OVERSIGHT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION'S STRUCTURED TRANSACTION PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MAY 16, 2012

Printed for the use of the Committee on Financial Services

Serial No. 112–127

U.S. GOVERNMENT PRINTING OFFICE

75–733 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

HOUSE COMMITTEE ON FINANCIAL SERVICES

SPENCER BACHUS, Alabama, *Chairman*

JEB HENSARLING, Texas, *Vice Chairman*
PETER T. KING, New York
EDWARD R. ROYCE, California
FRANK D. LUCAS, Oklahoma
RON PAUL, Texas
DONALD A. MANZULLO, Illinois
WALTER B. JONES, North Carolina
JUDY BIGGERT, Illinois
GARY G. MILLER, California
SHELLEY MOORE CAPITO, West Virginia
SCOTT GARRETT, New Jersey
RANDY NEUGEBAUER, Texas
PATRICK T. McHENRY, North Carolina
JOHN CAMPBELL, California
MICHELE BACHMANN, Minnesota
THADDEUS G. McCOTTER, Michigan
KEVIN McCARTHY, California
STEVAN PEARCE, New Mexico
BILL POSEY, Florida
MICHAEL G. FITZPATRICK, Pennsylvania
LYNN A. WESTMORELAND, Georgia
BLAINE LUETKEMEYER, Missouri
BILL HUIZENGA, Michigan
SEAN P. DUFFY, Wisconsin
NAN A. S. HAYWORTH, New York
JAMES B. RENACCI, Ohio
ROBERT HURT, Virginia
ROBERT J. DOLD, Illinois
DAVID SCHWEIKERT, Arizona
MICHAEL G. GRIMM, New York
FRANCISCO "QUICO" CANSECO, Texas
STEVE STIVERS, Ohio
STEPHEN LEE FINCHER, Tennessee

BARNEY FRANK, Massachusetts, *Ranking Member*
MAXINE WATERS, California
CAROLYN B. MALONEY, New York
LUIS V. GUTIERREZ, Illinois
NYDIA M. VELÁZQUEZ, New York
MELVIN L. WATT, North Carolina
GARY L. ACKERMAN, New York
BRAD SHERMAN, California
GREGORY W. MEEKS, New York
MICHAEL E. CAPUANO, Massachusetts
RUBÉN HINOJOSA, Texas
WM. LACY CLAY, Missouri
CAROLYN McCARTHY, New York
JOE BACA, California
STEPHEN F. LYNCH, Massachusetts
BRAD MILLER, North Carolina
DAVID SCOTT, Georgia
AL GREEN, Texas
EMANUEL CLEAVER, Missouri
GWEN MOORE, Wisconsin
KEITH ELLISON, Minnesota
ED PERLMUTTER, Colorado
JOE DONNELLY, Indiana
ANDRÉ CARSON, Indiana
JAMES A. HIMES, Connecticut
GARY C. PETERS, Michigan
JOHN C. CARNEY, JR., Delaware

JAMES H. CLINGER, *Staff Director and Chief Counsel*

Subcommittee on Oversight and Investigations

RANDY NEUGEBAUER, Texas, *Chairman*

MICHAEL G. FITZPATRICK, Pennsylvania, *Vice Chairman*
PETER T. KING, New York
MICHELE BACHMANN, Minnesota
STEVAN PEARCE, New Mexico
BILL POSEY, Florida
NAN A. S. HAYWORTH, New York
JAMES B. RENACCI, Ohio
FRANCISCO "QUICO" CANSECO, Texas
STEPHEN LEE FINCHER, Tennessee

MICHAEL E. CAPUANO, Massachusetts, *Ranking Member*
STEPHEN F. LYNCH, Massachusetts
MAXINE WATERS, California
JOE BACA, California
BRAD MILLER, North Carolina
KEITH ELLISON, Minnesota
JAMES A. HIMES, Connecticut
JOHN C. CARNEY, Jr., Delaware

CONTENTS

OVERSIGHT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION'S STRUCTURED TRANSACTION PROGRAM

Wednesday, May 16, 2012

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:22 p.m., in room 2220, Rayburn House Office Building, Hon. Randy Neugebauer [chairman of the subcommittee] presiding.

Members present: Representatives Neugebauer, Fitzpatrick, Renacci; Capuano, Waters, and Carney.

Also present: Representatives Westmoreland and Herrera Beutler.

Chairman NEUGEBAUER. The Subcommittee on Oversight and Investigations will come to order. This hearing is entitled, "Oversight of the Federal Deposit Insurance Corporation's (FDIC's) Structured Transaction Program."

Each side will be limited to 10 minutes for opening statements. And I want to recognize the attendance of Members who are not assigned to the Oversight and Investigations Subcommittee. Representative Jamie Herrera Beutler is here, and we also expect Mr. Westmoreland to attend. I ask unanimous consent that they be allowed to participate as if they were on the committee today.

I will now recognize myself for an opening statement.

This hearing is focused on the oversight of the FDIC's Structured Transaction Program. We will hear from the FDIC. We will also hear from some of the market participants today. The Structured Transaction Program was created to resolve the distressed assets program. It has transferred about 42,000 assets, with an unpaid balance of about $25.5 billion, into 32 public-private partnerships.

One of the reasons that we are having this hearing is because there is not a lot of regulation that applies to structured transactions, and so we are going to learn more about the process. Also, we had an OIG audit of the Structured Transaction Program that found control deficiencies related to inadequate FDIC policies, and we will hear from the OIG on that as well.

I think the goal here is to learn more about this program. This is a program designed to mitigate losses, ultimately, to the taxpayers. We want to make sure that everything is being handled properly.

But the program also has impact on some of the people who were banking with some of these entities that found themselves one day without a bank. We need to know how this process is playing out and if there are things that we need to be looking at from an oversight standpoint. So I look forward to learning more about the Structured Transaction Program.

With that, I will yield to the gentleman, Mr. Capuano.

Mr. CAPUANO. Thank you much, Mr. Chairman.

I don't have much of an opening statement. I am looking forward to the testimony from these gentlemen, and from the next panel, as well.

I appreciate you calling this hearing. I think that the FDIC plays a very important role in this economy in protecting investors, and it is important that we make sure that they continue to be able to do that. That is their primary objective, and as far as I am concerned, anything that interferes with that is problematic to this Congress. Therefore, today I am looking forward to hearing testimony on this specific aspect of the difficulties we have recently gone through and I guess continue to go through in the economy and how it has played it out and how it has impacted the FDIC.

Again, Mr. Chairman, thank you very much.

Chairman NEUGEBAUER. I would remind Members that all Members' opening statements will be made a part of the record.

Now, I would like to introduce the first panel: Mr. Bret Edwards, Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation; the Honorable Jon T. Rymer, Inspector General, Federal Deposit Insurance Corporation; and Mr. Stuart Miller, Chief Executive Officer, Lennar Corporation.

Gentlemen, your written testimony will be made a part of the record, and we will recognize each of you for 5 minutes for a summary of that.

With that, Mr. Edwards, you are recognized for 5 minutes.

STATEMENT OF BRET D. EDWARDS, DIRECTOR, DIVISION OF RESOLUTIONS AND RECEIVERSHIPS, FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. EDWARDS. Thank you, Mr. Chairman.

Chairman Neugebauer, Ranking Member Capuano, and members of the subcommittee, I appreciate the opportunity to testify on behalf of the FDIC on our agency's Structured Transaction Program.

A structured transaction is only one of the asset disposition strategies the FDIC employs to fulfill our statutory duty to maximize the net present value return from the disposition of assets of failed institutions and to minimize the amount of loss realized in the resolution of those institutions.

This type of transaction has been used for approximately 4 percent of the $670 billion in assets that the FDIC inherited from bank closures since January of 2008. Most of the time we are able to achieve the least costly resolution by transferring the failed banks' deposits, assets, and certain liabilities immediately after the bank closing to an acquiring bank.

Unfortunately, failing banks with little franchise value and poor asset quality do not attract sufficient interest from viable bidders. In those instances, depositors are paid the full amount of their insured deposits. The FDIC, as receiver, then chooses an alternative strategy for handling these failed bank assets, such as cash sales, securitizations, and structured transactions.

Patterned after a successful program used by the former RTC, the FDIC initiated a structured transaction sales program in May of 2008. By using structured transactions, the FDIC avoids selling assets in distressed markets at prices below their intrinsic value and saves the costs associated with maintaining the infrastructure needed for long-term agency management of the assets. We estimate that we have saved approximately $4 billion by using structured transactions instead of cash sales.

In structured transactions, the FDIC pools a group of similar assets from one or more failed bank receiverships and transfers them to a newly formed LLC. Through a competitive bidding process, the FDIC offers a portion of the equity in the LLC to prequalified private sector experts who have experience managing the types of assets in the pool and who have the economic resources to bear the obligations and risks of the agreement. The highest bidder pays cash for its equity interests in the LLC and becomes the managing member, with responsibility for the day-to-day management of the LLC and its assets. The percentage of book value that the bidder's valuation represents is for the entire pool of the assets and cannot be attributed to any individual asset.

Since 2009, to ensure robust bidding, many of the transactions have included leverage in the form of purchase money notes issued by an LLC to the failed bank receiverships as partial payment for the assets sold by the receiverships to the LLC. The purchase money notes represent debt owed by the LLC to the receiverships. In general, most transaction agreements require that these notes be repaid in full before there is any equity distribution to the members of the LLC. These notes do not finance the cash purchase price paid by the managing member for its equity interest in the LLC.

The FDIC actively monitors these transactions through its staff and third-party contractors. On a regular basis, the FDIC and its contractors conduct on-site compliance reviews of each LLC's operations. Additionally, the managing member must comply with stringent monthly, semi-annual, and annual reporting requirements.

The FDIC's Office of Inspector General has completed audits on two of the transactions. The FDIC agreed with all of the OIG's recommendations and has implemented or is in the process of implementing these recommendations.

At my request, the OIG has begun audits of two LLCs managed by an affiliate of Rialto Capital Management. These reports are expected to be delivered in the late third quarter of this year.

We understand that a number of borrowers and guarantors have raised concerns about the managing members not achieving the resolution of their debts as the borrower or guarantor would desire. The FDIC investigates every borrower or guarantor inquiry and works with the managing member to address any of the concerns raised. We fully expect the managing members to pursue payoffs and loan modifications when these options would result in the highest return to the LLC.

With respect to single family residences, the managing members and their servicers are obligated to follow a federally-mandated loan modification program. Where a payoff, modification, or other loss mitigation is not feasible, the managing member is left with no other choice but to enforce the terms of the loan contracts through the courts and other legal means.

To ensure that it receives the highest return on the assets, and that managing members treat failed bank borrowers fairly, the FDIC monitors compliance with transaction agreements, measures actual performance against projections, conducts regular site visitations, and thoroughly investigates borrower complaints with regard to the servicing and disposition of their loan by the managing member.

Thank you for the invitation to testify, and I would be happy to answer your questions.

[The prepared statement of Mr. Edwards can be found on page 51 of the appendix.]

Chairman NEUGEBAUER. I thank the gentleman.

Mr. Rymer, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE JON T. RYMER, INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. RYMER. Thank you, Chairman Neugebauer, and Ranking Member Capuano. Thank you for your interest in the work performed by the FDIC Office of Inspector General (OIG) relating to the Corporation's structured asset sales program.

The OIG is an independent office within the FDIC established to conduct audits and investigations to prevent waste, fraud, and abuse, and to improve the efficiency and effectiveness of FDIC programs.

In my written statement, I provide an overview of our audit coverage during the current crisis. Specifically, I describe work that we have done related to failed financial institutions and the FDIC's resolution and receivership activities.

Today, I am pleased to discuss our completed and ongoing work as it relates to one of those FDIC resolution approaches: the structured asset sale transaction.

The OIG has completed performance audits of two structured asset sale transactions that we selected based on the size and type of assets involved. The first audit was of ANB Venture, which involved over 1,100 individual assets and an unpaid balance of about $1.2 billion. The second audit was of Corus Construction Venture. Corus involved 101 individuals assets and an unpaid balance of $4.4 billion. And Corus also contained an advance funding mechanism.

My office contracted with CliftonLarsonAllen to conduct these audits. The objectives in both audits were to assess the compliance of the structured asset sales agreement and to assess the FDIC's monitoring of these agreements.

In our reports, we concluded that ANB, Corus, and their respective managing members complied with some provisions of the structured asset sales agreements and that the FDIC had implemented certain controls for monitoring these transactions. We also noted that the FDIC had planned or was in the process of implementing significant control improvements. However, our audits identified a number of control deficiencies involving both compliance and monitoring that warranted FDIC management attention.

To that end, the ANB audit report contained 10 findings and 24 recommendations. According to the FDIC, actions have been taken on these recommendations. The Corus report contained 7 findings and 10 recommendations, and corrective actions for these recommendations are expected to be completed by September 30th of this year.

My written statement describes in more detail the results of these audits.

We are continuing our audit coverage of structured asset sales transactions with an audit of Rialto Capital Management. This audit, which was requested by FDIC management due to inquiries and complaints that it had received, will cover two transactions. The first transaction involves about 5,200 assets with an unpaid balance of approximately $2.3 billion. The majority of these assets pertain to residential acquisition, development, and construction projects. The second transaction involves 345 assets, primarily commercial ADC projects, with an unpaid principal balance of $799 million.

The Rialto audit included the same two objectives we used in conducting the ANB and Corus audits, with the addition of two more objectives, which involved the bidding and selection process and the terms and conditions of the structured asset sales agreements themselves. In designing our audit procedures, we are also placing particular emphasis on the controls over transactions with affiliates.

As part of this audit, we have selected a representative sample of assets that were subject to the inquiries and complaints that we were aware of at the time we initiated our work. We are evaluating these assets, as part of a larger sample, to satisfy our audit objectives.

The inquiries and complaints that we are aware of primarily deal with the LLC's aggressiveness in pursuing balances owed on the loans, the LLC's treatment of borrowers or guarantors and its loan servicing, and the FDIC's handling of loans prior to the transfer to the LLC.

We are scheduled to complete our field work in June of this year and issue a draft report in July. A final report incorporating FDIC management's comments will be issued near the end of August.

Going forward, we intend to continue our work related to each of the FDIC's resolution approaches. With regard to structured asset sales approach, our next audit will focus on the FDIC's overall control of these transactions. This plan, or this approach, is consistent with our earlier work in examining failed financial institutions and our more recent work of the shared loss program. As our resources permit, we look forward to conducting a study in the next year to evaluate the risk and effectiveness of all of the resolution approaches.

This concludes my prepared statement. I thank you for the opportunity to discuss our work, and I am prepared to answer your questions. Thank you.

[The prepared statement of Inspector General Rymer can be found on page 111 of the appendix.]

Chairman NEUGEBAUER. Thank you.

Mr. Miller, you are recognized for 5 minutes.

STATEMENT OF STUART MILLER, CHIEF EXECUTIVE OFFICER, LENNAR CORPORATION

Mr. MILLER. Thank you, sir.

Mr. Chairman, Mr. Ranking Member, and distinguished members of the subcommittee and guests, I want to thank you for the opportunity to speak to you here today.

My name is Stuart Miller, and I am CEO of Lennar Corporation. We are the parent company of Rialto Capital, which is involved in the FDIC's structured transactions that are the subject of this committee.

