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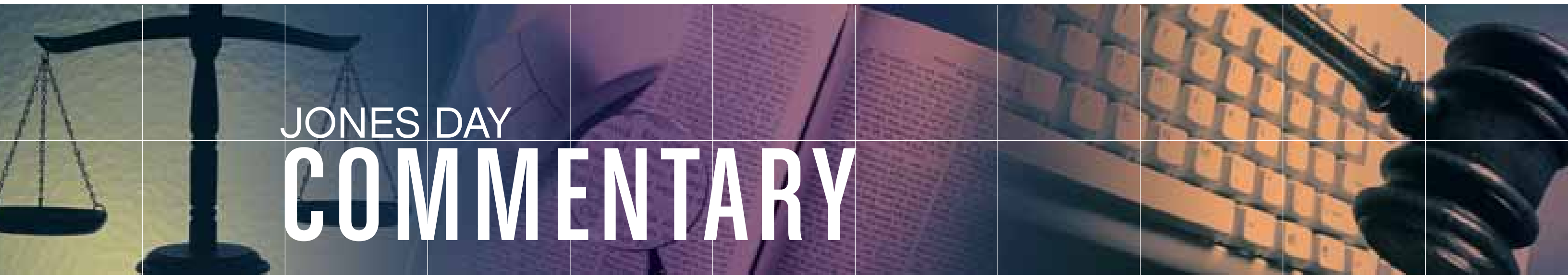

THE PUBLIC-PRIVATE INVESTMENT PROGRAM

The Public-Private Investment Program (the "PPIP") is a joint program of the United States Department of the Treasury (the "Treasury"), the Federal Deposit Insurance Corporation ("FDIC"), and the Board of Governors of the Federal Reserve System ("Federal Reserve"). It is an element of the Financial Stability Plan announced by the Treasury on February 10, 2009, and has two parts—the Legacy Loans Program and the Legacy Securities Program.

The exact funding of the PPIP and how the funds will be allocated is uncertain. *The Wall Street Journal* indicated on March 28, 2009, that the Treasury intends to allocate $75 billion of new Troubled Assets Relief Program ("TARP") funds to PPIP capital and loans, and that $25 billion of TARP funds would be used to support potentially up to $250 billion of Term Asset-Backed Securities Loan Facility ("TALF") loans to funds participating in the Legacy Securities Program.

As with other government programs announced over the last six months, there are still numerous, important terms to be worked out, and the terms and structure of the Legacy Loans Program are subject to the FDIC providing public notice of rulemaking and a public comment period. Accordingly, there will be continuing major developments before the PPIP can be utilized. Now is the time to help shape the PPIP and prepare for the opportunities it will provide.

LEGACY LOANS PROGRAM

The Legacy Loans Program seeks to encourage private investors to acquire legacy assets from FDIC-insured institutions ("banks") in an effort to provide participating banks with greater liquidity and less risk. Private investors will form individual Public-Private Investment Funds ("PPIFs"), with a "non-controlling" equity co-investment from the Treasury and a FDIC guarantee of debt financing, to purchase assets from participating banks. U.S. banks not controlled by foreign entities will be eligible for this Program. The FDIC has indicated that it may consider allowing foreign controlled institutions to participate, however.

Banks will identify the assets that they desire to sell and will have to demonstrate to their regulators, the Treasury, and the FDIC that these assets will qualify for the Legacy Loans Program. The primary assets that are the current focus of the Legacy Loans Program are residential and commercial mortgage loans, including whole loans and securitizations backed by loan portfolios, but it may evolve to include other asset classes. It is unclear how the Legacy Loans Program will cover securitizations and how it will interact with TALF and the Legacy Securities Program. Although not a focus of the proposal, this Program should cover banks' most illiquid assets, for which there are few purchasers, and where purchase money financing is limited or unavailable. The illiquid assets that should be covered by the Legacy Loan Program include acquisition, construction, and development loans, and foreclosed and other real estate held by banks as other real estate owned (OREO).

The FDIC will, with the assistance of a third-party valuation firm selected by the FDIC, determine the value of the assets and the amount of debt financing it is willing to guarantee. Leverage will not exceed a 6-to-1 debt-to-equity ratio, with the amount of leverage decreasing as the risk of the loans increases. The FDIC will then oversee diligence, prepare marketing materials, and auction the assets to FDIC-qualified and approved private investors to purchase the assets. The selling bank may elect to accept or not accept any bid. If a bid is accepted from the highest bidder for an asset pool, that bidder may then form a PPIF, with the Treasury and the private investors each funding 50 percent of the PPIF's equity. PPIFs may elect to receive less than 50 percent of the equity from the Treasury, subject to a minimum to be determined. If the selling bank accepts the bid of the private investor, the PPIF will receive financing for the acquisition by issuing debt guaranteed by the FDIC, which is expected to be part of the consideration paid to the selling bank. The FDIC-guaranteed debt will be collateralized by the purchased assets.

