities backed by portfolios of residential and commercial mortgage loans ("legacy securities"), which continue to pose a roadblock to financial recovery by hindering the ability of financial institutions to raise new capital and lend money. This is primarily due to the difficulty faced in properly valuing these assets and the inability of investors to obtain private financing on reasonable terms to purchase them.

The PPIP is designed to encourage private investors to form Public-Private Investment Funds ("PPIFs") that will purchase legacy assets. Such PPIFs will be funded with TARP[3] capital to provide government equity co-investment capital as well as government or FDIC-guaranteed debt financing. The PPIP will use $75 to $100 billion of TARP capital along with capital from private investors to generate $500 billion to purchase legacy assets, which may be expanded to $1 trillion in the future. The goal of the program is to facilitate the valuation and purchase of these legacy assets by private investors, thereby renewing investor confidence in these types of assets and stimulating additional purchases, which will ultimately lead to increased lending by financial institutions.

The PPIP involves the Treasury, the Federal Reserve, and the Federal Deposit Insurance Corporation (the "FDIC") and consists of two programs, the "Legacy Loans Program" and the "Legacy Securities Program," designed to address legacy loans and legacy securities, respectively. The diagram that follows sets forth the general program structure.[4]

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1 For additional information on the PPIP, see the Treasury's white paper, available at: www.treas.gov/press/releases/reports/ppip_whitepaper_032309.pdf.

2 For additional information on the Financial Stability Plan, see the Treasury's Fact Sheet, available at: www.financialstability.gov/docs/fact-sheet.pdf.

3 For additional information on TARP, see the issue of *DechertOnPoint* related to TARP, available at: www.dechert.com/library/FS%20Finance%20and%20Real%20Estate%20Emergency%20Economic%20Stabilization%_20Act.pdf.

4 U.S. Department of the Treasury, www.treas.gov/press/releases/tg65.htm.

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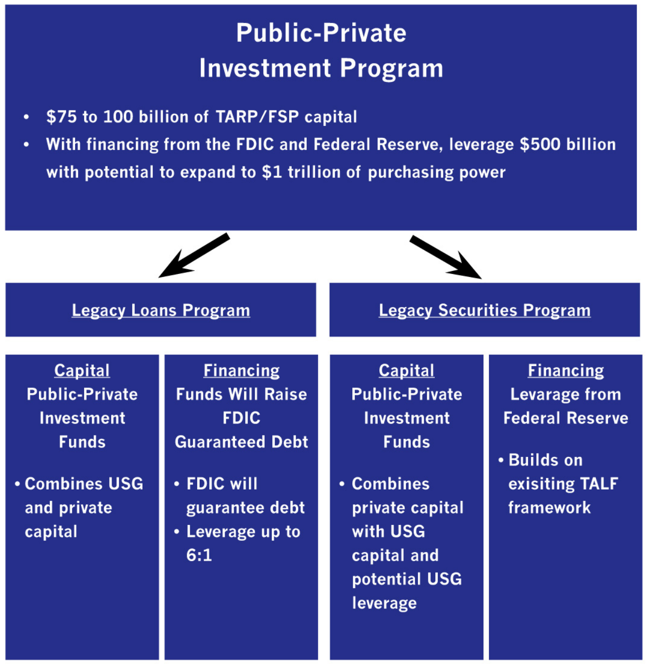

Source: U.S. Department of the Treasury

Legacy Loans Program

The Legacy Loans Program is designed to increase private demand for and facilitate market-priced sales of loans and other assets ("Eligible Loan Assets") by encouraging private investors (e.g., individuals, mutual funds, pension plans, insurance companies, and other long-term investors) to purchase such assets by providing Treasury equity co-investment capital and FDIC debt guarantees.[5] Eligible Loan Assets and any supporting collateral must be situated predominantly in the United States. The goal of this program is to restore maximum confidence for the participant bank's depositors, creditors, investors, and other counterparties.