We are certainly very pleased to be here and to discuss these transactions. It is our policy and program to remain transparent, to answer questions, and to be participatory in all instances and inquiries relative to our business. We look forward to responding to any thoughts or questions that you all may have.

In that regard, in my opening statement, I would like to make six observations and points relative to our involvement with the structured finance transactions.

Number one, Rialto was awarded the partnership with the FDIC in a pure bid program. The FDIC defined the documents, the pool of assets, the structured finance terms, the fees, and the relationship with the manager in a comprehensive program; and we evaluated the program and bid on that basis, as did all of the other bidders. There were no renegotiations. We took the program as it was defined. We were required to give a conforming bid, and the highest bid won. Our bid in two of these bids was the highest.

Number two, Rialto and Lennar have invested cash of approximately $250 million in the two FDIC ventures. Lennar will not receive any money back until the $627 million loan to the FDIC is paid in its entirety. After the loan is paid in full, Rialto/Lennar and the FDIC will split cash as it comes in in a 60–40 relationship—60 percent to the FDIC, and 40 percent to Lennar—until all invested cash is returned. Only then, which we expect to be 4 to 5 years from now, will Lennar begin to receive a return on its investment.

Number three, the portfolios are predominantly defaulted loans; over 90 percent of the portfolio is defaulted loans. Borrowers entered into loan agreements with their banks. There was a default. The bank depleted capital, failed, and then was seized. Twenty-two institutions failed and were seized by regulators. The FDIC packaged a portfolio of loans from these 22 institutions that were in FDIC receiverships into structured transactions in which it conducted a bid process to sell 40 percent interest to qualified buyers/managers. We took over the management of these predominantly defaulted loans. We did not cause the defaults or negotiate the terms of the loans. It was and remains our job to use our expertise to find resolution.

Number four, these assets are primarily sophisticated commercial transaction loans. They are not consumer residential loans on homes. These were loans where sophisticated business borrowers negotiated for a loan, generally with each side represented by competent counsel, to borrow, in many instances, millions of dollars in order to generate business profit. The risks and rewards were clearly allocated within the loan documents negotiated at the time, with both parties clearly understanding that all of the rewards would be concentrated in the borrowers' hands, and, accordingly, the various understood risks of the business proposition would rest with the borrower.

Number five, because these were business transaction loans for the benefit of the borrower and because all of the rewards would go to the borrower, the bank carefully negotiated that the collateral for most of these loans would be both the business assets or properties, as well as an absolute personal guarantee. Borrowers, to be able to borrow, readily gave those guarantees to pay back the loan whether the business proposition was successful or not.

Number six, we at Lennar/Rialto have over 20 years of experience in managing and resolving defaulted loans. Our process is time-tested and well-ordered. It is crafted around professionalism, with a high degree of respect and decency as we endeavor to work with each borrower individually and with propriety as we seek resolution. By definition, the relationship between a defaulted borrower and a lender seeking resolution is adversarial and sometimes contentious. Simply put, the parties have very different objectives. With that said, our program is to work within the four corners of every loan agreement individually, as well within the four corners of the rules and spirit of our court system and the laws.

Thank you for your time, and I am happy to answer any questions.

[The prepared statement of Mr. Miller can be found on page 105 of the appendix.]

Chairman NEUGEBAUER. Thank you, Mr. Miller.

In consultation with the ranking member, I am going to recognize a couple of Members who came in and give them an opportunity to make a brief opening statement. I recognize Mr. Westmoreland for 2 minutes.

Mr. WESTMORELAND. Thank you, Mr. Chairman, and I appreciate you holding this important hearing.

I want to thank all the witnesses. I want to thank Mr. Miller for stepping up to the plate. I want to thank Mr. Leventhal and Mr. Fogg.

Mr. Chairman, once again, we find the government picking winners and losers. Rialto, Colony Capital, Oak Tree Capital, and others are the winners. Builders, developers, and even their subcontractors and in some cases their purchasers that had previously purchased their product are the losers.

Make no mistake, Rialto is the case that Mr. Miller was talking about, and the other managing partners are getting a great deal. They get financial information about their competitors for pennies on the dollar. In fact, Rialto only paid $241 million for $3 billion in loans. This is approximately 8 cents on the dollar. To add to this sweetheart deal, I think Rialto received a $600 million loan from the FDIC, interest free, nonrecourse, for 7 to 10 years. Now that is a deal that I think most of these borrowers would have taken if they could have bought this loan for 8 cents or put up 8 cents on the dollar and then had the FDIC loan them the rest of it for 7 years with no interest and no recourse. I think the FDIC would have recovered a lot more money.

But wait, there is more. Rialto and these other managing partners are paid a management fee. On this particular case, the $3 billion case, I believe the fee was $32 million for the first year. This is paid on the unpaid balance.

So what incentive is there for any of these managing partners to settle the loan when they are getting a management fee on the whole deal? There is no incentive. If you take the $32 million and divide it by the number of loans, which I think was 5,200, they are being paid $6,100 per loan per year; and this is paid on the unpaid principal balance of the portfolio.

In fact, many of my constituents have tried to negotiate with Rialto and the FDIC. The FDIC is probably the hardest agency that I am familiar with that is willing to negotiate anything.

I will say that Rialto has stepped up in the last week or 2 weeks to try to settle some of these things. But earlier this year, I gave the FDIC verifiable proof that the FDIC was not maximizing return for the Deposit Insurance Fund, and let me tell you what happened.

We had a gentleman who had a loan with a bank and he borrowed the money to buy stock in another bank—if you will give me just 30 more seconds—$500,000. The bank he bought stock in went broke. Silverton Bank went broke. He had a modified agreement for 85 percent of the $500,000 agreed to by the FDIC. Then, the FDIC sold that loan to a third party for 18 cents on the dollar. That is a problem.

And so I hope that we will get some answers today to make sure that the FDIC is getting the maximum that they can for the money and that they are not killing small business and doing away with jobs.

I yield back.

Chairman NEUGEBAUER. I now recognize Ms. Waters from California for a brief opening statement as well.

Ms. WATERS. Thank you very much, Mr. Chairman.

I almost don't need to give this opening statement. Mr. Westmoreland just spoke for me. Those are absolutely my concerns.

But I want to thank you, Mr. Chairman. I welcome today's hearing as an opportunity to closely examine the Structured Transaction Program the FDIC adopted in the wake of the 2008 financial collapse to manage and dispose of assets from failed institutions that may be more difficult to market and sell. While I understand that the FDIC has the legal responsibility to maximize recovery on the assets of failed banks and replenish the Deposit Insurance Fund, I am interested to learn more about the reports suggesting that FDIC's practices and private sector partnerships may be creating additional hardships for small businesses and borrowers.

In addition to that, I would also like to hear from the FDIC today about the steps it has taken to ensure that small enterprises, minority- and women-owned businesses have the opportunity to purchase FDIC assets or are in some way involved in these structured transactions.

In a 2010 Bloomberg article, one observer noted that the new FDIC strategy for managing assets seized from failed banks has turned the agency into a long-term investor making a multibillion dollar bet on the recovery of some of the most distressed condominium markets in the country. Instead of selling the assets to maximize cash in hand, the agency is offering its private sector partners zero percent financing, management fees, and new loans to complete construction of projects it can hold until markets recover.

With that said, it is my understanding the regulators have determined that in certain situations, public-private structured transactions can offer a better chance to replenish the Deposit Insurance Fund. I therefore welcome the FDIC's comments today on the level of success and savings the agency has achieved with this program, as well as the agency's response to criticisms against the program.

And, lastly, I am particularly interested in the FDIC's new investor match program that was designed to encourage small investors and asset managers to partner with larger investors in order to participate in the FDIC's structured transaction sales for loans and other assets from failed banks. In an effort to be inclusive of all firms, the FDIC launched the program to expand opportunities for participation by smaller investors and asset managers, including minority- and women-owned firms. I do look forward to hearing from the agency today regarding whether this program is working to extend opportunities to these types of firms that may have been otherwise excluded from these transactions, and I would like some specifics and some numbers to document if they are going to represent that they have done these things.

I yield back the balance of my time.

Chairman NEUGEBAUER. I thank the gentlewoman.

And now the gentlewoman, Ms. Herrera Beutler, is recognized for a brief statement.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman, and members of the subcommittee. Thanks for holding this hearing today.

This topic is incredibly important, so important that I am here even though this isn't actually my committee. I am grateful to be a part of this hearing today, because this is very important to the folks in southwest Washington in the district that I serve.

Over the last year, I worked to understand what happened with small business owners like Mr. Fogg, who is here today, who had loans with the now-collapsed Bank of Clark County in my district. And the answers still aren't very clear. What I do know is that the fallout resulted in destroyed businesses, bankruptcies, and the loss of livelihoods for folks in my area.

So today, I want to find out what led the FDIC to give an extremely favorable deal to Rialto Capital, and consider the terms of the agreement between the FDIC and Rialto. In this "sweetheart deal" is what comes to mind—and my colleague uses the same term—Rialto was allowed to pay 8 cents, and it is worth repeating, 8 cents on the dollar for $3 billion worth of assets. Further, the FDIC issued Rialto a 10-year, over $600 million loan at zero percent interest. That is a great deal.

I believe that had Mr. Fogg or any other home builder in my area been given a 10-year zero interest loan, they would have provided a much higher return than 8 cents on the dollar. Instead, most were left to deal with Rialto.

And excuse me, Mr. Miller, I know that you said you work with a high degree of respect and decency, but I can give you case after case—I have been in office for 15 months, and this is the one where I have had case after case after case. My church came to me and said, Rialto won't negotiate with us. I have to tell you that they are not a for-profit entity.

So I accept that businesses fail. That is part of the free enterprise system. What I don't accept is when a government or quasi-government agency that has a taxpayer guarantee makes a deal that puts small businesses at a disadvantage. That is what I don't accept.

And so today, I am hoping to understand the interest not only that Rialto has but Lennar Homes, who has now moved into my area, and what your plans are in Clark County. Technically, I know it is not allowed for Lennar to buy from Rialto the land it obtained under such agreeable terms. Yet, your Web site shows that they have moved into Vancouver, and I am very interested in that relationship. I am interested in the major tracts of land in my largest county that are now owned by Rialto, and hearing what the plans are moving forward and making sure that the FDIC does its job with regard to oversight.

So I am grateful to be here, Mr. Chairman. Thank you.

And I yield back.

Chairman NEUGEBAUER. I thank the gentlewoman.

That is all of our opening statements, and we will now go into a question-and-answer period. Each Member will have 5 minutes, and the Chair recognizes himself first.

Mr. Edwards, in some of the structured transactions deals, some of the people have loans and some don't. I think 22 of the 32 had nonrecourse loans; the other 10 did not. Can you distinguish the difference between a transaction where someone does not get financing and someone else gets the financing? What was the basis of that?

Mr. EDWARDS. Yes. Thank you, Mr. Chairman.

It might be helpful if I could give a little background into how the failed bank assets are slotted into the structured sales program. At the FDIC, we try very, very hard when a bank is failing to find a financial institution to take that failing bank over on a whole bank basis so that they take all the loans and all the deposits.

In some instances, that is not possible. There are instances when banks fail for liquidity reasons and we have very little time to market the institution. Therefore, investors have very little time to look at the book of loans that a bank has, and so we end up taking them back in our receivership capacity.

In other instances, the bank simply has very little franchise value. The assets are of very poor quality, and there is just no interest in acquiring those.

So I want to repeat it is our goal to not take any failed bank assets back. In a perfect world, we would transfer those immediately to an acquiring institution. But early on in the crisis, it was very difficult to do that, because we did have more liquidity failures.

So with those assets that we have to take back in our receivership capacity, what we have done is to institute the structured sale program, mostly for real estate-related assets and, as some of the Members have said, mostly distressed assets. Sixty-plus percent of the real estate-related assets that went into these structured transactions were distressed assets.

But, in any event, we try to group assets of like kind. For instance, in the Rialto transaction, those were all pretty much acquisition, development, and construction loans. We group those into packages. We use a financial adviser to assist us in figuring out the best structure for those, and then we put them into packages and attempt to sell them.

There are some loans that we work ourselves. And I should mention that after the bank fails, there is usually a 6- to 9-month period where we do have to work the assets ourselves until that structured transaction closes.

So if that gives you a flavor for—I am sorry, go ahead, sir?

Chairman NEUGEBAUER. So the question is, of the 32 sales, 22 of them involved in financing—

Mr. EDWARDS. Yes.

Chairman NEUGEBAUER. —10 of them did not.

Mr. EDWARDS. Yes.

Chairman NEUGEBAUER. I want to know why some people got financing and some didn't. Does that change the deal?

Mr. EDWARDS. I think we have done a less-than-perfect job of explaining the role of financing.

When we create a structured sale, what happens is we create a limited liability company. We gather up the assets that are slotted for that sale, and the receiverships contribute those assets to the limited liability company. So once they have contributed those to the limited liability company, we then bid out a percentage of the equity to capital investors.

We do add leverage to those transactions. And we started to do that, I believe it was in 2009, because what we were finding was the bidding was not as aggressive and there were not as many bidders there. By adding leverage to the transaction, we got better bids.

Let me make one point clear: We are not financing the cash contribution of the LLC to these transactions. The note is issued by the LLC we have created to the receiver in partial payment for the assets that the receiver contributed to the LLC.

Chairman NEUGEBAUER. So basically, the ones that don't have financing, it is because they made a bid on a certain percentage of the equity of that—

Mr. EDWARDS. That is correct.

Chairman NEUGEBAUER. And they didn't leverage up. So this could have been a smaller pool or an investor that had—

Mr. EDWARDS. Correct.

And I will say, just from an historical perspective, early on in the crisis, we did not have the LLC structure. We actually had a partnership structure. And part of the reason we changed to an LLC structure was because that allowed us to issue the debt.

Chairman NEUGEBAUER. One last question. Mr. Edwards, let's say I was banking at bank "X," I was current on my loan, but the bank had a bunch of other bad paper in there. My loan was current, and in fact I had 2 years left on my note, and I am in the middle of a development. What happens to me? You have closed my bank, but I am in the middle of a project here, and it is 2 more years on the note, and I have room on my line of credit for an advance. What happens to me?

Mr. EDWARDS. Thank you for that question. That is an excellent question.

It is one of the most difficult things we face when a bank closes. We are talking about unfunded commitments. Somebody, as you point out, is in the middle of the development, they haven't missed any of their payments. We look at each of those unfunded commitments—one of the first things our credit people do when they go in the night of the bank failure is to find out where we are on those. On a case-by-case basis, we look at those and make a decision on which ones we should fund and which ones we shouldn't. And really, the litmus test for that is if you put a dollar in, will you get a dollar back?

This is very analogous to the situation in a bankruptcy—a Chapter 7 bankruptcy where the trustee is faced with the same kind of situation. They need to make a decision. If I put a dollar in, will I get that dollar back out?

I will give you an example. Suppose in that situation you had 4 spec homes and they were all 75 percent complete. In that fact pattern, we would almost assuredly go ahead and fund those, absent other circumstances we haven't talked about. Because it makes sense. We will finish the homes. They are almost complete. We will continue to fund the loan. And when those are done, we will work with the borrower to figure out where to go from there. That has been our policy throughout this crisis.

