

Client Alert

Economic Crisis Response Group

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Treasury, Federal Reserve and FDIC Discuss Legacy Asset Public-Private Investment Program

The Economic Crisis Response Group is closely monitoring new developments in response to the current turmoil affecting the world's financial markets and institutions and provides updates and analysis on key initiatives to address this crisis.

This update focuses on the joint statement by the Treasury, Federal Reserve and FDIC released on July 8 announcing the launch of the Legacy Securities Program and discussing the current status of the Legacy Loans Program.

The joint statement noted that both programs will initially be modest in size as a result of improved conditions in financial markets since the programs were announced in March, as well as the demonstrated ability of financial institutions to raise private capital under the Supervisory Capital Assessment Program. The joint statement stated that the agencies are prepared to expand the programs as necessary in the event economic conditions further deteriorate.

Legacy Securities Program

The Legacy Securities Program consists of two related parts: 1) the Legacy Securities Public-Private Investment Program ("PPIP") and 2) the expansion of the Term Asset-Backed Securities Loan Facility ("TALF") to finance the purchase of Legacy Securities.

Legacy Securities PPIP

The Treasury has committed to co-invest up to \$30 billion of equity and debt in public-private investment funds ("PPIFs") established by private sector fund managers for the purpose of purchasing legacy securities. Each Legacy Securities PPIP fund manager will receive an equal allocation of capital from the Treasury. Legacy Securities PPIFs will initially be limited to investments in commercial mortgage-backed securities ("CMBS") and non-agency residential mortgage-backed securities ("RMBS"). To qualify as a legacy security eligible for purchase by a PPIF, these securities must have been issued prior to 2009 with original ratings of AAA (or its equivalent) by two or more nationally recognized statistical rating organizations (without giving effect to ratings or credit enhancement) and

must be secured directly by the actual mortgage loans, leases, or other assets (“Eligible Assets”).

The Treasury has pre-qualified the following nine firms to participate as Legacy Securities PPIF fund managers (“Fund Managers”) in the initial round of the program:

- AllianceBernstein, LP and its sub-advisors, Greenfield Partners, LLC and Rialto Capital Management, LLC;
- Angelo, Gordon & Co., L.P. and GE Capital Real Estate;
- BlackRock, Inc.;
- Invesco Ltd.;
- Marathon Asset Management, L.P.;
- Oaktree Capital Management, L.P.;
- RLJ Western Asset Management, LP.;
- The TCW Group, Inc.; and
- Wellington Management Company, LLP.

The Fund Managers, in turn, have established business relationships with ten leading small-, veteran-, minority-, and women-owned financial services businesses, located in five different states, to provide services to the PPIFs.

Each Fund Manager must raise at least \$500 million of capital from private investors for the PPIF within the next 12 weeks. The Treasury will match the amount of equity financing raised by the PPIF one-for-one on a fully side-by-side basis with these private investors. In addition, each Fund Manager will contribute a minimum of \$20 million of firm capital to the PPIF. The PPIFs can begin to purchase Eligible Assets upon raising the required amounts of private equity capital.

The Treasury will provide debt financing in amounts up to 100% of the total equity of the PPIF. PPIFs also may tap other sources of debt financing, subject to total leverage limits and covenants, such as private lenders or through the TALF program.

Legacy Securities TALF

On May 19, 2009, the Federal Reserve announced the inclusion of certain high-quality CMBS issued prior to January 1, 2009 (“legacy CMBS”) within Eligible Collateral under TALF. Borrowers may obtain TALF financing for legacy CMBS commencing upon the July CMBS TALF operation date. PPIFs may obtain TALF financing for legacy CMBS that qualify as Eligible Collateral under the TALF program. The Federal Reserve and the Treasury are still considering whether to expand TALF to include legacy RMBS within Eligible Collateral.

Legacy Loans Program

The Legacy Loan Program is designed to boost private demand for distressed assets and facilitate price discovery and sales of troubled assets. Under the program, the FDIC would provide oversight for the formation, funding and operation of a number of vehicles that will purchase these assets from banks or directly from the FDIC. Private investors would invest equity capital and the FDIC will provide a guarantee for debt financing issued by these vehicles to fund asset purchases collateralized by the purchased assets. The FDIC would receive a fee for its guarantee.

The FDIC announced in June that it will test the funding mechanism contemplated by the program in a sale of receivership assets this summer. The FDIC expects to solicit bids for the initial sale of receivership assets in July.

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The joint statement did not indicate the extent (if any) to which the Treasury will disclose the prices at which the legacy assets are purchased under these programs. Reports since the release of the joint statement cite Treasury concern that full public disclosure could cause banks and other holders to incur massive write-downs of similar assets on their books, which could be systemically destabilizing. On the other hand, non-disclosure of transaction prices impairs the ability to establish market values for these assets. These tensions will need to be addressed going forward.

Proskauer's Economic Crisis Response Group includes lawyers with extensive experience representing private and public companies, institutional investors, financial services companies, private equity and hedge funds, lenders, commercial banks and individuals in the complex and interrelated areas impacted by the current financial situation. Our multidisciplinary group brings together the talents of our business and transactional lawyers with our litigation capabilities, particularly as they pertain to acquiring, managing or disposing of distressed assets; issues concerning investments in financial services companies; and complex financial instruments and transactions, including structured finance products, as well as a broad range of other areas such as corporate governance and defense, insurance coverage, reductions in force and other employment and benefit-related issues, securities regulation, and bankruptcy and restructuring matters.

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This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

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