The FDIC will provide oversight related to the operation of the PPIFs, which will be formed by private investors to purchase pools of legacy loans from insured depository institutions. Pursuant to criteria to be established by the Treasury and the FDIC, U.S. banks and U.S. savings associations of all sizes will be eligible to participate in the program and potential private investors will be pre-qualified by the FDIC to bid on the assets in an auction. Banks or savings associations owned or controlled by a foreign bank or company are not eligible. To protect taxpayer investment, equity financing for the PPIFs will be provided jointly by the private investors and the Treasury on a 50/50 basis and debt financing issued by the PPIFs to fund asset purchases will be guaranteed by the FDIC in return for a guarantee fee. The FDIC's guarantee of the debt will be collateralized by the purchased assets. It is expected that the debt will initially be placed at the participant bank which may then choose to resell the debt into the market.

While current guidance has not been issued with respect to all entities involved, the executive compensation restrictions contained in the Emergency Economic Stabilization Act of 2008 ("EESA") will not apply to passive private investors in the Legacy Loans Program.

The Legacy Loans Program involves a four-step process:

- Step 1: Identification of Assets – Financial institutions will identify which legacy assets to sell (e.g., a pool of loans) and will work with their primary regulator to evaluate the assets and the financial impact of the proposed sale and to demonstrate that such assets meet the requirements of the Treasury and the FDIC. The FDIC, in consultation with third party valuation firms, will then analyze the assets to determine the amount of debt funding it is willing to guarantee. The FDIC will not provide debt guarantees on financing in excess of a 6-to-1 debt-to-equity ratio.

- Step 2: Auctioning of Assets – The FDIC will auction off the legacy loans and the selling bank will have the option to accept or reject the highest bid within a pre-determined time frame. The successful bidder will form a PPIF and the Treasury will fund up to fifty percent (50%) of the equity requirement of the purchase. Subject to a to-be-determined minimum, the private investors may choose to take less than the initially targeted 50% Treasury equity. The Treasury will receive warrants in the PPIF but will have no control rights in the PPIF. The Treasury and the private investors will share profits and losses in proportion to equity invested. Bidders in the auction will be subject to FDIC approval, must provide a 5% refundable cash deposit with their bid, and will be subject to restrictions on bidding on assets sold by either affiliates or contributors of 10% or more of the PPIF's private capital.

5 For additional information on the Legacy Loans Program, see the Treasury's Summary of Terms and FAQs, available at: http://www.treas.gov/press/releases/reports/legacy_loans_terms.pdf and /www.treas.gov/press/releases/reports/legacy_loans_faqs.pdf.

- Step 3: FDIC Guarantee – It is anticipated that the successful bidder will issue FDIC-guaranteed debt to the selling bank to finance the non-equity balance of the purchase price. The seller will have the option to hold the debt or resell it. Each PPIF will be required to maintain a debt service coverage account to ensure sufficient working capital to meet debt servicing obligations and interest and operating expenses, which will be funded from asset cash flow.

- Step 4: Private Management – Subject to strict FDIC oversight and using approved asset managers, the purchased legacy loans will be managed by the PPIF until final liquidation. The FDIC will be paid an on-going administrative fee by the PPIFs for its oversight.

Hypothetical Example:

- Step 1: A bank identifies for sale a pool of residential mortgages with a $100 face value. The FDIC analyzes the pool and determines the amount of debt funding it is willing to guarantee—this example assumes the maximum 6-to-1 debt-to-equity leverage ratio.

- Step 2: The pool is auctioned off by the FDIC to the highest private investor bidder—this example assumes a high bid of $70. If the bid is accepted by the bank, the successful bidder forms a PPIF to purchase the pool and, assuming the maximum Treasury contribution, the private investor and the Treasury each contribute 50% of the equity funding to the PPIF. In this example, the private investor and the Treasury each invest $5.

- Step 3: The PPIF issues $60 of FDIC-guaranteed debt to finance the balance of the purchase price.

- Step 4: The PPIF manages and services the pool and its disposition.