Chairman NEUGEBAUER. Thank you.

And now the gentlewoman from California, Ms. Waters, is recognized for 5 minutes.

Ms. WATERS. Thank you very much.

Mr. Chairman, there is a long history to many of our concerns about the resolution procedures of the FDIC. Many of us go back to the resolution corporation and how they disposed of failed assets, and what we see with the FDIC is quite different. Many of us are not only concerned about some of the issues that were raised here today about what happens to those banks, those individuals who are left when you take over a failed institution and they are in development and how they are going to continue to get funding, loans, etc. But many of us, whether we are talking about the resolution of assets and how you dispose of failed assets, many of us are concerned about how you get rid of or you put out to bid or you make available these assets. We are concerned about that as we are concerned about REOs on the housing market side.

What we find is, too often, we get these big institutions or corporations who have the ability to put in smart bids and to leverage and to do all kinds of things. And it looks as if, in the case of Rialto, they had additional assistance in being able to be financed in some shape, form, or fashion.

But what many of us know and understand is, to the degree that you break up these assets and they are put out to smaller corporations or organizations, it improves economic development in all of our communities.

And so, when we hear about what appears to be sweetheart deals, we are going to have to spend a lot of time. And I think you are going to see that on both sides of the aisle, we really want to know what is happening with all of this.

We understand that the FDIC was trying to take all of the assets of a failed bank and move them all at one time to another bank or to individuals. And we have people who came in to us and said, "We put together a group from our community with substantial dollars, but the FDIC in this particular package wants us to take the barn and the equipment and the animals, and we don't need all of that." But just like with RTC, we could take the savings accounts, we could take this, we could take that.

We can't we do that? And why are we still going down the same road of making available to the big guys the opportunity to not only be successful in these bids but to get our help in doing so in the way that we finance them?

Mr. Edwards?

Mr. EDWARDS. Thank you very much. I appreciate your question, and I do share your concern.

I know you asked a question about inclusion of smaller investors. We started a small investor program. Under the structured sale program, 3 of the 32 sales themselves have been to small investors.

We did hear the feedback of the market, as well as folks here on Capitol Hill about the concerns, and so we created a pilot program and it is out on our Web site. It is called the Small Investor Program, or SIP. Instead of these large, large packages, what we do is we limit these to just one receivership. We try and concentrate the assets geographically. We do offer technical assistance to potential buyers. And we lengthen the due diligence period so that they have adequate time to look over these packages.

And I will have to say that the pilot has been deemed a success—

Ms. WATERS. Excuse me, I have to interrupt you for one moment, because I want to make sure I understand—

Mr. EDWARDS. Sure.

Ms. WATERS. —what is in this. Are these the assets that you find very difficult to get rid of?

Mr. EDWARDS. Yes, that is correct.

Ms. WATERS. Why would a small business want to be involved with getting very difficult assets to manage and to try and make money on?

Mr. EDWARDS. There are plenty of folks who don't have the capital that a larger deal requires, but have the expertise.

And I will tell you, for those of you who have a real estate background, working distressed real estate credits is a tough business. It requires a lot of technical knowledge. And some of these folks have that, but what they don't have are the funds to bid on these larger deals.

So we have found great success in breaking these packages into smaller packages and bidding these out. These folks are very happy with these deals, and they are working on them now.

With respect to the Investor Match Program, I know you mentioned that, so I just wanted to say quickly: It is the equivalent of, sort of, a match.com. It is a Web site where both investors and people with expertise, but not necessarily capital, can exchange emails and say, "I have 'X' amount, and I want to invest in one of these deals;" or, "I have a lot of expertise, or my firm has a lot of expertise, but I don't really have a lot of capital."

So we have put that Web site together. The numbers have really doubled since the very beginning when there was a small number. And there are quite a few minority- and women-owned businesses that have partaken in that Web site. So we hope—

Ms. WATERS. What is "quite a few?"

Mr. EDWARDS. I don't have the exact numbers, but I can certainly get those for you.

Ms. WATERS. Remember, that is what I said. I want to know.

Mr. EDWARDS. Yes. And I can certainly get those for you.

Ms. WATERS. Thank you, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentlelady.

And now the gentleman, Mr. Fitzpatrick, the vice chairman of the subcommittee, is recognized for 5 minutes.

Mr. FITZPATRICK. Thank you, Mr. Chairman.

Director Edwards, have the FDIC Office of Inspector General audits prompted any changes or improvements to the way the FDIC structures the LLC transactions?

Mr. EDWARDS. Yes, thank you for that question. That is an excellent question.

Absolutely. Our relationship with the Inspector General is respectful, cordial, and professional. But we are very grateful for the work they have done in this area, because, as you know, they did one audit of the ANB transaction, another one of Corus. And I thought they did a very thorough and reasonable job.

I would like to say that we adopted what we had done during the RTC days and began this program in May of 2008. We are constantly revising policies and procedures. We are constantly revising the agreement based on lessons learned and things that come up.

So a lot of what Mr. Rymer's people and his contractors pointed out to us, we took to heart. As you see in my testimony, on the ANB venture, for instance, there were a large number of findings and recommendations. We addressed every single one of them with our managing member. And I expect when his people go in, they will find things much improved. I would say the same about Corus.

In Corus, in particular, I would like to talk about one issue, and that has to do with the definitions that are spelled out in our LLC agreements. As those of you with a real estate background or those of you with a legal background would understand, these agreements are lengthy, complex, and difficult to administer. And we have some very fine people who do that. Nevertheless, the people we are dealing with on the other side of the table, like Mr. Miller, are very sophisticated, and they have their own set of attorneys and bright minds working on this. And reasonable people can interpret contracts differently.

We work very diligently to work those differences out. And where we find that, in retrospect, the contract should have had tighter language or more clarity to it, we go ahead on a prospective basis and amend the contract.

Mr. FITZPATRICK. Mr. Miller, what are some of the concerns that have been raised by borrowers whose loans have been transferred to one of the subsidiaries of your organization?

Mr. MILLER. Remembering that in these transactions approximately 90 percent of the loans had already defaulted, most of the borrowers were concerned as to how they would reach resolution and what the process would be. Many of them had gone from bank holding to—or bank as their lender to FDIC as their lender and then ultimately to us. So an initial concern or question—and we have 20 years of experience with this—is, who is my new lender and how will we interact? So there is some skepticism.

Unfortunately, in the context of a market turn and a great number of defaults, there is some turmoil in the business and there is some reconciliation in terms of relationship that has to take place.

I think that there are always questions where borrowers feel they have had representations made by either their bank or by the FDIC, and there is a discovery process that ensues. Those are concerns that are raised by borrowers. And the discovery process is, in many instances, one that comes down to he said/she said and trying to figure out what the actual facts and landscape are.

Remember that, with us, in these 2 transactions, we very quickly had to take over 5,500 loans—again, 90 percent defaulted—very quickly read every document and define the landscape. So the concerns of borrowers would range anything from, how will my loan be administered, to how long will it take until we can sit down and have a conversation?

Mr. FITZPATRICK. Attorney General Rymer, I think my time is about to run out, but I was wondering whether you believe that the structured transaction sales pose a risk to the Deposit Insurance Fund.

Mr. RYMER. They certainly do, sir. They are principally the reason we began this audit process.

I think we have to put it in context. There are some $668 billion that have passed through, in various forms of resolution, through the failure. This program—$25 billion or so is in this particular program.

We were concerned that, because this program is somewhat unique, there were not standing control mechanisms in place. That is why we did an audit early on of ANB and why we did an audit of Corus. In the case of ANB, we saw very little of a control environment to oversee that transaction. We have not yet done an overall audit to look at the entire control environment, but we did look at the controls of that particular transaction.

We have seen some anecdotal evidence, not yet proven through an audit, but we have seen evidence that the compliance process is maturing. There are compliance contractors in place now that management is hiring to review these transactions in great detail and with more regularity than they were in the past. And in terms of corporate governance, the FDIC Audit Committee, which is a committee of the board of directors, routinely receives reports on oversight of this program.

So oversight was minimal, I would say, early on, but we have seen some growth. We do plan, as I mentioned in my opening statement, to do a more comprehensive review of the oversight program a little later, probably early next year.

Mr. FITZPATRICK. Thank you, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

And now the gentleman from Ohio, Mr. Renacci, is recognized for 5 minutes.

Mr. RENACCI. Thank you, Mr. Chairman.

I am trying to understand the transaction. I think I do, but I am going to walk through it, and maybe start with you, Mr. Edwards, and then ask you, Mr. Miller.

It sounds like you bundle a group of assets from a troubled organization—and somebody testified 90 percent of them are normally defaulted already, defaulted loans—you bundle them together, and you put them in an LLC. And then you bid this LLC out, and the owner gets 40 percent of that LLC for a note taken back in this case, a nonrecourse note.

But that owner of the 40 percent has to, at least in this case—I think it was $900,000 or whatever it was—has to recover $900,000 first, pay the note back, and then the difference is split, 60 to the FDIC and 40 to the owner of the—40 percent share in the LLC. Correct?

Mr. EDWARDS. Yes, in most aspects.

It might be helpful if I just—since Mr. Miller is here—generally, the cash flows for our managing members in these LLC transactions are nonpublic information. But since most of those were in his statement, maybe I could just walk through that transaction for you, and hopefully I will get to it.

First of all—

Mr. RENACCI. Before do you that, though—

Mr. EDWARDS. Yes. Please.

Mr. RENACCI. —because I am really trying to stay top in—

Mr. EDWARDS. Sure.

Mr. RENACCI. —but that is kind of a top—

Mr. EDWARDS. Yes. You are correct. So the receivership contributes assets to an LLC we create. We then bid out the LLC to private sector entities.

Before we do that, we specify a few things: Are we going to allow leverage, yes or no? If we are, what ratio of leverage? In the case of Rialto, it was one-to-one—

Mr. RENACCI. But those are all the procedures. I want to come back to you, because I only have 5 minutes.

Mr. EDWARDS. Okay.

Mr. RENACCI. I want to go over to Mr. Miller, and then I am going to come back to you.

Mr. EDWARDS. Okay.

Mr. RENACCI. Mr. Miller, when you get these, if you own 40 percent of this LLC and you are now managing it, do you change the loan terms in any way? Are the loan terms the exact loan terms that the individuals already had signed up for, already had guaranteed, already had interest rates, already had terms? Are you changing any of that?

Mr. MILLER. Now, when you ask about the loan terms, you are not talking about the loan with the FDIC?

Mr. RENACCI. No, no. I am talking about the loans that are bundled in that LLC.

Mr. MILLER. Okay. So we, in the transactions that we have purchased, become the manager of—part-owner and manager of those loans.

Mr. RENACCI. I understand that. Are you changing the loan terms?

Mr. MILLER. We do. We negotiate with borrowers to sit down and to rethink and to find common ground as it relates to either extending the loan or terminating the loan or something like that.

We do not have absolute authority nor do we have FDIC authority to alter the loan terms unilaterally. So it is only as a negotiation with the borrower or through the court system that there is any alteration to those loan terms.

Mr. RENACCI. So do you make the loan terms any worse than they have already signed on, or do you make them better? In other words, you can't say, well, you had a 15-year mortgage, you are only 2 years in, but I want it all paid today.

Mr. MILLER. That is correct. We cannot alter the loan terms to the detriment of the borrower unilaterally.

Mr. RENACCI. Okay. So the borrower still has the same loan, in most cases, that he had signed up for or she had signed up for years ago, months ago, whatever. You now have that.

Mr. MILLER. We have the same loan terms that we have inherited from the FDIC. The FDIC might have altered in some way.

Mr. RENACCI. Okay. So with that being said, my next question is, who decides how they are bundled? Because at this point in time, ultimately the borrower, in my opinion, hasn't been hurt just yet, because they are still signed up for the same debt they agreed to pay you a long time ago. So who now bundles them to make the decision of what goes in the LLC?

Mr. EDWARDS. Thank you. We work with a financial advisor to figure out what the best structure for a particular loan sale is. So we go through the inventory of assets that we have taken back from the failed banks that we were unsuccessful in selling to an acquiring institution, and they will look through the portfolio with us, and we will figure out, okay, what is a rational way to market these loans. That is how we package them up.

Your point about the loan terms is absolutely essential. Borrowers have the same rights and responsibilities that they did with the bank. We don't change the loan terms unless it is by mutual agreement.

Mr. RENACCI. So how do you—so then you bid these out to a third party. How do you decide—I know it is to the highest bidder, but—

Mr. EDWARDS. Right.

Mr. RENACCI. —how do you decide who gets a chance to bid?

Mr. EDWARDS. We have an extensive prequalification process. It is all laid out on our Web site. You have to have the financial capacity and the technical expertise. And you have to have a good background; you cannot have caused a loss to the Deposit Insurance Fund, for instance.

And so if somebody goes through that prequalification process, then as specific loan packages become available, they are invited to bid. And if they choose to do so, they can sign up for due diligence and go ahead and bid.

Mr. RENACCI. Thank you.

Now, Mr. Miller, some of those loans that you get in this package that you are now managing, some of them are worthless and some of them you are going to get more than 8, 10, 20 percent, whatever you are buying them for?

Mr. MILLER. Yes, sir. Thank you.

First of all, I want to correct—we don't pay 8 cents on the dollar for, or we haven't in this instance paid 8 cents on the dollar for the loans.

And, yes, some of them will be worth absolutely zero, and have been. Some of them will be worth substantially worth more than what we paid. That is the expectation.

Mr. RENACCI. I don't know how you could pay 8 cents when you are—whatever you are paying, you are still going to get—once you pay that back, you still have to contribute 60 percent back to the FDIC.

Mr. MILLER. That is correct, sir.

Mr. RENACCI. It looks like I am running out of time. Thank you.

Chairman NEUGEBAUER. I thank the gentleman.

And now, Mr. Westmoreland is recognized for 5 minutes.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

Mr. Edwards, you mentioned to Ms. Waters that you were making these in smaller amounts. The smallest amount I have seen is $101 million. Is that a small amount to you?

Mr. EDWARDS. It is in terms of what a potential investor would have to contribute, and again, that is the book value, perhaps, of the transaction, but not the terms of the actual cash contribution that somebody would have to put up. We have not found—

Mr. WESTMORELAND. That is okay. That is just what I wanted you to—the smallest one so far I have seen is $100 million.

Now, there was one made to a realty group that if you divide the number of assets into the amount, it came up to about $50,000 per asset. Couldn't you have divided those up into smaller things where more people could want to get in on this deal where they pay 8 cents down and then you loan them the balance at zero percent interest for 7 to 10 years with no recourse? Don't you think people would be interested in that?

Mr. EDWARDS. Again, maybe I should talk first about the 8 cents. The loans that Rialto ended up purchasing, the equity partnership, they had a book value of $3.1 billion. The estimated market value, the implied value based on their bid, was about $1.2 billion.

Mr. WESTMORELAND. Who did that estimate come from?

Mr. EDWARDS. We had a financial advisor who gave us—

Mr. WESTMORELAND. Okay.

Mr. EDWARDS. Yes.

Mr. WESTMORELAND. Thank you. Who is your financial advisor?

Mr. EDWARDS. We have a range of financial advisors, such people as Barclays, and Stifel Nicolaus. I can get you a list.