PPIFs will be managed and controlled by private investors, within parameters pre-established by the FDIC and the Treasury. The selling bank will initially service the sold loans, subject to control by the buyer. The FDIC will structure and guarantee the debt that the selling bank will take back when the legacy assets are sold. This debt will be saleable into the market, presumably without registration under the securities laws due to the FDIC guarantee. It is unclear whether individual issues of such FDIC-guaranteed debt will be of sufficient size or liquidity for a secondary market to develop. The proposals state that the FDIC will provide "rigorous" oversight for the formation, funding, and operation of the funds that purchase assets from banks. None of the parameters or restrictions on the FDIC's oversight and involvement have been disclosed.

The PPIF will pay the FDIC annual debt guarantee fees, as well as ongoing administration fees for the FDIC's oversight during the term of the PPIF. The amounts of these fees have not been disclosed.

Private investors may not participate in any PPIF that purchases assets from sellers that are affiliates of such private investor or that represent 10 percent or more of the aggregate private capital in the PPIF.

The Treasury will receive warrants in connection with Legacy Loans Program sales in an undisclosed amount and on undisclosed terms. It is unclear who will be the issuer of the warrants and the securities for which these warrants will be exercisable. If the selling bank is the issuer of the warrants, it will have significantly less incentive to sell assets in a market-driven auction process.

The executive compensation restrictions applicable to the TARP recipients will not apply to "passive" private investors in the Legacy Loans Program.

On March 26, 2009, the FDIC opened a public comment period for the Legacy Loans Program through April 10, 2009, unless extended. We expect significant changes to the Program following the comment period and prior to the Program's implementation. Notable open issues include:

- The nature and scope of FDIC oversight of the PPIFs, and the term of such oversight and the related fees.
- The information participating banks and bidders will be expected to provide to the FDIC prior to the auction process, and the criteria for assets to be sold and for bidders to qualify.
- The structure of the auction process—what type of auction, how private investors and asset managers will be selected to participate in auctions, how long the auction period will last, the timing of the due diligence period, auction reserves, and whether the auctions will be structured to avoid classifying the assets as "available for sale" under GAAP.
- The terms and liquidity of the FDIC-guaranteed debt issued by the PPIF.
- The regulatory capital risk-weightings applicable to the FDIC-guaranteed debt, and whether such debt could be counted as capital by the selling banks.
- The amount and sources of funding that may be needed by the FDIC to provide its guarantee.
- Whether private investors will be permitted to sell or pledge their PPIF interests.
- Whether the government will be entitled to an increased participation if investment returns exceed specified levels.
- Whether private investors' identities will be disclosed.

It is hoped that the FDIC will build upon its experience with its Temporary Liquidity Guarantee Program ("TLG") debt guarantees in establishing the structure, terms, and payment processes for the PPIF debt and debt guarantees under the Legacy Loans Program. A new collection process for fees payable to the FDIC under this Program will need to be established, since most PPIFs will not be banks.

LEGACY SECURITIES PROGRAM

The Legacy Securities Program is intended to encourage private investors to purchase legacy securities to allow banks and other financial institutions to free capital to support new extensions of credit. The loans and other assets underlying eligible assets must be situated predominately in the U.S., which is subject to further clarification by the Treasury. Apparently, eligible assets must be purchased solely from any bank, thrift, credit union, securities broker or dealer, or insurance company established and regulated under the laws of the United States or any of its states, territories, or possessions, which has significant operations in the U.S., and is neither a foreign central bank nor owned by a foreign government. *See* Emergency Economic Stabilization Act of 2008 ("EESA"), Sections 3(5) and 101(a)(1).

The Treasury will use TARP funds to provide capital to match private capital raised by PPIFs, as well as provide secured loans to the PPIFs participating in the Legacy Securities Program. The Legacy Securities Program further contemplates that participating PPIFs may obtain debt financing from the Federal Reserve Bank of New York under the TALF, from private sources, and from any other Treasury program.

The Treasury and the Federal Reserve have expanded TALF to make non-recourse, secured loans available to investors to fund purchases of Eligible Assets. "Eligible Assets" for the Legacy Securities Program are expected to include non-agency residential mortgage backed securities ("RMBS") that were originally rated AAA and outstanding commercial mortgage-backed securities ("CMBS") and possibly asset-backed securities ("ABS") that are rated AAA and originated prior to 2009. Borrowers under the Legacy Securities Program will need to meet certain eligibility requirements that have not been determined. Collateral haircuts for TALF purposes will be determined at a later date and will reflect the risk of the assets provided as collateral. Lending rates, minimum loan sizes, and loan durations also have not yet been determined. These and other terms of the Legacy Securities Program are proposed to be determined based on discussions with market participants without any definite timeline. Currently, Eligible Assets under the Legacy Securities Program are not eligible ABS under the existing TALF.

