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U.S. Treasury and FDIC Solicit Comments on Public-Private Investment Funds and the Legacy Loans Program

by Christopher Cardinale

On March 26, the FDIC released additional information about the functioning of the Legacy Loans Program. This program will provide banks with an opportunity to sell pools of real estate-backed loans to Public-Private Investment Funds ("PPIFs") through an auction process. At least 50% of the equity in a PPIF must be privately contributed. Financing will be provided in the form of FDIC-guaranteed loans at a debt-to-equity ratio of not more than 6:1.

- As currently conceived, PPIFs are intended to facilitate a "buy and hold" investment strategy. Private parties will bid on interests in the PPIF, which will own the pool of loans. This program will not give private parties direct control over acquired loans, and will not be a means of achieving control over the underlying real estate.

The FDIC is soliciting comments on many fundamental aspects of this emerging program, including the types of loans that would be eligible for sale (e.g., only Legacy Loans [i.e., loans originated before 2009] or newly originated loans), the structure of the PPIFs, what type of auction process should be used, whether transfer of PPIF equity interests should be permitted after the acquisition of assets, how asset management should be controlled, how the FDIC guarantee fee should be calculated, etc. **Comments are due by April 10, 2009.**

- Owners and developers of real estate, as well as real estate lenders, may want to submit comments that may help to accelerate the program's impact on new real estate lending. For example, the category of eligible loans could be expanded to include newly issued loans, or banks could be induced to sell Legacy Loans by being offered the chance to sell an equivalent amount of new loans back into the program.

The author, Christopher Cardinale, is a member of the Real Estate Group and can be reached at ccardinale@goulstonstorrs.com. If you would like more details about how to submit comments, please contact:

Peter Corbett 617.574.4124
pcorbett@goulstonstorrs.com

Robert Towsner 617.574.6438
rtowsner@goulstonstorrs.com

Sheldon Weisel 202.721-1135
sweisel@goulstonstorrs.com