Mr. WESTMORELAND. So you are the FDIC and you don't have anybody who can advise you on the finances?

Mr. EDWARDS. No, I think that our—

Mr. WESTMORELAND. You have all outside financial advisors?

Mr. EDWARDS. Correct.

Mr. WESTMORELAND. Now, you said that the Inspector General was doing a good job.

Mr. EDWARDS. Yes.

Mr. WESTMORELAND. Do you think he is doing it appropriately?

Mr. EDWARDS. I have all the respect, professional respect in the world for Jon. You can read his background. I think he has a very—

Mr. WESTMORELAND. Okay. Do you realize that your partner in this deal said that the Inspector General was being invasive? Do you agree with that?

Mr. EDWARDS. I don't agree with it, and I am not aware that comment was ever made.

Mr. WESTMORELAND. Okay.

Can you give me, not right now but in writing, an example of where you went in to some unfinished homes and worked it out with the borrower to finish those homes up? I want to know where those are at, because I don't know of any of them. And, in fact, people have had a terrible time even getting in touch with somebody about the FDIC, and the FDIC said we are not a bank, we don't do that. So I would like to know where those are, exactly.

But, Mr. Miller, in your testimony, you say that the borrowers you deal with are advised by counsel at every point in the negotiations. Is that correct?

Mr. MILLER. To the best of my knowledge, they are, sir.

Mr. WESTMORELAND. However, we have heard from different people that Rialto's prenegotiation letter sent to borrowers includes a clause that prevents the borrower from bringing legal counsel to negotiations. In fact, I have heard reports that Rialto will not engage with borrowers who have counsel present.

Is this the open process that you are claiming—that you are holding up as a model?

Mr. MILLER. No, sir. And thank you for your question. As you know, we have talked about this before.

It is very much our policy to engage in conversation and communication with our borrowers. And while I respect and understand that you might have heard one side of the story, I have always found that anytime I hear one side of the story, it is always very compelling.

Mr. WESTMORELAND. I know. And I heard your side, and that is the reason I went to get another side.

Mr. MILLER. Yes, sir. Thank you.

But the reality is, from the prenegotiation letter all the way through to every negotiation that we have with our borrowers, we engage borrowers with counsel, without counsel.

Mr. WESTMORELAND. Okay.

Mr. MILLER. We try to engage our borrowers properly and respectfully. And I think—

Mr. WESTMORELAND. So if I brought you a prenegotiation letter that was sent to a borrower who said that they were not allowed to have an attorney, you would find that troubling?

Mr. MILLER. I am not sure of the context of that letter, so I won't speak hypothetically. What I would say is that in all instances, any communication with borrowers starts at point "A" and is subject to discussion and negotiation. So if a borrower—

Mr. WESTMORELAND. Okay, but if I brought—

Mr. MILLER. Excuse me, sir.

Mr. WESTMORELAND. —a letter from Rialto—

Mr. MILLER. If the borrower would like to have an attorney present, the borrower can speak to us and say, "I would like to have an attorney present, and I would like that as part of my written record."

Mr. WESTMORELAND. I am just asking you if you would look at a notification from Rialto to a borrower telling them that they could not have counsel during the negotiations.

Mr. MILLER. Sir, I would certainly look at a communication.

Mr. WESTMORELAND. Thank you. Yes, sir.

Now, what percentage of your negotiators are attorneys?

Mr. MILLER. I would have to get back with the real number, but I would say probably 30 percent.

Mr. WESTMORELAND. Okay. So it is possible that somebody who was not being represented by counsel was actually negotiating with an attorney. Is that possible?

Mr. MILLER. I would venture to say probably not.

Mr. WESTMORELAND. Okay.

Mr. MILLER. We generally do not—I can't speak absolutely, but I believe not.

Mr. WESTMORELAND. Mr. Edwards, the last time we spoke on the record, which I think was August 2011—

Mr. EDWARDS. Yes, sir.

Mr. WESTMORELAND. —on structured transactions, I asked you if it would be best for a managing partner to go to court and obtain a judgment and allow the borrower to continue to accrue the interest in the taxes rather than foreclosing and taking the collateral first. Your response was that it seemed to be a case-specific situation.

Do you remember that conversation?

Mr. EDWARDS. Yes, I do.

Mr. WESTMORELAND. So my office sent you case after case to prove our claim that Rialto specifically is litigating over negotiating. However, your answers are the equivalent of giving me and this Congress the finger.

In your letter to Mr. Scott Leventhal, who will testify later—and I hope that all three of you gentlemen will stay tuned and hear some of the other side of this story—dated March 27, 2002, you said, the FDIC states, "Although the FDIC holds an equity interest in the LLC, such as Rialto, we do not manage or service the assets that were conveyed to the LLCs or Rialto itself. Therefore, the FDIC is not in a position to control the resolution strategy to loans owned by the LLC."

So you are saying that even though you are a 60 percent partner in the deal, that you have fronted $642 million, that you have no say-so in it?

Mr. EDWARDS. No, I wouldn't say that. We do exercise an oversight responsibility. But if you look at how and why we put these transactions together, it was specifically to make use of the private sector's expertise in working out these credits.

It would not be a true sale if, in fact, we were involved in the day-to-day management of the LLC. And, in fact, that is exactly why we created these transactions: so that the government was not involved in the day-to-day aspects of those transactions.

Mr. WESTMORELAND. Are we going to do another round, Mr. Chairman?

Chairman NEUGEBAUER. We are going to try.

Mr. WESTMORELAND. I yield back, since my time is up.

Chairman NEUGEBAUER. Okay. Thank you for yielding back.

Ms. Herrera Beutler is recognized for 5 minutes.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman.

I have a couple of questions. Mr. Westmoreland made a very important point. Now, I understand that you are saying, in concept you set up this LLC by way of trying to protect the depositors, and you are working with the private sector and they are putting in some skin, and it is supposed to work. We are not opposed to that idea. The problem is, in practice, we have seen very different things.

I think you have about 150—or had—loans; some were defaulted, some were performing. And I have instance after instance after instance of cases—people who did not talk, they were not related—I shared my church, they are nonprofits, they are developers, it is across-the-board—who have come to me and said, we cannot negotiate in good faith with Rialto, because they will not work, they won't negotiate. I almost laugh to hear you say "negotiate." It is like the bully on the playground coming up to the skinny kid and saying, "Give me your lunch." That is not negotiating. Yes, the kid could say no, but he is going to lose his lunch and get a black eye anyway.

So where this comes to you, if you were operating on your own with your own capital, you wouldn't have me here questioning it. My problem is when an agency steps in and says to a construction loan that is performing, we are not going to extend any more payment to you, and then we are going to sell the loan to a business which has over 20 years of experience and understands how to develop this and has unlimited or very—I shouldn't say unlimited, but significant access to capital and a tremendous sweetheart loan deal, we have a problem.

And so, to hear you say that there is a negotiation taking place in good faith, I guess that is one thing that I would ask: Is that something you are willing to go back on? If I present to you cases, probably 80 of them, where people have not been able to negotiate—many of them are in foreclosure at this point or have lost it all in bankruptcy—is that something you are willing to work with us on?

Mr. MILLER. Is that for me?

Ms. HERRERA BEUTLER. Yes, Mr. Miller.

Mr. MILLER. Yes, thank you for your question.

We have had numerous inquiries through various Members that we have responded to in writing over and over again. And, of course, we are always open to and willing to listen to, understand, and rethink any program or any negotiation that we have in place.

The answer to your question simply is, yes, of course we will go back, and we want to hear any concerns that people have.

Ms. HERRERA BEUTLER. Great.

Mr. MILLER. That is why I am here today.

Let me just say that it is very important to know that, number one, you might only be getting one side of a story. Number two, the terms and conditions of loan documents are very clear. The simplest answer is, the borrower is always able to pay off their loan. At the end of the day, they are looking for a compromise. And what one person might consider responsible or reasonable, another person might say, I need to know the factual landscape.

Ms. HERRERA BEUTLER. That is fair. And in reclaiming my time, part of my concern is, when someone is—by nature of home construction or commercial development, the way that the loan works is the money comes in phases. So if the FDIC says, "Sorry, we are going to cut you off, you don't get to finish it," it makes it very difficult then when you have the new owner of a loan who comes in and says, "We want it all, we want it all now." You are, by definition, picking winners and losers. And the government shouldn't be in that business.

Mr. Edwards, I have a question. It is kind of a two-parter. Actually, between the two of you, I have heard this now. But, Mr. Miller, your testimony stated that Rialto purchased the 5,500 distressed loans with an unpaid balance of $3 billion with a purchase price of 1.2. However, Rialto paid the 250, which is 8 cents on the dollar down, and the FDIC picked up the remaining 600-plus million.

So you put down 8 cents on the dollar, and I have two questions with that. First, how were these deals negotiated? And, second—perhaps this is more for Mr. Edwards—was the highest bidder really 8 cents? I do have folks in my neck of the words who maybe couldn't have hit the whole 100 percent but they could have hit 60 cents, they could have hit 80 cents. But was the highest bidder really 8 cents?

Mr. EDWARDS. First of all, I will answer your question on the bidding. These transactions are widely, widely marketed. As I was indicating before, we have a prequalification process. In the case of the two Rialto deals, there were 16 bidders and 42 bids on the first deal that they bought from us. They were the highest bidder. In the second deal, there were 11 bidders and 18 separate bids, and they were the highest bidder. This is a very, very competitive process.

Ms. HERRERA BEUTLER. So 8 cents was the highest bid?

Mr. EDWARDS. I think the issue here is, what they bid is a dollar amount for the percentage equity that they are getting in the LLC. In this case, it was 40 percent of an LLC with loans that are worth $1.2 billion. They paid—

Ms. HERRERA BEUTLER. Worth on paper.

Mr. EDWARDS. No, worth with regard to our financial advisor's estimate, worth $1.2 billion. They paid $243 million for their 40 percent share of the equity portion of the deal. Fifty percent of the deal was debt, 50 percent was equity.

Ms. HERRERA BEUTLER. So—

Mr. EDWARDS. So, in other words, yes, they bought—

Ms. HERRERA BEUTLER. —8 cents was the highest bidder in terms of recovering. Okay, so these—

Mr. EDWARDS. If you look at this as a metric of percentage of book value, the 8 cents is correct, but—

Ms. HERRERA BEUTLER. I have to tell you—

Mr. EDWARDS. Yes.

Ms. HERRERA BEUTLER. —one thing I keep hearing is, I ask a question and then sometimes it is, with the whole portfolio we can't pick and choose pieces of it. And then I hear, you can't break it down. I keep hearing different points made in response to questions.

In my mind, we had willing people who could have performed, and it was the FDIC who stepped in. And it was one of the first banks that went down in our region. Granted, I don't think you all knew what you were doing, and we are bearing the consequences.

But, with that, we will keep going. Thank you, Mr. Chairman.

Mr. MILLER. Mr. Chairman, should I answer my portion of the question?

Chairman NEUGEBAUER. I think we are going to try to come back around.

Mr. MILLER. Okay.

Chairman NEUGEBAUER. We are going to have to vote here in just a little bit.

The Chair now recognizes Mr. Capuano, the ranking member of the subcommittee, for 5 minutes.

Mr. CAPUANO. Thank you, Mr. Chairman.

And, gentlemen, I am kind of put off on this, because the truth is, I have not dealt with this, so this is kind of a new issue to me. My office has gotten no calls on this, so I am kind of learning as we go along. But I have been listening, and I have read the testimony. And, Mr. Inspector General, I have a couple of questions.

I believe you said it in your testimony, but you also put it in your written statement. You said, according to the FDIC, actions have been taken to address the suggestions you made.

Mr. RYMER. Yes.

Mr. CAPUANO. Have you not checked with the FDIC?

Mr. RYMER. No, sir, not yet. We have not completed the audit follow-ups where we would routinely get back to those.

Mr. CAPUANO. Okay. But you will be doing that?

Mr. RYMER. Yes, sir.

Mr. CAPUANO. You have no reason to believe that anything other than what they have told you is true?

Mr. RYMER. Not at this point, sir, but we certainly will verify that.

Mr. CAPUANO. Okay. And when you did your audit, did you check any potential conflict of interest on these things? Was that part of the audit or no?

Mr. RYMER. The two we completed, no, we did not, sir. But the one we are doing now, the Rialto work, there is a bidding and selection process portion of that audit that will look at that.

Mr. CAPUANO. Okay. Great. Thank you. And you expect that to be done, give or take, in August?

Mr. RYMER. Yes, sir, late August.

Mr. CAPUANO. Great. Thank you.

Mr. Edwards, most of my questions—I was going ask you about that 8 cents on the dollar. I think you just answered it as you see it. I wouldn't mind seeing that in writing at a later time, because it is hard to follow some of the numbers that get thrown around when you are not that familiar with it. So I would like to hear about that a bit little more, because 8 cents on a dollar? I am in. I have 8 cents. Don't get me wrong; that is all you are going to get. But I will get a buck for it. But I understand that there are differences of opinion, and I would like to follow it a little bit better.

But I would like to ask you on—actually, I am not sure if it was Mr. Edwards or Mr. Miller. I believe one of you, maybe both of you, said that of the loans in the package here, 90 percent of them were in default. Am I right to believe that most of these loans that are in default are construction loans? They are not typical mortgage loans, they are loans that are in the middle of construction, so the asset you have is possibly a pile of dirt or a hole in the ground? Is that a fair assessment or not a fair assessment? Understanding, not assessment.

Mr. MILLER. Sir, if you look at the 5,500 loans, they are a range of loans. They are not consumer loans, they are not loans on homes that are occupied by families. They are generally either, really, land, dirt, or land that is partially developed, homes that are under construction, shopping centers, office buildings, warehouses.

Mr. CAPUANO. That are mostly under construction. So these are mostly, for all intents and purposes, construction loans.

Mr. MILLER. Some under construction. Some of them are completed projects. It is a panoply of property types.

Mr. CAPUANO. The reason I ask is because—I think the point was made—you can't pay off a construction loan. If you pull a loan in a middle of a construction, you just can't do it. I have had construction loans. They are really just bridge loans until have you an asset that you can then take if I ever finish it. So I think that is an important point to make.

Mr. Edwards, I guess the one question that hasn't been asked that I am aware of is, okay, you have 4 percent of all the assets in this. And that 4 percent is based on book value, not actual value, and that is fair enough, but whatever, some very relatively small percentage.

Mr. EDWARDS. Right.

Mr. CAPUANO. There have to be other—or maybe there isn't—but I presume there are other bad loans that don't go into this 4 percent that you handle another way. And I am just curious, if you get rid of the structured asset sale transaction, what do you do with these assets?

Mr. EDWARDS. Yes, thank you for the question.

With respect to the $670 billion of assets that were from failed banks since the beginning of 2008, the lion's share of those have gone to acquiring institutions. In the instances where we cannot, as I described earlier, where we cannot pass those to acquiring institutions with or without a loss share agreement—

Mr. CAPUANO. Hang on.

Mr. EDWARDS. Yes.

Mr. CAPUANO. I need to hear it in English. So I am going to translate for you, and tell me if I am right.

Mr. EDWARDS. Yes.

Mr. CAPUANO. Bank “A” fails. You want to sell most of bank “A” to bank “B.”

Mr. EDWARDS. Absolutely.