Role of the FDIC

The FDIC will charge the PPIFs an annual fee for providing the debt guarantee, and the PPIFs will also be responsible for paying the FDIC ongoing administrative fees. The FDIC will oversee the terms of formation, funding and operations of the PPIFs, including establishing the leverage ratios applicable to each pool of assets, monitoring due diligence and preparation of marketing materials, and conducting the auctions for the assets. Third-party valuation firms will provide the FDIC with advice in determining asset valuation and appropriate leverage ratios based on expected cash flows, risk of the underlying assets, expected lifetime losses, geographic exposures, maturity profiles and other relevant factors. The FDIC will also establish criteria to identify eligible assets, and will be responsible for managing the associated debt guarantees. Once the assets are purchased, each PPIF will be required to manage and service the assets within parameters established by the FDIC and the Treasury and provide regular reports to the FDIC.

FDIC Request for Comments

The FDIC is seeking public comments to the proposed Legacy Loans Program from now through April 10, 2009, and seeks to release final details and launch the program as quickly as possible thereafter. The FDIC is seeking comments on all aspects of the program but has formulated questions of particular concern for parties to consider. These questions include, in part, the following:[6]

- Which asset categories should be eligible for sale through the program? Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale?

- 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?

- 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 can the FDIC best encourage a broad and diverse range of investment participation? Similarly, what type of auction process facilitates the broadest investor participation?

- What parameters of the note and its rate structure would be essential for a potential private

[6] For additional information on the public comment process, see the FDIC's Legacy Loans Program – Program Description and Request for Comments, available at: www.fdic.gov/llp/progdesc.html.

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capital investor to know at the time of the equity auction to provide equity?

- 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?

- Should the FDIC guarantee fee be adjusted based on the risk characteristics of the underlying pool or other criteria?

- 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?

- Should the program permit multiple selling banks to pool assets for sale? If so, what constraints should be applied to such pooling arrangements?

- 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?

- What should the relative role of the government and private sector be in the selection and oversight of asset managers?

- 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?

- Should data used by the independent valuation consultant, as well as results of such consultant's analysis, be made available to potential sellers and/or bidders?

Legacy Securities Program

The Legacy Securities Program is designed to unfreeze the secondary market for legacy securities such as non-agency residential mortgage-backed securities ("RMBS") and commercial mortgage-backed securities ("CMBS") by encouraging private investor purchases, thereby affording financial institutions a greater opportunity to dispose of troubled securities and stimulating the extension of new loans by such institutions. Debt financing will be provided by the Treasury and by the Federal Reserve under the planned expansion of the recently launched Term Asset-Backed Securities Loan Facility ("TALF") (such expansion, "Legacy TALF").[7] Matching equity capital and debt financing will be available from the Treasury under the Legacy Securities PPIP program.[8]

Legacy Securities PPIP

The Treasury will also provide equity co-investment and non-recourse loans to PPIFs in order to provide immediate support to the market for legacy non-agency RMBS and CMBS. In order to qualify, such RMBS and CMBS must have been issued prior to 2009 and have an initial rating of AAA or an equivalent rating by two or more nationally recognized statistical rating organizations without ratings enhancement and must be secured directly by the actual mortgage loans, leases or other assets and not other securities (other than certain swap positions as determined by the Treasury) ("Eligible Securities Assets"). The loans and other assets underlying any Eligible Securities Asset must be situated predominantly in the United States, which limitation is subject to further clarification by the Treasury. Eligible Securities Assets must be purchased solely from financial institutions from which the Secretary of the Treasury may purchase assets pursuant to Section 101(a)(1) of EESA.[9] While current guidance has not

7 For additional information, see the issue of *DechertOnPoint* related to TALF, available at: http://www.dechert.com/library/FS_Finance_and_Real_Estate_3-09_TALF.pdf

8 For additional information on the Legacy Securities Program, see the Treasury's Summary of Terms and FAQ, available at: www.treas.gov/press/releases/reports/legacy_securities_terms.pdf and www.treas.gov/press/releases/reports/legacy_securities_faqs.pdf.

9 Section 101(a)(1) of the Emergency Economic Stabilization Act defines "financial institution" as any institution, including but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.

been issued with respect to all entities involved, the executive compensation restrictions contained in EESA will not apply to passive private investors in the Legacy Securities PPIP. The goal of these PPIFs is to generate attractive returns for taxpayers and private investors through long-term opportunistic investments.

