goulston&storrs
counsellors at law

clientalert

March 2009

U.S. Treasury Announces the Public-Private Investment Program – What You Need to Know

by Christopher Cardinale and Peter Corbett

On March 23, Treasury Secretary Timothy Geithner unveiled details of the Public-Private Investment Program ("PPIP"), the long-awaited plan to revive the U.S. financial system by removing toxic assets from the balance sheets of the nation's banks. The PPIP, which is part of the larger Financial Stability Plan announced by the Obama Administration on February 10, 2009, identifies certain "legacy assets" – loans ("Legacy Loans", which apparently may include both real-estate backed and other types of loans) and securities backed by real estate loans ("Legacy Securities") – as the key elements straining U.S. financial institutions and compromising their ability to raise capital and increase lending activities. The PPIP would serve to utilize U.S. government equity co-investment and attractive public financing programs to lure private capital into the marketplace to acquire the legacy assets and revitalize the health and lending capacity of U.S. financial institutions.

While many details of the PPIP have yet to be revealed, this announcement provides significant additional information about the program and its objectives.

1. ***Legacy Loans.*** Under Treasury's Legacy Loans Program, banks wishing to dispose of legacy assets from their balance sheets may offer pools of existing loans (likely to be limited to loans originated before January 2009) for sale. Qualified private parties, subject to FDIC approval, may form public-private investment funds ("PPIFs") to bid on the loan pools at auction. Participating banks will first choose the assets to be sold and identify them to the FDIC, which will in turn engage a private evaluator to analyze the assets and determine the level of debt funding FDIC will guarantee. The purchase price paid by the PPIF will consist of a combination of FDIC-guaranteed debt and equity contributed 50/50 by the PPIF and the government. Depending upon the characteristics of the loans being purchased, the debt-to-equity ratio could be as high as 6:1, requiring just over $7 of private capital for each $100 of purchase price. Following FDIC approval, the pools of loans will be auctioned and, subject to the participating bank's right to reject bids, sold to the highest bidder.

    - Notwithstanding the details of the announcement, no immediate action is required for interested parties. Treasury noted that additional details are still being worked out and the exact requirements and structure of this the PPIP will be subject to a formal notice and comment rulemaking. Goulston & Storrs' Treasury Regulatory Group can assist interested parties in providing commentary to the Treasury Department and the FDIC with respect to the final shape of the program.

2. ***Legacy Securities.*** The Treasury Department's plan to deal with Legacy Securities has two components; a PPIF structure and the expansion of the Term Asset-Backed Securities Loan Facility (TALF) to include real estate asset-backed securities.

    The PPIF component Legacy Securities Program is similar to the Legacy Loans Program in that it is designed to create public-private partnerships for the acquisition of certain Legacy Securities (often referred to as "toxic assets") from U.S. financial institutions. Under the plan, up to five (5) qualified, private fund managers will be selected by Treasury to participate in the Legacy Securities Program. The fund managers will raise private capital to be matched by Treasury funds and invested on a pro rata basis. Each fund manager will partner with the U.S. Government in forming a PPIF to purchase Legacy Securities at auction, with significant government participation. Minimum qualifications for fund managers include (i) demonstrated ability to raise at least $500 Million in private capital and (ii) at least $10 Billion (current market value) of Eligible Assets currently under management. Eligible Assets include commercial mortgage backed securities ("CMBS") or residential mortgage backed securities ("RMBS") issued prior to January 2009 that, at issuance, carried an AAA rating or equivalent.

- As the Legacy Securities PPIF requires pre-qualified fund managers, the only immediate action that can be taken under this program is to apply for designation as a Fund Manager. Applications are available on the Treasury Department's web site (www.treasury.gov) and are due by April 10, 2009.

In addition to the creation of PPIFs for Legacy Securities, yesterday's announcement also includes the anticipated expansion of the TALF program to include as eligible securities CMBS and RMBS issued prior to January 2009. While specifics are yet to be announced, assets eligible for this program are expected to include (i) non-agency RMBS (i.e., not Fannie Mae, etc.) that were rated AAA at issuance; and (ii) CMBS and ABS that are currently rated AAA.

- No immediate action is possible under the TALF component of this program with respect to CMBS or RMBS. Details are still being worked out by Treasury and the Federal Reserve.

The authors, Christopher Cardinale and Peter Corbett, are members of the real estate group and can be reached at ccardinale@goulstonstorrs.com and pcorbett@goulstonstorrs.

For questions regarding the information contained in this client alert, please contact your usual Goulston & Storrs's attorney or:

Robert S. Towsner 617.574.6438
rtowsner@goulstonstorrs.com

Sheldon J. Weisel 202.721.1135
sweisel@goulstonstorrs.com