Mr. CAPUANO. You go to bank “B,” and bank “B” says, “Wait a minute. I will take it, but I don’t want these 200 loans.”

Mr. EDWARDS. Correct.

Mr. CAPUANO. “These are no good. I don’t want them. I will take everything but those 200 loans.”

Mr. EDWARDS. Yes.

Mr. CAPUANO. Okay.

Mr. EDWARDS. Yes. And then once we get those loans, by definition, since the bank fails and there is no acquirer, we have to start working them ourselves.

And as I suggested, there is a percentage that we end up just retaining in the portfolio and working out. In other instances, we work them for a while and then put them into these Structured Transaction Programs. There are also instances where we can, mostly with performing loans, put them into securitizations.

Really, the only other alternative is you sell them for cash. The whole reason that we are doing this program is because cash sales in a distressed market right out of the bank get incredibly low bids. As a matter of fact, early in the crisis, we did put some of these loans in a standard whole loan sale package, and the prices that we got were very low.

Mr. CAPUANO. Have you or Mr. Rymer or anyone else, have you done maybe a comparison, for the sake of discussion, take 200 of these exact same loans that maybe you did just spin them out right away, take the loss up front, versus the ones you have held? I am just curious. Your point makes sense to me, but is there any statistical analysis to back that up to say generally that is correct?

Mr. RYMER. Sir, in my statement, we identified an audit that we have yet to do but that we certainly plan to do. And that is, if you go back to the $668 billion in total that has passed through the resolution process, there are three or four different resolution methods that have been used principally, and the most popular one is the purchase and assumption through a bank. Then, there are the loss share agreement arrangements. And then at the end, the smaller piece is the one we are talking about today, the structured asset sales.

I believe it is very important for an independent assessment of the value of those three resolution methods to be compared to each other, and to consider the risk associated to the FDIC and certainly the risk or potential damage or harm that may be happening in a particular market—

Mr. CAPUANO. And you plan on doing that, Mr. Rymer?

Mr. RYMER. Yes, sir, we do.

Mr. CAPUANO. When you do that, I presume—again, the different approach is one thing. But as it was explained, as I heard it anyway, one method is all the so-called good loans and the other method is all the so-called bad loans. I am sure you do, but I need to make sure of it: You are going to be doing apples to apples. Comparing the return on value for a bad loan to a good loan, very interesting but it doesn’t help. I am sure I know the answer, but I need to ask.

Mr. RYMER. Yes, sir. The point we would make is that for like collections of assets, we would do a comparison.

Mr. CAPUANO. Thank you.

Mr. EDWARDS. I think it would be helpful if I just add one point. Early on in the crisis, as I indicated, we tried to do cash sales; the prices were just very, very low. At this point in the crisis, as we market LLC transactions, we market them both as an LLC transaction and as a whole loan sale. If the whole loan sale price is better, we take that, because the market has now recovered. And, in fact, we had a transaction with some hotel loans last year, and that is exactly what happened.

Mr. CAPUANO. Thank you.

Thank you, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentlemen.

I am going to do a very quick lightning round. I am going to give Mr. Westmoreland 2 minutes, and I am going to hold him to it.

So, you are recognized for 2 minutes.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

I would like to ask unanimous consent to I submit for the record a letter from American Land Rights and any attached material submitted by borrowers whose loans have been transferred into one of these LLCs; a letter from Merolla & Gold, LLP; and a letter from Tom Carson, a doctor of appraising, really.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mr. WESTMORELAND. Mr. Edwards, did you go to—or did anybody go to any of the specific borrowers and say, if you can come up with 8 percent of what the loan is, we will give you a loan for the remainder of it, we will be a partner with you at 60 percent, and we will give you 7 to 10 years to do this, and it will be at no interest and there will be no recourse to you? Did you give any of those borrowers that opportunity?

Mr. EDWARDS. No, we did not. What we do—

Mr. WESTMORELAND. Do you think any of those borrowers would have taken that opportunity?

Mr. EDWARDS. I am certain they would have. But I will tell you—

Mr. WESTMORELAND. Me, too.

Mr. EDWARDS. —what we do when a bank fails is, when an asset is put into a receivership because we haven't been able to pass it to an acquiring institution, we will work with the borrower. If they give us their current financial statements and we are able to get an appraisal on the collateral, we will try and do some kind of workout with them before we even put these loans in a structured sale. It is a 6- to 9-month period, generally, before that happens. So we do work with these borrowers.

Mr. WESTMORELAND. You were at the hearing that we had in Atlanta, and Mr. Miller. We had it at noon in Georgia, and we had people from Washington State, California, Nevada, Texas, Florida, and New Jersey who came, who had problems with Rialto. There was not one mention of Starwood, Four Squared, Colony, or anybody else. These people traveled on their own dime to come to that hearing.

That is just one side of the story, and I can't wait to get yours on some of these other things. But that is a problem, when you have people traveling across the country just to come to a hearing at which they are not even going to get to testify.

Mr. Edwards, I just find it very, very troubling that the FDIC has not done more to make sure that at least some of these people have an opportunity to have the same deal you are offering other folks. That just makes sense.

And, with that, I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

The gentlewoman from California is recognized for 2 minutes.

Ms. WATERS. Mr. Chairman, I think that what the FDIC is hearing today is our dissatisfaction with the way that they are disposing of these assets in one or two or three different ways.

Mr. Miller, you have the ability, in negotiating with these borrowers, to decide whether or not you are going to demand a payoff, whether or not you are going to do a loan modification, or what have you. We have been going through this on housing, and so we are very concerned about the way loan modifications work or don't work. And we have been trying to keep people in their homes.

And while we understand that you have to get the most you can get for these assets—that is kind of dictated to you—we want some balance. And we want you to be able to sell these assets and make a reasonable return on the sales. But we also want to keep these businesses and we want to give people an opportunity, rather than taking what they have invested in and giving it to somebody else for the 8 cents on the dollar that you have been hearing.

So do you hear us, Mr. Edwards?

Mr. EDWARDS. Yes, we do. And believe me, we are very concerned about how this impacts communities and borrowers. As you just pointed out, we have a statutory duty under our enabling legislation to maximize the recovery of these receiverships. The structured sale transactions, as I pointed out in my oral and my written testimony, under best estimates have netted the receiverships over $4 billion more than just a straight cash sale.

I will tell you this, to anybody on the committee: We have said and we will say again, if there are individual fact-specific borrower issues that you would like to bring to our attention, we spend a lot of time looking through those complaints and trying to make sure that our partners have not violated the LLC agreements in any way and are acting in a respectful and businesslike manner.

Ms. WATERS. Mr. Chairman, may I—Mr. Rymer, do you audit the negotiated arrangements with the borrowers that Mr. Miller is doing, and if so, are you able to determine whether some are more favorable than others or what have you? Do you audit that?

Mr. RYMER. No, ma'am, we have not.

Ms. WATERS. How do you know what he is doing?

Mr. RYMER. We audited his compliance with the terms and conditions of the contract. That report is not complete, ma'am, but it is expected to be finished in August.

But I can tell you that the objective of that audit was to audit his compliance with the terms and conditions of the contract, to audit the FDIC's oversight of that contract, to audit the bidding and selection process that Rialto went through to—

Ms. WATERS. That is not what I am talking about, and I will cut you off. My time is up.

Would you make sure that we get a copy of that report? I want to take a look at what has happened to all of these negotiations.

Chairman NEUGEBAUER. Absolutely. We will get those, and we will ask the FDIC to furnish us a copy of that report.

Going to go back to a lightning round. Ms. Herrera Beutler?

Ms. HERRERA BEUTLER. All right, lightning, I am going to speak fast. Thank you, Mr. Chairman.

I understand, Mr. Miller, Lennar is not actually—legally allowed to buy land acquired by Rialto in this agreement. However, Lennar has recently decided to begin buying land and building homes in southwest Washington, in the same area in which Rialto owns huge amounts of undeveloped land that remains deadlocked.

Can you explain this decision? Are there laws prohibiting Lennar and Rialto from discussing the loans and the land that they own? Meaning, you have access to competitors, other developers; you have their financials, basically. Can you share that information? And, further, what is to stop Rialto from sitting on the undeveloped land to jack up the price of development Lennar is planning?

Mr. MILLER. Thank you for your question.

Boy, there are so many things. I feel like I am sitting here as a villain, and I don't get to answer any of the questions. Let me say—

Ms. HERRERA BEUTLER. To a lot of broken homes in my neck of the woods, you are a villain. And that is not my personal—but I have a lot of broken homes.

Mr. MILLER. Thank you. I understand that, and we remain sensitive to that in our offices every day. We are engaged to do a business that is difficult, and sometimes it is a little bit—it is adversarial and uncomfortable. And there is no question about that. We are very sensitive to that. We recognize the landscape.

I have to start by answering the question and telling you, we did not pay 8 cents for these loans.

Ms. HERRERA BEUTLER. Okay, that is not my question, Mr. Miller. And I have a very limited amount of time. It is more specific to Lennar and Rialto, the land that is held, the information that is shared, and the financials.

Mr. MILLER. Okay.

Ms. HERRERA BEUTLER. And you can provide the rest in writing, as far as the 8 cents. I am happy—we will all continue the dialogue.

Mr. MILLER. Thank you.

We have to recognize that Lennar put $250 million of cash that sits behind the loan and comes out pari passu with money to the FDIC. We do not play games for our homebuilding business or anything else by investing in loans in any area of this country. Our homebuilding operation enters various areas of the country having nothing to do with the activities of Rialto.

Ms. HERRERA BEUTLER. Reclaiming my time, I actually find it interesting that when Clark County was the largest and fastest-growing county in the State of Washington, Lennar wasn't there. Every homebuilder in, like, the west coast was there, but Lennar wasn't there until everything went down. And there are these holdings by a company that isn't the same but they are cousins, so to speak.

Mr. MILLER. At that time, it was not economically feasible when prices were high and it was very difficult for us to enter that market. We are entering that market for different reasons.

Yes, we have loans in the Rialto portfolios and the FDIC portfolios in those areas. Understand that every time we end up through Rialto taking back a piece of land and unfortunately taking it back from one developer, we cannot sell that land to our homebuilding operation and don't intend to—

Ms. HERRERA BEUTLER. I understand that.

Mr. MILLER. But we are enabling a competitor, another home builder, to build on that piece of land at a lower basis. So we are actually invigorating the economy by putting the land in someone else's hands. We are not holding these tracts of land for some future date or for some other reason.

Ms. HERRERA BEUTLER. And there is no financial information that is shared between the two on the land that is held, financials?

Mr. MILLER. Recognize—there is no financial information that is shared, nor would it matter. Remember, our financial information as a public company is available to everyone. There are no trade secrets in that. And we certainly don't seek financial information on any of our competitors, either through loans that we have or through other means.

Mr. RYMER. Ma'am, if I could quickly tell you that in the audit we are doing now with Rialto, we are paying particular attention to the controls over transactions with affiliates. That is an audit step that will be in the audit report that you should expect later this summer.

Chairman NEUGEBAUER. I want to thank our witnesses. I appreciate your testimony.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

With that, this panel is dismissed, and we will call up the second panel: Mr. Scott Leventhal, president of Tivoli Properties, Inc.; and Mr. Edward Fogg, owner of Fogg Construction Company and Fogg Mortgage Company. If you would take your places, please.

We are trying to get these opening statements as quickly as we can. We think there are going to be some votes here in a while, and it will be a fairly lengthy vote.

And so, with that, Mr. Leventhal, thank you for being here. You are recognized for 5 minutes to summarize your written testimony.

STATEMENT OF SCOTT L. LEVENTHAL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, TIVOLI PROPERTIES, INC.

Mr. LEVENTHAL. Thank you, Mr. Chairman, and members of the subcommittee. My name is Scott Leventhal. I am the president and CEO of Atlanta-based Tivoli Properties, Inc. Tivoli is a developer of high-rise condominiums, apartment projects, mixed-use projects, subdivisions, both in-fill subdivisions, lifestyle communities, and entry-level communities.

I appreciate the time to speak to this committee and would note that we are all here today because the world has been turned upsidedown. And by turning the world upsidedown, there is obviously some fallout and things that should be reviewed and addressed.

As an Atlanta-based developer, I am particularly affected by the fact that Georgia has seen more bank closures than any other State in the country. For me, that has resulted in multiple banks being closed, the assets of those failed banking institutions being transferred through whole bank purchasing assumption agreements where the FDIC will backstop the losses sustained on those loans through a loss share, through structured transactions with private partners, multiple partners, as well as directly liquidated to private investors.

The subcommittee and the prior witnesses talked previously about the methodologies and how these loans are liquidated and transferred, and it is important that we do analyze that.

The whole bank purchasing assumption is a situation where the FDIC is capable of taking all the assets of a failed banking institution and transferring those assets to a financially solvent institution. That institution doesn't get to choose the good or the bad. They take the loans, they work the loans out. The loans that are unable to be sold through a whole bank purchasing assumption end up in these structured transactions.

The primary difference between these two methods of liquidation is that when a bank fails and an acquiring bank purchases the assets, the borrower is dealing with the bank. When a bank fails and the FDIC is incapable of selling those assets to another acquiring bank, they end up in the hands of a private partner, and in most instances that private partner is a direct competitor of the borrower.

These structures provide, as previously discussed, management fees to be paid on the unpaid balance of the loans. They also provide for interest-free financing for a significant term.

Further, something that has not been addressed in this hearing is that these structures actually have a disincentive for the private partner to perform. Meaning that for the private partner to liquidate the assets in the structured transaction, they will get to a point where the profits that are being split between the private partner and the FDIC will actually increase to the FDIC and decrease to the private partner, thereby diluting the amount of asset management fees that are available to be collected. If you have 7 years, why finish anything? Why liquidate? Why deal with it?

Another matter which has been touched on today is, when a bank fails and the FDIC comes in and takes over the assets of the failed institution through a receivership, and elects to not fulfill the obligations that are required under the loan agreement, that issue has a very specific legal term; it is called repudiation.

Now, the consequences of repudiation are very significant. In many instances, borrowers have borrowed moneys for the purposes of construction projects. Depending on what point in time the assets or the bank fails, that borrower may be subject to repudiation. And the FDIC, because of other problems the bank may have, will elect not to proceed forward. Many borrowers around the country are facing this issue, and it is resulting in very dire consequences and dire situations.

Now, the acquiring bank or the private partner through the structured transaction also then has the opportunity to pursue the borrower, pursue the guarantor for the full amount that has been drawn, except for the lender failed to perform. They repudiated. It is interesting that the rules are written in pencil in some instances.

I think that the subcommittee should take consideration of the fact that structured transactions are important. They are important to the FDIC's ability to liquidate assets. But what we need to do is we need to resolve the issue where direct competitors are coming in and they are being given access to private borrowers' financial information. It creates an unfair advantage, particularly when the Federal Government assists and is driving competition out of the marketplace.

Tremendous litigation is ensuing around the country; and while many borrowers have the right under the Federal Bankruptcy Code to seek some sort of debtor protection, they should not be forced to if the opportunity exists to work those loans out.

I am moving very quickly. I have one last point, Mr. Chairman, if you would allow my indulgence. I see the clock has changed.