Equity Co-Investment with Qualified Fund Managers

Under the Legacy Securities PPIP program, private investment managers will apply for qualification as a Fund Manager ("FM").[10] Applicants will be pre-qualified based upon criteria that are expected to include:

- a demonstrated capacity to raise at least $500 million of private capital;
- a minimum of $10 billion (market value) of Eligible Securities Assets under management;
- demonstrated experience investing in and operating Eligible Securities Assets; and
- headquarters in the United States.

Treasury plans to evaluate prospective FMs "holistically" based on the criteria set forth above and will not automatically disqualify a FM if it is unable to meet any one of the criteria. Treasury also encourages the participation of small, veteran-, minority- and women-owned private asset managers to partner with larger asset managers, if necessary, in order to meet the criteria identified above.

Additionally, the Treasury application requires applicants to provide, among other things, detailed information regarding the applicant's existing organizational structure and background, specific detail on management personnel, reference contacts for the applicant's three largest limited partners, and the top three custodians with which the applicant processes assets. The applicant must also provide details regarding the proposed PPIF, including the proposed organizational structure, material terms of the operating agreement, an indication of whether the applicant would seek Treasury debt financing in excess of 50% of the total equity capital, and any fees the applicant proposes to charge private investors. The applicant must also describe its existing investment strategies and how it proposes to apply those strategies in its capacity as an FM, as well as the risk management metrics and governance and management safeguards that it will employ as an FM. FMs must also agree to waste, fraud, nd abuse protections for the PPIF to be defined by the Treasury.

The Treasury expects to approve approximately five FMs but may add additional FMs depending on the quality of applications received. It is anticipated that preliminarily approved FMs will have approximately twelve (12) weeks to raise at least $500 million of private capital and demonstrate committed capital to target Eligible Securities Assets before receiving final approval. Upon final approval, the FMs will be eligible to receive matching equity capital from the Treasury under the PPIP on a fully side-by-side basis with the private capital (i.e., the Treasury equity capital will be drawn down at the same time and in the same proportion as private capital is drawn down to provide for anticipated investments). The Treasury and the private investors will generally share any profits or losses on a pro-rata basis in accordance with equity capital investments, except that the Treasury will take warrants as required by EESA to protect the interests of taxpayers. The terms of such warrants will be evaluated on a case-by-case basis.

Senior Debt Financing

Provided that the private investors do not have voluntary withdrawal rights,[11] FMs will have the option to obtain non-recourse loans from the Treasury in an aggregate amount of up to 50% of the total equity capital of the PPIF and secured by its Eligible Securities Assets.[12] The Treasury will consider FM requests for additional debt financing of up to 100% of a PPIFs total equity capital subject to restrictions on asset level leverage, withdrawal rights, disposition priorities, and other relevant factors determined on a case-by-case basis. Treasury financing is only available if private investors do not

[10] Applications for Fund Managers may be found at www.financialstability.gov/ and must be submitted to the Treasury by April 24, 2009. The Treasury is expected to announce preliminary approvals on or before May 15, 2009.

[11] Private investors may have voluntary withdrawal rights, subject to limitations to be agreed with the Treasury including no withdrawal right prior to the third anniversary of the first investment in the PPIF.

[12] TALF does not permit the granting of subordinated security interests in eligible collateral. Therefore, some accommodation will need to be made to either the PPIP or TALF to resolve this inconsistency.

have voluntary withdrawal rights. This senior debt (i) will be funded concurrently with drawdowns of equity commitments, (ii) will accrue interest at an annual rate to be determined by the Treasury, (iii) will have the same duration as the PPIF,[13] (iv) will be repaid on a pro-rata basis as principal repayments or disposition proceeds are realized by the PPIF, and (v) will be structurally subordinated to any TALF financing received by the PPIF.[14] Treasury debt will accrue interest at an annual rate to be set by Treasury, which will reflect the total leverage of the PPIF and current market conditions.

Fund Management

The FMs will manage the PPIF (predominately following a long-term, buy-and-hold strategy, although the Treasury may approve other strategies involving limited trading) and control the process of asset selection, pricing, liquidation, trading, and disposition. The FM must provide access to relevant books and records of the PPIF to enable appropriate oversight and must provide monthly reports to the Treasury on Eligible Securities Assets purchased and disposed, current valuations of Eligible Securities Assets, and profits/losses on Eligible Securities Assets.