The Treasury will co-invest in PPIFs with approximately five initial, pre-approved asset managers with historical track records in the applicable asset classes ("Fund Managers") to acquire eligible legacy securities. The Treasury will select the Fund Managers, with the discretion to select more based on the applicants. Persons interested in applying to be a Fund Manager must submit an application no later than

April 10, 2009. The Treasury intends to notify applicants of a preliminary approval on or prior to May 1, 2009. Applicants will have a short period to raise at least $500 million of private capital prior to receiving final approval. All information disclosed in an application may be used by the government for any other purpose. The application can be found at http://www.financialstability.gov.

Private capital raised by each Fund Manager will be matched, dollar for dollar, by the Treasury. In addition, each Fund Manager will have the option to obtain for each PPIF secured, non-recourse loans from the Treasury ("Treasury Debt Financing") in an aggregate amount of up to 50 percent of a fund's total equity capital (including the Treasury's co-investment), *provided that* such financing will not be available to any PPIF in which the private investors have voluntary withdrawal rights. Each Fund Manager also may apply for additional Treasury Debt Financing, up to 100 percent of a fund's total equity capital, subject to certain restrictions to be determined by the Treasury. Treasury Debt Financing will accrue interest at an annual rate to be determined by the Treasury and will be payable in full at the end of 10 years, subject to extension by the Treasury. The eligibility of participating PPIFs and their assets for TALF funding, and the permissible levels of Treasury, TALF, and other debt funding are to be determined. The Legacy Securities Program would be more useful if less liquid, lower grade securities could be financed with PPIF capital and Treasury loans, with TALF financing used for the investment-grade securities.

Fund Managers will have discretion, subject to the Treasury's governance and management rules, to manage the PPIFs and to make all investment and disposition decisions on behalf of the PPIFs. Fund Managers shall be entitled to receive management and incentive fees from private investors and "fixed management fees" approved by the Treasury on capital invested by the Treasury. Fund Managers must agree to provide access to the PPIFs' books and records to the Treasury, the TARP Special Inspector General, the GAO, and others. *See* Jones Day *Commentary*, "TARP Recipients Should be Cautious and Vigilant in Responding to TARP Inspector General Requests" (March 2009).

Proceeds from the sales or maturities of legacy securities received by a PPIF, after any required debt payments, will be allocated between the Treasury and the applicable private investors *pro rata*, based on equity contributions; *provided that* the Treasury will take warrants, as required by the EESA. The issuer, the terms, and amounts of the warrants, and the securities for which the warrants are exercisable, are to be determined, partially based on the amount of Treasury Debt Financing received.

The Treasury will have the right to cease funding of committed but unfunded equity capital and debt financing in its sole discretion.

The executive compensation restrictions will not apply to "passive" private investors in the Legacy Securities Program. It is unclear whether these will apply to the Fund Managers or others, solely as a result of their participation in the Legacy Securities Program.

As with the Legacy Loans Program, the Treasury has not finalized or disclosed many terms and conditions of the Legacy Securities Program. Open issues include:

- The lending rates, minimum loan sizes, and loan durations and other terms of the expansion of TALF lending for legacy securities.
- The time period during which an approved Fund Manager has to raise the minimum private capital.
- Whether there is a cap on the Treasury's co-investment to each PPIF.
- The "fixed management fees" to be paid by the Treasury to the Fund Managers.
- Restrictions on and terms of the Treasury Debt Financing, and the interaction with TALF. The Federal Reserve Bank of New York has not yet included non-agency RMBS and CMBS as eligible assets for TALF.

- Fund governance oversight and reporting requirements to be specified by the Treasury.
- How prices for eligible assets will be tracked using third-party sources, and the nature and cost of annual audited valuations by a nationally recognized accounting firm.
- Warrants will be required in amounts and on terms yet to be determined. The issuers and the securities for which the warrants are exercisable also are unknown at this time.

CONCLUSION

Many critical elements of the PPIP are yet to be determined by the Treasury, the FDIC, and the Federal Reserve. Persons interested in participating as sellers, buyers, investors, fund managers, servicers, or in any other capacity should consider commenting on the proposals. The quality and effectiveness of these programs can be shaped and improved by private sector proposals. Private sector comments were essential to making the TLG practical, and it took several rounds of changes before the TLG was finalized. It took almost two months for the FDIC to complete the TLG, and four months for the Federal Reserve to implement TALF. The PPIP is a complex interagency program, and we expect it to take at least two to four months before the Legacy Loans Program and the Legacy Securities Program are operational. Jones Day will continue to update you as developments occur.

LAWYER CONTACTS

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