It is very important that we recognize that in a lot of litigation which is going on around the country, while structured transaction partners are seeking to recover and get judgments on the obligation, meaning the note and the guarantee without first foreclosing on the property or the collateral that secures the loan, you see communities all over, particularly in Georgia, wasting. And that means that the surrounding properties have severe effects from the fact that the neighboring property is just wasting away because a dispute is going on between two different parties and it is unrelated.

So Mr. Jones, who lives in a home that is right next door to a partially developed house or partially constructed house where the FDIC has come in and repudiated the loan, a successor has then come in and wants to litigate for the amount of that debt, that homeowner living next door's appraised value has declined. They can't get new financing. That borrower is now upside down.

[The prepared statement of Mr. Leventhal can be found on page 91 of the appendix.]

Chairman NEUGEBAUER. I thank the gentleman.

Mr. Fogg, you are recognized for 5 minutes.

STATEMENT OF EDWARD L. FOGG, OWNER, FOGG CONSTRUCTION COMPANY AND FOGG MORTGAGE COMPANY

Mr. FOGG. Good afternoon, Chairman Neugebauer, and members of the subcommittee.

My name is Ed Fogg, and I am grateful to be here. I would have never in my wildest dreams believed that my company's ultimate failure would come directly from the governmental policy of the FDIC and the partners they selected—

Mr. WESTMORELAND. Mr. Fogg, would you speak into the microphone?

Mr. FOGG. Yes, sir—only because my bank failed. My story is not one of a borrower who gave up and walked away from any of his obligations. I am not a borrower who took out loans with a bank with no intention of paying them back.

In late 2008, the Bank of Clark County approached me to purchase some of their distressed properties and develop rental homes. We closed our last construction loan on Christmas Eve, 2008, and the bank failed 23 days later.

Without any of the promised help from the FDIC, I still completed my construction projects out-of-pocket and paid every subcontractor. All of our loans were current at the time of the bank failure.

I am one of the many borrowers whose loans were repudiated for no good reason, and this has created my problems. I am sure you know that when a loan is repudiated, it requires me to hold up my end of the deal, but the FDIC does not have to the hold up the end of the deal of the failed bank. In my case, it did not fund approximately $650,000 of the original loan commitment. To many small businesses, this is devastating.

Put yourself in my shoes. Your bank just failed, the FDIC says there are no funds available to complete your project, and there is no construction financing in 2009. But, today, I really feel I am here to represent the little guy who unfortunately just banked with the wrong bank, and then eventually our loans were sold into some sort of structured transaction.

I heard Ms. Sheila Bair speak about the responsibilities of the American public to make their mortgage payments. I have done this, and it has really meant nothing.

I have also read the FDIC book called, "Managing the Crisis" and the clear message is that the FDIC recognized in the past the need to protect and not hurt communities by not cutting off credit to businesses and to work with the local communities. I hope in the future, they emphasize these actions once again.

I do believe the FDIC needs to recover as much money as possible to reimburse the American taxpayer, but it should never be done by creating further economic harm in the communities where they have unfortunately closed banks. Structured relationships with the FDIC need to be much more careful in selecting their long-term partners. The partners' goals should not be to become the prize of Wall Street but the solution for Main Street.

The FDIC's partnership with Rialto/Lennar was tricky from the beginning. All of the loans were basically primarily construction loans, land development loans, and it is obviously the same line of work that their parent company Lennar is in. Unfortunately, what incentive do they have to work out the problems of their competitors? It doesn't make much sense to hire someone that is your direct competitor to try to help you fix your problems.

In my case, with Rialto, we never had missed any sort of payments on any programs, even after they repudiated our loans and we had to come up with the $650,000 out-of-pocket. They eventually negotiated four different settlements with us, but every time, they would back out of the settlement. When they finally did offer me a settlement, they told me to pay my upside down home off completely or they would foreclose on me.

But they did come back with another option. They offered me a rate of 8 percent with a $10,000 up-front loan fee on a $250,000 loan. It took me a year-and-a-half to negotiate this loan extension, and the only extension they would give me was for an additional year-and-a-half. I am a mortgage broker, and if I had offered this to one of my clients it would have been conceived as predatory lending, as the APR in this loan is 38 percent.

Also, with the attractive financing the FDIC has offered their partners, it should be able to be passed along to the so-called experts of the community.

We understand what is in our projects. None of us went into these loans with the idea of not paying them back. We are experts in our local markets. We are experts in the product that we are putting out there. And we alone should be allowed to try to work with the FDIC to maximize the return to the American taxpayer. None of us wants to see our projects fail or not succeed.

The problem also isn't just with structured transactions. I have five loans with another bank called Frontier Bank. It was acquired by Union Bank of California. We worked for years and years to come up with a long-term solution and provided thousands of pages of income documentation and assets. We finally did receive a denial for our modification from this bank a few months ago, and the most amazing part about our denial is they actually mailed the decline of my modifications to a friend of mine's P.O. Box. Union Bank cared so little that they could not even get my address right. The FDIC should be disgraced by the actions of this partner.

We, the borrowers, did not go into these banks with the goal of defrauding them or not paying them back. I truly believe that given the time and acceptable terms, the FDIC would recover much more money and not force borrowers like myself into bankruptcy or foreclosure.

I thank you for letting me be here.

[The prepared statement of Mr. Fogg can be found on page 63 of the appendix.]

Chairman NEUGEBAUER. I thank the gentleman.

We now have votes, and so I am going to recess the hearing until after this series of votes.

With that, we are in recess.

[recess]

Chairman NEUGEBAUER. The committee will reconvene.

We will go to questions with Members, and I will recognize myself for 5 minutes.

Mr. Leventhal and Mr. Fogg, you know the basics of why FDIC is doing these structured transactions. There has been a pretty unprecedented amount of bank closures over the last few years, taking on a lot of assets. Some of these assets the acquiring banks don't want to take on, and you are familiar with that. Tell me what you would change about the way the FDIC is handling the structured asset program?

Mr. LEVENTHAL. Thank you, Mr. Chairman.

As I mentioned earlier, the Structured Transaction Program is an important tool for the FDIC to be able to liquidate assets, and it is very sensible that the FDIC goes into partnership with private partners who are experts in the field. It would not make sense to get someone who is not an expert.

I think that the primary issue that needs to be addressed is that borrowers should have an expectation that they are doing business with banks. Banks operate in a manner that borrowers are accustomed to. If we could divest the obligations of some of these individual borrowers in these structured transactions before they are entered into, where the private partner comes in and they acquire all the assets and they take the skill set they have and the assistance they are getting from the FDIC to be able to improve on the assets, I think that a structure could come about that would result in one, a better financial reward to the FDIC, and two, an improvement within local economies.

Chairman NEUGEBAUER. Mr. Fogg?

Mr. FOGG. Why does the FDIC think that for their 40 percent stake in the deal, they are actually getting a better deal than working with the local communities? Why is somebody like Rialto more of an expert on my project than I am? Why do they have to go out and hire somebody to try to liquidate it, to try and recover, when I obviously have a vested interest in getting through it?

We didn't go into these transactions trying to commit fraud. We went into them to try to make money for our families.

So by the FDIC putting them in a big structured transaction, hiring some guys from who knows where in the country, how are they more of an expert on my piece of property or my particular grocery store or high-rise building than I am? All they do is they go out and, after they get the property, they come back and hire other people from our community to be their so-called experts when we were there to begin with.

Chairman NEUGEBAUER. So you heard the FDIC say that there is a transition period between the time when they acquire those assets and when they put them into the structured transaction. That period of time is in the neighborhood of 9 to 12 months. In your own experience, Mr. Leventhal, in that 12-month period before your loans were put into the structured transaction, tell me a little bit about your dealings with the FDIC.

Mr. LEVENTHAL. Thank you, Mr. Chairman.

First, I think I would be remiss if I didn't let this committee know that I have been very fortunate, and I have recently settled my disputes, which I had one with Rialto. I have had other matters with other structured transactions which have not resulted in any poor experiences for me.

And I can say that my experience with the FDIC may be a little bit surprising, but during the term of receivership, I worked well with them. Unfortunately for me, during the term of receivership, which I believe was approximately October or the fall of 2009 for about 10 or 12 months, we were facing one of the worst real estate recessions this country has ever seen. And the FDIC's willingness to compromise with me did not lead me to have the ability of raising the necessary capital to come in and acquire and resolve it. But I did have a very pleasant experience with the receiver during that time period.

Chairman NEUGEBAUER. So while they were cooperating with you, you were in a market where going out and getting additional financing to take that loan out was not available to you?

Mr. LEVENTHAL. Capital was completely scarce, in particular for the type of property that was the subject of that loan. It just was not available. And it still in large part is not available.

Chairman NEUGEBAUER. Was that a condo project?

Mr. LEVENTHAL. No, the FDIC receivership and Rialto transaction were an anomaly for the business I am actually involved in. It was a suburban townhome project. I had acquired the property because it was all presold to a major national builder. Three weeks after I bought the property, the builder canceled on it, terminated. And that is where I think the Lennars of the world would have an opportunity of creating value in partnership with the FDIC.

Chairman NEUGEBAUER. All right. Thank you.

I now yield to the ranking member, Mr. Capuano.

You pass?

I will go to Mr. Westmoreland. You are recognized for 5 minutes.

Mr. WESTMORELAND. Thank you, Mr. Chairman, and thank you for doing this. And I want to thank Mr. Edwards from the FDIC for sticking around.

Mr. Leventhal, when did you have a settlement with Rialto?

Mr. LEVENTHAL. The settlement has occurred within the last 7 days.

Mr. WESTMORELAND. Okay.

And, Mr. Fogg, did you have any instances where you had some houses—were you in the residential business?

Mr. FOGG. I am a residential contractor. But I also build a number of rental properties and maintain those and keep those.

Mr. WESTMORELAND. Did you have any projects that were maybe partially completed when the bank failed and you could not continue on with the construction?

Mr. FOGG. I would like to also answer the chairman's question with this, because it kind of ties together.

The bank had approached me to purchase their distressed properties to build rental housing, because we were experts in that arena, to get them off their books. The bank failed 23 days later. We had purchased the land, bought the permits, and put the foundations in. And at that point, we met with the FDIC when they called us in on the weekend. They said, please come in on Monday morning and talk to us. It is a pretty unpleasant surprise when you sit in their meeting and they have an armed guard sitting next to you. It is not exactly what you expect from your financial institution.

They asked me to provide them with a business plan of what I wanted to do to work out the problem. Being in a situation I could not fail, because obviously I have a lot of other real estate assets going on, I came up with a plan where I had loans of approximately $285,000 a unit. My plan was, okay, you don't need to give me $285,000; I will do $200,000 a unit.

The contractor at that time thanked me for the plan and said it is the best business plan that they had ever written. Please proceed.

I never got anything in writing. I am an honorable guy. So I took my own funds and any money I could scrape up to complete my project.

At the time of completing the project, I brought them lien releases, paid bills, you name it. And at the end of the day, the FDIC contractor said, I am sorry, there is someone at the FDIC who, unfortunately, has made the business decision to not honor their funding commitment. I didn't have anything in writing; shame on me.

During that period of time, we constantly talked to them. I talked to them 2 or 3 times a week, trying to see, who do I speak with? How do I resolve this? I have other unresolved issues. And they always led me down the path. They led me down the path every single time.

Mr. WESTMORELAND. This was the FDIC? And was it a branch or was it the FDIC in D.C. or—

Mr. FOGG. When you deal with the local contractor, they are not actually—I guess—

Mr. WESTMORELAND. This was an FDIC contractor? Somebody the FDIC had contracted with?

Mr. FOGG. It was called Quantum Services—Quantum Investments—or whatever they wanted to call themselves. But they are the figurehead or the face of the FDIC that you meet in your local community.

Mr. WESTMORELAND. Okay.

Mr. FOGG. You never get a chance to speak to anybody actually at the FDIC.

Mr. WESTMORELAND. Mr. Leventhal, do you know of any—and I know you dealt with Starwood, I think. Is that not true?

Mr. LEVENTHAL. Yes, sir.

Mr. WESTMORELAND. And that was a pretty decent experience there?

Mr. LEVENTHAL. No. I lost a great building that I had constructed. I turned it in from a condo project. It was at the worst time to have built a condo project. Made it a hundred percent cash flowing building at 90 percent occupancy.

Starwood had a great deal. They came in and they foreclosed out the building because the building that I spent $51 million building was not even worth $29 million. That is a really staggering thought when you consider it. And I had investors that lost upwards of $15 million in the transaction.

Personally, it wasn't a bad experience. It was a nonrecourse loan. I wasn't made to suffer, as some debt collection efforts would. And Starwood has since come in and they have taken back lots of collateral. And Atlanta is now in a good position because condominiums have sold so much that it almost makes sense to build another condo building—almost.

Mr. WESTMORELAND. One last question. Are any of you familiar with any subdivisions that were halfway completed or developed, say that phase one was finished and sold out, had 22 homes in it or whatever number, phase two was being developed, and all of a sudden the bank went out of business financing it, and the FDIC sold that to a structured loan agreement, and they couldn't work it out or sued immediately and it sat there? And the 22 finished houses suffered the loss—or at least the previous homeowners were suffering a loss for their equity and their investment.

Mr. FOGG. I own those homes. I purchased a property from the Bank of Clark County, built those homes out-of-pocket, as I said. And then within the same subdivision, there were probably 5 or 6 other bare lots, half-finished houses, holes cut, overturning weeds, houses turned into drug houses.

I am a direct victim of that in my unfortunate situation of the houses that I spent $285,000 to build are not worth that due to the fact that they let this property languish.

And if you drive anywhere within Clark County, you are going to find subdivisions car-high in weeds. It is a bad situation for a lot of guys.

So, yes. Personal knowledge? I own those subdivisions. I own the homes in those subdivisions.

Mr. LEVENTHAL. I drive past many of them in Georgia.

Chairman NEUGEBAUER. The gentleman's time has expired.

Ms. Herrera Beutler is recognized for 5 minutes.

Ms. HERRERA BEUTLER. Thank you.

I am glad you asked that question, because I wanted to reiterate that it is not that you got out over your skis. You did it in good faith, you put your own money up, and then the FDIC was the one, from my understanding, that came in and said, okay, that is not a deal.

So one of the things that I heard Mr. Edwards talk about was that period of time, the transition period. And I understand that during our transition period in some of the cases I have worked with people were getting good back and forth, there was a negotiation taking place, and people—borrowers actually felt like they were in a good place. But then they made the sale, and those deals were all null and void. If they weren't completed before it went to Rialto, whatever the FDIC had negotiated was voided.

But it sounds like in your case Quantum told you—

Mr. FOGG. Yes.

Ms. HERRERA BEUTLER. —before—

Mr. FOGG. We have lots of different issues.

So the first thing is, yes, Quantum did tell me that they would have no problem getting the approvals from the FDIC for me to get a reduced amount of funds to finish my construction project. When that didn't happen, obviously, I spent hundreds of phone calls and meetings with those contractors to try to resolve something. The gentleman at the FDIC I think felt so bad at the end, or the Quantum, of unable to resolve anything with the FDIC that they actually, on one of my notes at the time of being prepared for sale to Rialto, they actually prepared a 1-year extension on one of my notes that had matured so that I would have adequate time to hopefully work with Rialto.