Management Fees

FMs may charge private investors management and incentive fees which must be detailed in the FM application for consideration by the Treasury. The Treasury will also consider proposals for fixed management fees with respect to the Treasury's equity capital.

Hypothetical Example:

- Step 1: A private investment manager applies for qualification as an FM and is pre-qualified to raise private capital to participate in a PPIF with the Treasury.
- Step 2: The FM raises $100 of private capital for the PPIF. The Treasury provides a dollar-for-dollar match of this private capital and therefore contributes a $100 equity co-investment on a side-by-side basis with the private investors to the PPIF.
- Step 3: The FM requests and receives a $100 loan from the Treasury to the PPIF (50% of the total equity capital of the PPIF) secured by the Eligible Securities Assets purchased by the PPIF. The FM may also request additional loans of up to $100 from the Treasury to the PPIF (resulting in a combined loan amount equal to 100% of the total equity capital of the PPIF). As previously noted, the PPIF may also access additional debt financing under TALF, any other Treasury program, or from private sources.
- Step 4: The PPIF has $300 (or, in some cases, up to $400) in total capital and begins purchasing Eligible Securities Assets[15]—this example assumes the PPIF does not access any other funding sources.
- Step 5: The FM manages the PPIF through disposition and will have complete discretion in investment decisions.

Legacy TALF

Through the current iteration of TALF, the Federal Reserve Bank of New York provides non-recourse loans to investors in certain types of newly-issued asset-backed securities ("ABS"). The first TALF fundings occurred on March 25, 2009 and April 14, 2009 and additional fundings are planned through December 31, 2009. Once it is launched, Legacy TALF will incorporate assets that also are eligible for the Legacy Securities Program, including certain securities backed by non-agency residential and commercial mortgage loans. Legacy TALF is intended to build investor confidence and promote the purchase of legacy securities—thereby increasing market liquidity—by providing leverage through the use of non-recourse loans. Legacy TALF debt financing will help fund purchases of legacy securities by PPIFs.

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13 FMs will propose the term of a PPIF with the intention to maximize returns for taxpayers and private investors, but no greater than 10 years, subject to extension with the Treasury's consent.

14 The PPIF may be eligible to take advantage of the expanded TALF program, any other Treasury program, and private debt financing, provided that the Treasury equity capital and private equity capital must be leveraged proportionately from any private debt financing.

15 FMs may not purchase Eligible Assets from affiliated sellers, from any other FM or its affiliates, or from any private investor that has committed at least 10% of the aggregate private capital raised by the FM.

TALF borrowers will need to meet eligibility criteria, presumably similar to those currently required under TALF. Other aspects of the program, such as asset risk "haircuts," lending rates, minimum loan sizes, and loan durations, will be determined at a later date after discussions with market participants. TALF does not impose executive compensation requirements on participating primary dealers or investors.

As with the Legacy Loans Program, the exact details and requirements of the Legacy Securities Program have not been finalized.

Tax Considerations

From a tax perspective, it would generally be desirable to structure the PPIF as a tax transparent vehicle, which would typically encompass a grantor trust, partnership or limited liability company. The tax goal would be to insure that any taxable income or gain will not attract any added tax burden at the investing entity level and any possible tax losses can "flow through" the entity and be of use to the investors. There is no guidance yet as to what restrictions the government may impose on the entity, which can affect the type of entity to be used. In addition, while the grantor trust vehicle is the simplest tax option, there are limitations on its use that may push the entity into being a partnership or limited liability company, and then there are added tax law restrictions that such entity must address in order to avoid application of the "publicly traded partnership" rules, which, if applicable, would cause the entity to be treated as a corporation for tax purposes.

