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THE TREASURY DEPARTMENT ISSUES DETAILS OF ITS PUBLIC-PRIVATE INVESTMENT PROGRAM

On Monday, March 23, 2009, the Treasury Department unveiled the first details of its Public-Private Investment Program (PPIP). The central purpose of PPIP is to ease congestion in the U.S. financial markets by promoting a liquid market for troubled "legacy assets" held by certain financial institutions that are inhibiting these institutions' ability to lend and to raise new capital. Through a combination of Federal Deposit Insurance Corporation (FDIC) guarantees of debt issuances and federal equity co-investments along with private investors, the Treasury Department expects that the PPIP will generate at least \$500 billion in purchasing power to buy such legacy assets. Legacy assets are comprised of "Legacy Loans" (troubled real estate loans held on the books of banks) and "Legacy Securities" (commercial and residential mortgage backed securities issued prior to 2009 that were originally rated at least AAA ("Eligible Assets")). The PPIP will deal with these two classes of legacy assets separately through the Legacy Loans Program and the Legacy Securities Program.

Legacy Loans Program

The Legacy Loans Program (LLP) will allow financial institutions to pool together certain loans to sell to Public-Private Investment Funds (PPIFs). PPIFs will be joint ventures between the Treasury Department, on the one hand, and one or more private entities (such as private equity funds, hedge funds, financial institutions, individuals, insurance companies, mutual funds, publicly managed investment funds and foreign investors with a US headquarters), on the other hand. The PPIFs are designed to facilitate "buy and hold" investment strategies, since the government's view appears to be that these legacy assets have long-term value despite significant decreases in their mark-to-market values. While the specific details regarding which financial institutions can sell to PPIFs, assets that can be placed in the asset pools sold to PPIFs and the criteria for participating in a PPIF will be determined in future notice and comment rulemakings, the key components of the LLP that are currently known are as follows:

Acquiring the Assets

A financial institution (a "Participant Bank") with assets that it would like to sell to a PPIF may approach the FDIC with a proposed pool of assets. The FDIC will hire a third-party firm to provide valuation advice to the FDIC and assist with determining the appropriate debt-to-equity ratio for a PPIF investment in such asset pool, not to exceed 6-to-1. If the FDIC, along with the participating banks, their primary regulators and the Treasury Department, approves the asset pool, it will sell the pool through an auction process. Private investors will bid on the pool and the highest bidders will be awarded the right to form PPIFs to acquire the assets.

Financing the Purchase — Equity Investment

The private investors in the PPIF will contribute 50 percent of the equity portion of the purchase price of an asset pool, determined using the FDIC approved debt-to-equity ratio described above. The Treasury Department, using remaining uncommitted TARP funds, will contribute the other 50 percent of the required equity component. The private investors and Treasury Department will share pro rata in the profits and losses from the PPIF.

Financing the Purchase — Guaranteed Debt

PPIP provides that the PPIF will issue FDIC guaranteed debt for the remainder of the consideration for the purchase of the asset pool. The debt will initially be issued to the participant bank, which may choose to resell this debt into the market. The FDIC guarantee

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will be secured by the asset pool, and the FDIC will charge a guarantee fee in connection with providing the guarantee. The debt will be issued on terms consistent with the FDIC Guaranteed Secured Debt for PPIF Term Sheet, which has not yet been released.

Management

The private investors in each PPIF will retain control of asset management, subject to oversight and regulation (including approval of the asset managers) by the FDIC.

Treasury Warrants

The Treasury Department will receive warrants in the PPIF, as required by the Emergency Economic Stabilization Act of 2008 (EESA). These warrants are designed to protect the interests of the taxpayers. Details regarding the calculation of the amount and terms of these warrants have not been fully determined.

Legacy Securities Program

The Legacy Securities Program (LSP) consists of two components: (i) an expansion of the Term Asset-Backed Securities Loan Facility (TALF) to provide non-recourse debt financing to private investors that purchase Legacy Securities; and (ii) government co-investing with and lending to private investment funds that invest in Legacy Securities. The critical details of the first component have not yet been provided. The key details of second component of the LSP are:

Sellers

The Eligible Assets must be purchased from financial institutions from which the Treasury Department is permitted to purchase assets pursuant to the EESA.

Funds and Fund Management

The Treasury Department expects to select five¹ private asset managers (PAMs) to raise capital for, and to manage, investment funds that will invest in Legacy Securities. To be prequalified as a PAM, an entity must complete the application found at <http://www.financialstability.gov/>. The key eligibility requirements are:

- Demonstrated capacity to raise at least \$500 million of private capital.
- Demonstrated experience investing in Eligible Assets, including through performance track records.
- A minimum of \$10 billion (market value) of Eligible Assets currently under management.
- Demonstrated operational capacity to manage the funds in a manner consistent with Treasury's stated investment objective while also protecting taxpayers.
- Headquarters located in the United States.

Equity Co-Investment

After private capital is raised in the fund, subject to certain limitations, the Treasury Department will match the private contributions on a dollar-for-dollar basis. The Treasury Department will share pro rata with the private investors in the gains and losses from the fund.

Debt

Subject to certain limitations, the fund will have the option to obtain non-recourse loans from the Treasury Department in amounts up to 50 percent of the total equity contributions, and in certain cases up to 100 percent of the total equity contributions.

¹ More may be selected depending on the quality of applications received.

Fees

Fund Managers will have discretion in the fees that are charged to the private investors, but the proposed fees will be reviewed by the Treasury Department as part of the application process. Additionally, fund managers may submit proposals to the Treasury Department for fixed management fees that the Treasury Department will contribute.

Treasury Warrants

The Treasury Department will receive warrants in the funds, as required by the EESA. These warrants are designed to protect the interests of the taxpayers. The terms and amounts of the warrants will depend in part on the amount of Treasury debt financing.

Deadline

The application deadline for fund managers is April 10, 2009.

Considerations and Opportunities

Many have criticized the government for taking too long to roll out its so called “toxic assets” program. In addition, concerns have been raised about whether private investment funds and other private entities will be comfortable taking on the federal government as a joint venture partner. Among other things, despite the indication that, at least in regards to the LSP, fund managers will have discretion in the fees they charge to private investors, as described above, it is not certain whether participants in the PPIP will be subject to the same or similar restrictions on employee compensation that banks accepting TARP support have accepted. The ongoing bonus tax controversy has furthered this uncertainty. At the same time, this program appears to have been well received by the markets and has been praised for finally providing a plan to allow financial institutions to “right-size” their balance sheets by eliminating these toxic assets. In addition, potential buyers of distressed assets and managers of distressed asset funds who either do not have sufficient funding to purchase such assets or who want some level of government support in connection with such activities now have an opportunity to consider whether the PPIP provides them with valuable investment and asset management opportunities. The program’s success will hinge on the willingness and ability of institutional investors (such as pensions, endowments, private equity firms, and insurance companies) and other investors to invest in these assets (or invest in funds that invest in such assets), and the ability of fund managers and other private investors to appropriately value these assets to make the best use of the support from the federal government.

More information about both the LLP and LSP, and the application for LSP fund managers, can be found at <http://www.financialstability.gov/>. Please contact any of the attorneys listed on the right side of page one for further information about the LLP or LSP.

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