When my attorney and I brought that note to Rialto, Rialto's response was, that note is not signed. That is not valid. You are in maturity default.

I am like, I have gone this far. Do you really believe that I would fake a note from the FDIC to try to gain a six-more-months extension?

The only reason we had done it at that time was so that once we did get somebody in place that could hopefully make some sort of a decision to help us get through these assets, we would be able to show we were still in good standing. Because we had never missed a payment on one loan at that time.

Ms. HERRERA BEUTLER. This brings me to the point—from your first to final communication with Rialto, the first one that you got, was it a letter saying that you cannot use a lawyer? Were those precondition notices that they sent out? Was that how they started it with you? Or were you already in that?

Mr. FOGG. It has been so long ago on that. The only thing I remember from those conversations was I was supposed to sign a pre-negotiation agreement that said I could not bring any legal action against them for any reason. They wanted, obviously, all my financial data and all my documentation. But that was kind of the first hello, I am your lender, give me all your information. That was basically it. We never signed the agreement. At that point, I felt I wasn't going to sign my rights away in the beginning.

Ms. HERRERA BEUTLER. Very good.

With that, I yield back.

Actually, if I could ask one more quick question?

Chairman NEUGEBAUER. Sure.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman.

In meeting with some folks—and I will say this is more for the record—I have had a number of folks who were in similar situations in our area who will not—do not want me to use their names or their companies, because they are terrified of repercussions, because Rialto now owns part or all of them, and they don't want to go on record.

But I have had them talk to me, and one of the ones brought up the question of—and I don't know if you can even answer this question—two Quantums. There is a Quantum contractor through the FDIC, but I believe there is another Quantum that is in or a subsidiary of Rialto. And there is confusion. The borrowers don't know who they are talking to. Can you bring—

Mr. FOGG. Yes. Initially, when the FDIC closed the bank, they brought in Quantum—I don't know—Quantum somebody. And their job was to unwind the operations of the daily bank who collects your information and gets your loans off to whoever at the FDIC.

When Rialto took over the loans, they hired a company called Quantum Servicing, and they are the ones who are supposed to do your payment processing of your checks. I would say it is probably one of the poorest organizations I have ever dealt with. I had never missed a payment to those guys, until, unfortunately, we had to file Chapter 11 last week. But they could not track your payments. They didn't have billing statements.

So there are two distinct Quantums, and neither of them are very good.

Ms. HERRERA BEUTLER. Thank you. I yield back.

Chairman NEUGEBAUER. Thank you.

And I thank the witnesses for coming. I think we had two good panels.

My takeaway is that, while this process probably has some merit to it and it is helping work through a tremendous amount of inventory, we have heard concerns. We have folks from the FDIC who stayed over, and we appreciate that. Hopefully, they are listening to those concerns.

And the Inspector General is doing an audit and has done an audit. I think we will want to review the findings of that.

It is unfortunate that we had these kind of market conditions that created the need for these kinds of activities. But we appreciate the thoughtful testimony that the witnesses gave.

If there are no other—

Mr. WESTMORELAND. Could I ask one question?

Chairman NEUGEBAUER. Yes.

Mr. WESTMORELAND. Mr. Fogg, could you furnish a letter for the record of the first letter you received? Do you still have that?

Mr. FOGG. I am sure my attorneys have it.

Mr. WESTMORELAND. Okay.

Mr. FOGG. I can get that for you.

Mr. WESTMORELAND. If you could just get that to us, I would like to put that in the record, if there is no objection.

Chairman NEUGEBAUER. Without objection, it is so ordered. If there are no other questions, this committee is adjourned.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

[Whereupon, at 5:58 p.m., the hearing was adjourned.]

A P P E N D I X

May 16, 2012

Statement of Congressman Gary G. Miller

Subcommittee on Oversight and Investigations Hearing

"Oversight of the Federal Deposit Insurance Corporation's Structured Transaction Program"

Hearing held on May 16, 2012

The purpose of this hearing was to examine the use of structured transaction sales by the Federal Deposit Insurance Corporation (FDIC) in which the FDIC partners with private-sector entities to dispose of assets acquired by the FDIC when it resolves a failed bank.

I appreciate Chairman Neugebauer convening this hearing. I have received statements from: (1.) Mr. Mike Mugel of Red Mountain Retail Group and (2.) Ms. Sharon Newby Gilbert and Ms. Sondra Newby Mayer of Rancho Santa Fe, California that I would ask to be included in the hearing record. These statements recount real life examples of the flawed process endured by borrowers when their banks were placed into Receivership by the FDIC. This testimony provides the Committee with poignant examples of viable construction projects that ultimately failed as a direct result of bank failures, where the FDIC took over as Receiver. I appreciate these individuals sharing the details of their own personal stories with the Committee.

The examples contained in this testimony raise serious concerns about FDIC policy and practice toward existing construction loans when a bank fails. In many cases, the FDIC takes over as Receiver of a bank literally months before the construction projects are complete but the process does not allow for such projects to be completed. Instead, the apparent protocol is to cease construction loan payments, which makes it impossible to complete the project.

If the FDIC had not taken over as Receiver, funds for these projects would have continued and the contractors building the project would have completed construction and paid off the loan as planned. Clearly, the FDIC should take over banks that are failing. However, when the FDIC takes over as Receiver, it should separate out the viable loans from the loans that caused the bank's failure and make sure those viable projects are not harmed during the receivership. When a viable loan is forced to be called early, it oftentimes forces the project to fail and actually creates losses for the FDIC. I have introduced legislation, which is cosponsored by 105 House members, to prevent bank examiners from forcing banks to call construction loans that are current and in compliance with loan terms. If a bank fails, such protection should also be extended for those borrowers.

I am pleased the Oversight Subcommittee is looking at this program as these are egregious examples that have been raised about people who, through no fault of their own, have lost substantial sums of money for no reason. I thank Chairman Neugebauer for his leadership on this important issue and urge all of my colleagues to read the testimony of Mr. Mugel and of Ms. Gilbert and Ms. Mayer.

Testimony of Mike Mugel, CEO Red Mountain Retail Group

Prepared for Submission for the Record to the Subcommittee on Oversight and Investigations

May 16, 2012 Hearing

"Oversight of the Federal Deposit Insurance Corporation's Structured Transaction Program"

LACK OF GOOD FAITH AND FAIR DEALING

An unintended consequence of the recently enacted bank/FDIC JV structured program is that these new structures have no incentives for their principals to act in good faith and certainly do not favor fair dealing when working with their existing Borrowers.

My name is Michael Mugel and I am the CEO of a shopping center and residential re-development company headquartered in Santa Ana, California. I currently do business in nine states in the country and I have created over 15,000 jobs through re-development over the past 20 years.

I know this may sound obvious but most Borrowers borrow money from banks because they do not have endless amounts of cash on hand.

Real estate financing is essentially a form of collateral based lending. That is, the amount of the loan is based on the value of the collateral. When a Borrower looks to obtain financing for the acquisition or development of a piece of real estate, the loan is underwritten by a bank using the real estate as the primary piece of collateral, not the financial strength of the Borrower. In most instances, a principal or other related entity of the Borrower also provides additional personal guaranties securing the Borrower's repayment of the loan, which is used by the bank to further protect itself in the event of the Borrower's failure to perform under the terms of the loan and in the event the collateral does not maintain its value.

Well, what happens then when the bank that made the loan is taken over by the FDIC and an acquiring new bank/FDIC JV defaults under the loan documents and does not act in good faith with a Borrower?

What happens when one's bank fails and another bank takes over and stops funding a project immediately so that the project cannot be completed?

How can a Borrower fulfill his or her obligations under their loan documents when the new FDIC/JV new Bank's first action is for them to turn off a Borrower's loan mid-development?

In these situations, the Borrower has not breached or committed any default under his or her loan documents and please remember that this loan was underwritten using the real estate as the primary source of collateral.

The FDIC/JV Bank is choosing to shut a project down mid-development and as a result have intentionally or unintentionally collapsed the value of the asset. Those actions now put the Borrower and/or its guarantors in harm's way under the terms of the loan documents and the personal guarantees that signed as part of their loan agreement (But the Borrower has not defaulted so how can they be held personally liable?).

The FDIC/JV Bank does not care about being held to a loan agreement as the FDIC "washes" clean the new lender from being liable under the old loan agreement. The new acquiring FDIC/JV Bank entity can do whatever they believe is in their best interests.

The FDIC/JV Bank then begins the process of chasing the Borrower and its guarantors on his or her personal guarantees and this new venture begins collecting fees for managing the very long legal process that is about to ensue. They collect fees for foreclosing the property, they collect fees for managing, leasing and asset managing the property, and they collect fees for ultimately selling the property.

Certainly this cannot be seen as using Good Faith nor Fair Dealing with Borrowers when the FDIC/JV new Bank are the ones who are choosing to stop the funding of the project contrary to the terms of the loan documents and absent any default by the borrower.

Under this scenario, the Borrower cannot complete the project, the economic value of the project collateral plummets, as the unfinished project is now seen as a "broken project", massive jobs are lost because the project cannot be completed and the project sits on the servicer's books for years booking servicing fees to their balance sheets.

These scenarios are not storytelling and I have included some real life examples.

Example number one (2009):
Sugar House Redevelopment, Salt Lake City Utah

I purchased 343,000 square feet of abandoned industrial, warehouse and retail buildings in the City of Sugar House, Utah for purposes of converting the buildings into a new hotel, Apartment and strip retail project (1,000 new jobs for the area). My bank was Pacific National Bank which was owned by a group of nine banks out of Chicago.

We purchased all the buildings in late 2007/08 under an acquisition loan and upon receiving our entitlements from the City of Salt Lake, Pacific National Bank ensured us that we would be receiving our second round of funding or $6MM to complete the project.

Of course, Pacific National Bank then failed and the FDIC under a 90%-10% loss share agreement gave the bank to US Bank. We were happy about this because we had just paid off in full another re-development loan with US Bank.

We met with US Bank at their offices in San Francisco and they notified me immediately that they had started the process of putting a charging order against my home and that they were looking for me to personally pay the loan off myself.
I flew up to San Francisco to build a new relationship with my new bank and they notified me that even though the bank that made me the loan defaulted on its funding obligations that the loan was now due and I would be held personally liable.

The new bank notified me that they wanted me to agree to a "friendly foreclosure" and give the project to them and that they wanted me to write an additional check for $500K. Then and only then would they, the bank, stop chasing me and let me off the hook for my personal recourse.

You see, under the loss/share arrangement, the new acquiring banks make more money (fees) if the real estate is owned by them (REO) and they certainly cannot lose money in their new venture with the government unless the property value is diminished by over 90%.

When US Bank took over my bank, 3 local brokers opinions of value were solicited by them for the project with all the brokers values coming in around $14-$15MM for an "as is" value of the property.

My loan was $10MM.

Clearly the FDIC/JV Bank was protected and my $5MM of equity was protected.
US Bank ignored their own opinions of value and began the foreclosure process immediately and went after my home with a charging order.

This project was the 5th project where my lender had failed and I simply could not sustain 5 lawsuits.

Under incredible duress, I called my Partners and shared with them the position that I was in as the guarantor of the loan and I told them that I was going to have to reluctantly write a check for $500K and give the keys to our property to US Bank. That is exactly what I did as I could not jeopardize my family to fight a system set up by the Federal Government to help the banks and not the borrowers.

Here is the most difficult part of the story, 1 1/2 to 2 years later US Bank sold the property for just $6MM wasting millions of dollars in US Taxpayers money.
However, US Bank, through its fee structure and revenue sharing with the FDIC, only made money.

Example number two (currently taking place now):
Upland, California 10 acres of land

I own 10 acres of land in the City of Upland, California which has an old 80,000 square foot rose packing plant located on it. It has views of the mountains and is ideally located in the "Colonies" which brings top dollar for residential values and retail rents. Originally, the project was going to be a mixed use retail and residential re-development.

My bank on this project and 3 other projects was Wachovia Bank.

Of course Wachovia Bank failed and Wells Fargo was given the assets of Wachovia under a loss/share arrangement by the FDIC.

I met the Wells Fargo Bank people at my office back in 2009 and they immediately threatened me with all my recourse provisions in my original Wachovia loan documents and immediately threatened to turn off my loans. One employee literally chased me around my office demanding that I place a second trust deed on my house and any other real estate that I own with little debt so that Wells Fargo would be more secured in their loan positions.

I threatened to sue Wells Fargo for their actions and after some very difficult negotiations they reluctantly agreed to "extend" all 4 of my loans. For the extension, I paid all of Wells Fargo's additional fees and points to "extend" my loans and to date I have never missed a payment. In fact three of the four loans, including a $1MM unsecured credit were repaid early.

I should be considered to be by Wells Fargo what would otherwise be known at any other bank as a AAA borrower.

My only loan left with Wells Fargo is the $4MM loan on the 10 acres of land in Upland.

I currently have the 10 acre property in escrow for $5.850MM with an all cash buyer with a scheduled closing date for the end of this year.

The loan recently came due and I need a 6 month extension of the loan terms from Wells Fargo to get enough time to close the escrow.

I approached Wells Fargo 45 days ago and they threatened me with my personal guarantees and stated to me that they are not going to extend my loan and have repeatedly told me that they are going to foreclose the property. In fact they have already commenced a foreclosure action.

Even though I am in escrow on the property for $1.850MM more than their $4MM loan and regardless of the fact that I have 7 other offers on the property for $5.750-$5.850MM and regardless of the fact that I have never missed a payment, paid off 3 other loans and carried the mortgage payments on this property for the past 3 years without fail, Well Fargo has now taken action to foreclose the property.

I even offered Wells Fargo an additional $1MM in free and clear property that I own as additional collateral for their $4MM loan on my Upland property and they declined it saying they were only interested in foreclosing on the property and chasing my personal guarantees.

This is happening in real time right now.

How is this acting in Good Faith and Fair Dealing?

I only need a 6 month extension and the value of the property is clearly worth much, much more than Wells Fargo's loan.

This is just abuse of course.

I will have to file a law suit to protect my asset.

Why as a Borrower am I being put into this position by an FDIC/Wells Fargo structure in the first place? Clearly their approach to acting in Good Faith or Fair Dealing is a waste of their time, my time, a waste of money, a killer of jobs (2 years per project at a time), a clogging of our court systems and an abuse on Main Street people.

Why do they do this?

Wells Fargo has nothing at risk in their FDIC/JV Structures. They do not lose if the property value is diminished and the only remedy a Borrower can act upon is the legal system. 2-6 years of time and a $1.5-$2MM cost per lawsuit does not make for a very realistic business plan for most borrowers. We are Main Street people not Wall Street people.

GOOD FAITH AND FAIR DEALING must be brought back into lending immediately. Six (6) of my banks failed and this FDIC/JV Bank scenario has caused me and my company to suffer incredible losses and endure what I can only describe as much unnecessary abuse and economic waste.

On several occasions now I have had to notify my Partners that although we had done nothing wrong and although we were on track with our projects that we would indeed be giving our property back to the FDIC/new Bank because I as the Guarantor of the loan did not have adequate resources or sufficient capital to sue each and every one of our 6 banks.

In conclusion, it is imperative that the Federal Government enact legislation that would obligate the lending industry to observe and maintain a system that is based on a standard of "good faith" and "fair dealing" with their borrowers. In other words, the system must be based on what is best to maintain the value of the real estate collateral at issue and not what is just best for the lenders or their services in order for them to minimize their perceived risk or maximize their fees and other revenue.