Tax exempt and non-U.S. investors both may have concerns about investing directly into a PPIF that is a U.S. partnership. As a result, the use of a foreign feeder fund formed in a low-tax or no-tax jurisdiction that is structured as a non-U.S. corporation for U.S. tax purposes may be a preferable addition to the structure. For tax exempt investors, the feeder fund can eliminate unrelated business taxable income that would otherwise arise from investment in a partnership holding debt financed property, which would occur here. For foreign investors, there may be no added tax advantage for investment in the foreign feeder over the PPIF, but foreign investors generally prefer to invest in a non-U.S. corporation rather than a U.S. partnership to eliminate U.S. tax filing requirements that may be imposed upon them. Among the many tax reform proposals floated in the last few months there is one proposal to treat foreign feeder funds as U.S. corporations, although at this time, there is no certainty of enactment of any such proposal. Of greater concern is the need to avoid having the activity of the PPIF rise to the level of a U.S. trade or business rather than simply that of an investor, as those terms are defined in the tax law, since trade or business status can result in taxation of the foreign feeder, which makes its use disadvantageous. The trade or business issue is especially dependent upon what steps are taken to (i) restructure debt once acquired, (ii) monitor the underlying investments, and (iii) address default, all of which need to be reviewed.

Apart from tax issues relating to the entity and its tax treatment, the structure will raise issues as to taxability of the underlying income stream, characterization of income as ordinary income or capital gain, and risk of phantom taxable income (that is, taxable income with no offsetting cash flow) that are prevalent in similar investment funds. The PPIF also has to grapple with the tax impact of post acquisition modifications of the terms of the acquired instruments, which can trigger premature taxation of built in gain inherent in any instrument that has been acquired for a price less than its face as well as other tax concerns. Further assessment of the actual tax risks and rewards may be undertaken once the parameters of the fund are worked out.

Comparison Chart

The chart included at the end of this update (see Appendix A) compares key aspects of the Legacy Loans Program and the Legacy Securities Program, which are quite different, such as:

- What assets are eligible for purchase;
- Who are eligible sellers and buyers;
- Who qualifies as a fund manager and a private investor;
- What are the terms of the capital structure and debt financing;
- Whether the programs require Treasury warrants and what are the terms of the warrants;
- What is the role of the Treasury, FDIC and Federal Reserve;

- What are the asset selection, pricing and disposition criteria;
- How the PPIFs will be managed, and how assets will be serviced;
- What the investment strategies of the PPIFs are expected;
- How conflicts of interest will be limited;
- When the programs will start;
- What fees will be charged;
- Whether the executive compensation rules will apply; and
- What the PPIF structures and withdrawal rights will be.

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Comparison of Legacy Loans Program and Legacy Securities Program

	Legacy Loans Program	Legacy Securities Program
Eligible Assets	Pools of loans and other assets in substantially sized pools purchased from insured depository institutions meeting criteria established by the FDIC and Treasury with supporting collateral situated predominantly in the United States.	Non-agency RMBS and CMBS that were originally rated AAA or the equivalent issued prior to 2009 and secured directly by mortgage loans, leases or other assets (and not by securities) and are secured by collateral situated predominately in the United States. The program may evolve to include other classes of assets.
Eligible Sellers	U.S. banks and U.S. savings associations organized under the laws of the United States or any State, the District of Columbia, any territory or possession of the United States, Puerto Rico, Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands. Banks or savings associations owned or controlled by a foreign bank or company are not eligible.	Financial institutions from which the Secretary of the Treasury may purchase assets pursuant to Section 101(a)(1) of the Emergency Economic Stabilization Act of 2008.[1]
Eligible Buyers	To be formed Public-Private Investment Funds ("PPIFs").	To be formed Public-Private Investment Funds ("PPIFs").
Eligible Private Investors	Private investors are expected to include an array of different investors, including, but not limited to, financial institutions, individuals, insurance companies, mutual funds, publicly managed investment funds and pension funds. The FDIC will pre-qualify private investors to bid at auctions. Private investor groups must be approved by the FDIC, and cooperation between private investor groups will be prohibited once the auction process begins.	Treasury will initially pre-qualify approximately five FMs to raise capital from private investors. After the initial pre-qualification, the Treasury is considering approving additional FMs based on modified criteria. The Treasury has not released guidelines regarding who qualifies as a private investor. The Treasury is encouraging small, veteran-, minority- and woman-owned private asset managers to partner with other asset managers, if necessary, to meet the FM criteria related to assets under management and ability to raise private capital.

	Legacy Loans Program	Legacy Securities Program
Capital Structure	Equity: At least 50% provided by private investors and up to 50% provided by Treasury. Debt: Initially placed at participant bank. Participant bank will be able to resell debt into market if they choose. Debt Guaranty: FDIC guarantees PPIF debt up to 6-to-1 debt-to-equity ratio.	Equity: Treasury and PPIFs to contribute equity on a dollar-for-dollar basis. Treasury retains right to cease funding of committed but undrawn Treasury equity capital and debt financing in its sole discretion. Debt: Subject to certain limitations, Treasury will provide financing in an amount up to 50% of total equity capital and will consider requests for financing in an amount up to 100% of total equity capital. PPIFs may also qualify for debt financing under the expanded TALF program, other Treasury programs, and from private sources, provided that the Treasury capital and investors' private capital must be leveraged proportionately from such private debt financing sources, and subject to total leverage requirements and covenants. Debt Guaranty: None.
Treasury Warrants	Yes, consistent with the requirements of the Emergency Economic Stabilization Act.	Yes, as required by the Emergency Economic Stabilization Act, and determined in part by the amount of Treasury debt financing taken by a PPIF, and evaluated on a case-by-case basis.
FDIC Role	Oversee formation, funding and operation of PPIFs. Oversee and manage debt guarantees. Administer the auction process (including review and selection of winning bids). Approve private investors.	None.
Treasury Role	Oversees and manages equity contributions to PPIFs.	Provides equity and debt from TARP funds.
Federal Reserve Role	None.	Potential TALF lender.

	Legacy Loans Program	Legacy Securities Program
Debt Financing Terms	Debt is non-recourse. Total permitted leverage determined on a pool-by-pool basis, but not to exceed a 6-to-1 debt-to-equity ratio. Proposed financing terms and leverage ratios for each PPIF will be established by the FDIC and disclosed to potential investors as part of auction process. The FDIC will provide a guarantee of debt issued by the PPIFs, which guarantee is collateralized by assets purchased by the PPIFs. PPIFs must maintain a debt service coverage account to ensure working capital for each PPIF is sufficient to meet debt servicing obligations, interest expenses and operational expenses. A portion of the auction proceeds will be retained until cash flow has fully funded the debt service coverage account, at which point the escrowed cash will be released to the participant bank. Interest Rate: Not Specified. Maturity Date: Not Specified.	Debt is non-recourse. Financing provided by Treasury in an amount up to 50% of total equity capital, or 100% of total equity capital if the PPIF complies with restrictions on asset level leverage, withdrawal rights, disposition priorities and other factors the Treasury deems relevant, determined on a case-by-case basis. Treasury financing is only available if private investors do not have voluntary withdrawal rights. PPIFs may also qualify for debt financing under the expanded TALF program, other Treasury programs, and from private sources. Any TALF debt must be structurally senior to the Treasury debt. The maturity date of the Treasury debt matches the maturity date of the PPIFs, which will have a maximum 10-year term, subject to extension. Treasury debt will accrue interest at an annual interest rate to be determined by Treasury, which will reflect the total fund leverage and current market conditions. Interest rate and maturity date of expanded TALF debt remain to be determined.
Asset Selection Process	Legacy loans ultimately eligible for purchase will be determined by the participant banks, their primary regulators, the FDIC, and the Treasury.	FMs will have discretion regarding asset selection.
Asset Pricing Process	Established by auctions run by the FDIC, and determination of FDIC leverage ratio in conjunction with consultation with third-party valuation firms.	FMs will have discretion regarding asset pricing.

	Legacy Loans Program	Legacy Securities Program
Servicing and Fund Management	The FDIC summary of terms indicates that servicing will be provided by the participant bank, unless otherwise defined. However, the summary also indicates that the PPIFs will retain control of servicing throughout operations, subject to relevant agreements, and each PPIF will have asset managers and will service assets within parameters established by the FDIC and Treasury. The FDIC has separately indicated that it anticipates that participant banks will either sell the assets with servicing rights released or continue to initially service the assets under a sub-servicing agreement with the PPIFs. Each PPIF must agree to waste, fraud and abuse protections to be defined by the Treasury and the FDIC to protect taxpayers. Each PPIF must provide information to the FDIC in performance of its oversight role. Each PPIF must agree to provide access to information required by the Special Inspector General of the TARP and the Government Accountability Office.	PPIFs will be managed by the FM, not the Treasury. Qualification criteria for FM applicants are anticipated to include: (i) the capacity to raise \$500mm of private capital; (ii) experience investing in Eligible Securities Assets; (iii) a minimum of \$10 billion (market value) of Eligible Securities Assets under management; (iv) operational capacity to manage the funds; and (v) headquarters in the U.S. Treasury will evaluate FM applications on a holistic basis, and a failure to meet one criterion does not necessarily disqualify an applicant. FMs are required to present monthly reports to the Treasury describing assets purchased and disposed of, current asset valuations, and profits and losses on assets. Prices of assets must be tracked using third party sources and annual audited valuations by a nationally recognized accounting firm. FMs must agree to waste, fraud and abuse protections for the PPIFs to be defined by the Treasury to protect taxpayers. FMs must agree to provide access to relevant books and records of the PPIF for the Treasury, the Special Inspector General of the TARP, the G.A.O. and their respective advisors and representatives. Treasury expects that FMs will have 12 weeks to complete fund raising after being selected. However, if an FM is unable to raise sufficient private capital, the FM will not be eligible for the Treasury's equity match or debt financing. Treasury expects to define final terms and conditions for the PPIFs prior to fundraising.

	Legacy Loans Program	Legacy Securities Program
Investment Strategy	Assets are selected with a view to restoring maximum confidence for the participant bank's depositors, creditors, investors and other counterparties.	To generate attractive returns for taxpayers and private investors through long-term opportunistic investments. PPIFs will follow a long-term buy and hold strategy, but the Treasury will consider other strategies involving limited trading and PPIF-level hedging such as interest rate level hedging, as appropriate.
Asset Dispositions	Private capital investors will control and manage the assets until final liquidation, subject to strict oversight from the FDIC.	FMs will have discretion regarding asset liquidation, trading and disposition.
Conflicts of Interest	PPIFs may not purchase assets from sellers that are affiliates of investors in the PPIFs or from sellers that represent 10% or more of the aggregate private capital in the PPIFs.	FM may only purchase assets from sellers, and may only sell assets to buyers, who are not affiliates of the FM, any other FM or its affiliates or any private investor that has committed at least 10% of the aggregate private capital raised by such FM.
Program Start Date	The FDIC is seeking public comments from now through April 10, 2009, and will be communicating with stakeholders expeditiously. The FDIC will launch the Legacy Loans Program as quickly as possible.	Not Specified. However, FM applications are due April 24, 2009, and the Treasury anticipates selecting FMs by May 15, 2009.
Fees	FDIC will charge annual debt guarantee fee and annual administrative fee and will be reimbursed for oversight and auction expenses. A portion of the guarantee fee will be allocated to the Deposit Insurance Fund.	FMs may charge private investors management fees and incentive fees, which must be detailed in the FM application along with a proposed fee structure for the Treasury.
Executive Compen-sation	The executive compensation restrictions will not apply to passive private investors. Application of executive compensation restrictions to asset sellers and other participants is not currently addressed.	The executive compensation restrictions will not apply to passive private investors. Application of executive compensation restrictions to FMs and other participants are not currently addressed.

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	Legacy Loans Program	Legacy Securities Program
Withdrawal Rights and Other Fund Structure Provisions	To be determined.	The Treasury and a vehicle controlled by the FM through which private investors will invest in a PPIF (“Private Vehicle”) will be the sole investors in a PPIF. Private investors may be given voluntary withdrawal rights at the level of a Private Vehicle, subject to limitations agreed upon by the Treasury. No private investor may voluntarily withdraw from a Private Vehicle prior to the third anniversary of the first investment by the Private Vehicle. No voluntary withdrawal will be permitted if the PPIF obtains additional Treasury financing. The Treasury will request suggestions on structure from FMs, including whether realized capital may be recycled. Private Vehicles will likely be structured to allow “benefit plan investors,” within the meaning of Section 3(42) of ERISA will be eligible to participate as indirect investors.

1 Section 101(a)(1) of the Emergency Economic Stabilization Act defines “financial institution” as any institution, including but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.