Thank you for your time in listening to our concerns with these matters.

Written Testimony of
Sharon Newby Gilbert of Riverside, California
and
Sondra Newby Mayer of Rancho Santa Fe, California

House Committee on Financial Services

Subcommittee on Oversight and Investigations

Hearing entitled "Oversight of the Federal Deposit Insurance Corporation's Structured Transaction Program"

Wednesday, May 16, 2012 2:00 PM

2220 Rayburn House Office Building

Chairman Neugebauer, Ranking Member Capuano and members of the House Committee on Financial Services, Oversight and Investigations Subcommittee:

Thank you for the opportunity to provide this written testimony.

Our parents, Ken and Worthene Newby, lived and worked in Southern California for decades after migrating from Oklahoma. While in California, they worked tirelessly and slowly built a life based on hard work and honesty. They also raised a beautiful family of two daughters and three grandchildren. Mr. Newby started as a laborer and worked his way up to a mason, then a masonry contractor, and eventually became the owner of a well-known and successful general contracting and building company. He built many important and historic buildings in the City of Riverside, where he and his family resided, and other parts of Southern California, including Riverside Polytechnic High School and the first mall in Riverside County, The Plaza. His wife, Mrs. Newby, ran the office of their dynamic development company.

They paid their taxes, followed the law, voted in elections, and utilized honest business practices.

At some point, our parents purchased a substantial hill-top parcel on which they planned to build a gated condominium community named Rocky Pointe Springs in Riverside, California. These semi-custom homes would include 5 single family units and 16 duplex-type units totaling 21 condominiums, all in a prime location. Before they could realize their plans to build it, our mother, Worthene Newby, passed away in December 2002.

Subsequently, our father started the project. Before he could even put a shovel in the ground, he paid $500,000 for school taxes and $1,000,000 for a builder's insurance policy. Since he did not want to pay high interest rates or become overextended by accumulating debt, Ken paid for everything himself using the majority of his life savings. These side-of-the-hill lots were more expensive than customary lots since many of them had to be engineered with steel caissons and Verdugo retaining walls.

After spending over $7,000,000 of his own money, Ken got a construction loan from 1st Centennial Bank of Redlands to finish the project. The bank called him their "Star Borrower" since he had previously invested so much of his own money and also because he was known throughout Riverside as a high-quality builder. The bank valued the property he encumbered at $13 million. He signed a construction loan for half, $6.7 million. As is customary, it would become due and payable after one year, in this case, Oct. 12, 2008.

Unbeknownst to our father, as early as January, 2008, the FDIC was investigating 1st Centennial Bank for fraud, gross negligence, recklessness, and willful misconduct, citing amongst other things officers who were taking large improper commissions. In June of that year, FDIC representatives had ordered the bank to bring in $30 million because they were woefully under capitalized, according to an FDIC Investigatory Report from August 2009. By July, 2008, the bank vouchers approved by the job superintendant and the bank inspector were becoming routinely late for payment, and very few were paid in August and September, apparently in a futile effort to artificially boost the bank's cash reserves.

This slowed construction down considerably, created anxiety for remaining contractors, and made it impossible for our father, Ken Newby, to finish construction in a timely manner. In decades of building, many times with larger projects than this one, he had never had such a problem. Over $600,000 in unpaid vouchers were ultimately not paid by the bank.

Mr. Newby got a short six-week extension in October 2008. When that ran out, the bank personnel told him that he needed to commit more of the property he had worked his entire life acquiring in order to extend the loan five more months until April 2009. Don Bruner, then Vice-President of 1st Centennial Bank, knowing full well that FDIC was closing the bank, went to Ken and offered a loan extension.

At this time our father, at age 88, had endured two back surgeries, both with complications, and was spending most of his time in bed. With no legal counsel, on heavy medication, and suffering from early onset of what appeared to be Alzheimer's Disease, Mr. Bruner went to our father's home and had him sign all of the documents for the extension and also coerced him into encumbering three additional properties in order for him to get a loan extension. These properties, like the earlier one, Rocky Point, were owned free and clear at the time the properties were used as collateral for the 1st Centennial construction loan.

Our father seriously believed that if he did not sign over his three collateral properties, he would not get the loan extension and would lose the very project he had put almost his entire life savings into building. He believed he had no choice. On November 30, he encumbered three more properties, including his personal residence, all valued by the bank at well over $3 million.

During this very time period when bank personnel were falsely telling the public that the bank was "well capitalized", the FDIC was preparing a Cease and Desist Order and working to shut the bank down. On January 23, 2009, the FDIC acted and closed the bank. The bank's breach of contract and breach of trust not only jeopardized almost all he had built financially, it also severely impacted our father's precarious health and his life.

When the bank was taken over, all disbursements stopped even though $2.4 million was left to disburse to Mr. Newby to finish construction. The subcontractors did not get paid and our father had no money left to continue the project.

Ken Newby died on September 1, 2010, after 6 weeks in the hospital. He never gave up hope that his beautiful project would be completed and sold. To this day, it stands empty and unfinished.

On February 9, 2010, the FDIC sold our father's note and loan along with hundreds of others to Multi-Bank. Later they were transferred to a subsidiary, Rialto Capital/ RES-CA NFT, LLC, a Florida based LLC.

We have had many opportunities to sell Rocky Pointe Springs, but without RES-CA's willingness to negotiate, our potential buyers with legitimate offers have gone somewhere else. They have now sued our father's estate and the trust he set up with our mother and they are threatening to come after anything left in order to satisfy the loan. We have had to hire legal counsel to represent us at great expense to defend ourselves.

At one point, a top official for Rialto Capital told us that they intended "to take everything we have left." In an effort to accomplish their goal RES-CA filed suit against us in April 2011. This is not the way our own government should treat honest law-abiding citizens like our parents or us. If not for the breach of contract and trust, the fraud, and financial elder abuse, the project would have been completed and all of this could have been avoided. Instead, we are being harassed and threatened with financial ruin.

We hope your august committee will investigate the abuse of power and threats of which we have been subjected.

Again, thank you for the opportunity to provide this written testimony.

STATEMENT OF

BRET EDWARDS
DIRECTOR, DIVISION OF RESOLUTIONS AND RECEIVERSHIPS
FEDERAL DEPOSIT INSURANCE CORPORATION

on

OVERSIGHT
of the
STRUCTURED TRANSACTION PROGRAM

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

May 16, 2012
Washington, D.C.

Chairman Neugebauer, Ranking Member Capuano, and members of the Subcommittee, we appreciate the opportunity to testify on behalf of the Federal Deposit Insurance Corporation (FDIC) on the FDIC's role as receiver for failed insured depository institutions. As requested, our testimony will focus on how structured transactions are used as a strategy to maximize the value of assets secured by real estate for the benefit of the Deposit Insurance Fund (DIF) and the depositors and other creditors of the failed institutions.

As described in more detail below, an FDIC structured transaction refers to a resolution strategy that involves the creation of a legal structure to manage failed banks' assets. This type of transaction has been used for approximately 4 percent of $668.8 billion of the book value of failed bank assets inherited from bank closures from January 2008 through May 12, 2012.

The Challenging Environment for FDIC-Insured Institutions

The banking industry has undergone a difficult process of balance sheet strengthening. Capital has been increased, asset quality has improved and banks have bolstered their liquidity. However, levels of troubled assets and problem banks are still high. While the economy is showing signs of improvement, downside risks remain a concern.

Nationally, through May 11, 2012, there have been 437 bank failures since the beginning of 2008. While still high, the current pace of failures is slowing. There have been 23 failures so far this year compared to 40 failures at this same point last year.

The FDIC is keenly aware of the significant hardship bank failures impose on communities across the country. The FDIC's supervisory goal is to avoid bank failures whenever possible by initiating timely corrective measures. Historically, most problem banks do not fail and continue to serve their communities. In addition, most banks across the country are in sound condition, well capitalized, and profitable.

FDIC's Duty to Resolve Failed Banks

Throughout the financial crisis, the FDIC has worked to maintain financial stability and public confidence in the banking system by giving depositors of failed banks quick and easy access to their funds. When the chartering authority closes an FDIC-insured institution, the law requires the FDIC to use the least costly method of resolving the failing institution. The least costly method minimizes the cost of bank failures not only to the DIF but also to the thousands of banks and thrifts that fund the DIF through insurance premiums.

In resolving failing banks consistent with the least cost mandate, the FDIC returns as many of the bank's assets and liabilities to the private-sector as quickly as possible. Hence, we strive to effect a "purchase and assumption" agreement for the whole bank, in which the receiver transfers all of the failed bank's deposits, assets and certain liabilities immediately after the bank closing to an acquiring bank. This type of transfer includes performing and non-performing assets at a competitive price. Unfortunately, the FDIC is not always successful in resolving banks in this manner. Often, failing banks with little or no franchise value and poor asset quality do not attract sufficient interest from viable bidders to allow for a whole bank purchase and assumption. In those instances, insured depositors are paid the full amount of their insured deposits. Uninsured depositors and other general creditors are given receivership certificates entitling them to a share of the net proceeds from the sale and liquidation of the failed institution's assets. The FDIC as receiver then uses an alternative disposition strategy for these failed bank assets, such as cash sales, structured transactions and securitizations, to maximize recoveries to the receivership.

Disposition of Failed Bank Assets

During the last banking and savings and loan crisis in the late 1980s and early 1990s, the FDIC retained many of the failed bank assets it could not sell to acquirers and managed those assets utilizing in-house resources. This practice often resulted in selling assets into distressed markets at prices below their intrinsic value and also required that the FDIC maintain a costly asset management infrastructure that was less efficient and not as nimble as that of the private sector. As a result of these experiences, the former Resolution Trust Corporation (RTC) entered into various joint ventures and partnerships with the private-sector to sell a significant number of failed thrift assets, and those programs proved successful. Consequently, the FDIC initiated its own structured transaction sales program in May 2008 patterned after the program used by the former RTC. For the 32 structured transactions completed to date, the FDIC estimates savings of over $4 billion versus the recoveries it would have realized in cash sales at the time these structured sales transactions were consummated.

The structured transactions allow the FDIC to facilitate the sale of many assets that are difficult to market and sell. The FDIC as receiver generally retains a majority interest in the proceeds from the assets, while transferring a minority interest in the net recovery and day-to-day management responsibility to private-sector experts. Because they have an ownership interest in newly formed limited liability companies (LLCs) that own the assets, and because they share the costs and risks of managing those assets, the private-sector experts have a vested interest in maximizing the assets' realizable value.

What is a Structured Transaction Sale?

In structured transactions, the FDIC pools a group of similar assets, such as single-family, commercial real estate, or construction-type loans from one or more failed bank receiverships and transfers them to a newly formed LLC. In exchange for contributing the assets, the FDIC receives all of the ownership interests, or equity, in the LLC. Through a competitive bid process, the FDIC offers a portion of the equity in the LLC to pre-qualified private-sector asset management experts. Once a pool of real estate assets has been identified, the FDIC engages a financial advisor to evaluate the portfolio and market the equity interest in the transaction. The financial advisor analyzes the portfolio and recommends to the FDIC an optimum structure and terms for the transaction. Of the $25.5 billion in assets originally included in structured transactions, $16.4 billion or 64 percent were nonperforming as of the respective closing dates.

Structured transactions are only offered to sophisticated counterparties that are qualified to engage in the types of transactions offered by the FDIC, and only to those counterparties that are able to demonstrate to the FDIC that they can bear the economic risk associated with the acquisition of an equity interest in the LLC (including the potential that they may suffer a complete loss of their equity investment in the LLC).

The Structured Transaction Entity or LLC

Prior to marketing the transaction, the FDIC determines the amount of equity interest in the LLC to be sold. The interest sold has ranged from 20 to 50 percent. The winning bidder in a structured transaction sale pays cash for its equity interest in the LLC and takes on responsibility for day-to-day management of the LLC and its assets. The price paid by the winning bidder for its equity interest in the LLC reflects its valuation of the entire portfolio of assets held by the LLC. The percentage of book value that the winning bidder's valuation represents should not be attributed to an individual asset.

Since September 2009, many of the structured transactions have included leverage in the form of purchase money notes (PMNs) issued by the LLC to the FDIC receiverships for partial payment of the assets sold by the receiverships to the LLCs. The FDIC's decision to offer structured transactions with leverage was driven by the severely distressed credit market, which affected the costs and availability of credit and liquidity. Leveraged transactions helped ensure a robust and competitive bidding process for the LLC equity. In the majority of the structured transactions, the transaction agreements require that, if the LLC issues a PMN, cash proceeds generated from the operation and sale of the LLC's assets, after deducting certain costs, generally must be used to pay down the PMNs and any other debt outstanding (such as a construction lending facility) before the LLC's members receive any distributions on their equity interests. Costs deducted to manage the LLC before payments on the PMN include taxes and insurance, property protection expenses, the fees of document custodians and similar third party contractors, and the management fee paid to the managing member (discussed more fully below).

The PMNs constitute debt owed by the LLC, and do not finance the cash purchase price paid by the winning bidder for its share of the LLC's equity. Upon issuance, the PMNs are issued to the FDIC as receiver. Some PMNs are guaranteed by the FDIC in its corporate capacity and may be sold to third party investors. In the case where FDIC corporate guarantees the PMNs, it receives a guarantee fee. Because the amount of leverage is based on the risk profile of the underlying pool of assets, the FDIC, in its corporate capacity, has not experienced any losses to date and does not expect any future losses as a result of its guarantee of the PMNs. The amount of debt the LLC issues will depend on the transaction's expected cash flows and the ability of the LLC to repay the debt. In the aggregate, for the 29 structured transactions closed through September 2011, the managing members project the total distributions to the FDIC, as of March 31, 2012, to be $13.8 billion.

Managing Member Responsibilities

Managing members are responsible for the servicing and disposition of the LLC assets as well as all credit decisions. The managing member is required to hire a qualified servicer to service the assets, prepare and provide tax information to members, to prepare LLC financial statements and reports, to retain an auditor to audit the LLC's financial statements, and to provide other resources necessary to conduct the LLC's business.

The managing member receives a monthly management fee from the LLC, specified prior to the bid date and calculated as a percentage of the unpaid principal balance of the loans or the net fair value of real property owned by the LLC. This is the only compensation received by the managing member for its asset management obligations, which include the obligation to pay servicers and any sub-servicers, general and administrative overhead costs, and any other costs associated with its asset management responsibilities. The management fee and property expenses, such as brokerage, preservation, and leasing fees, are paid by the LLC.

Monitoring Structured Transactions

The FDIC actively monitors these transactions through its staff and third-party contractors. On a regular basis, the FDIC conducts on-site compliance reviews of each LLC's operations, including the obligation to service loans in compliance with the transaction agreements, applicable law, and the terms of the loan documents. Additionally, the managing member must comply with stringent monthly, semi-annual, and annual reporting requirements, including providing audited financial statements for the LLC, auditor attestations, and certifications that it is in compliance with all transaction agreements.

In addition, the FDIC's Office of the Inspector General (OIG) conducts periodic audits of selected structured transactions to assess the managing member's compliance with the transaction agreements and the FDIC's monitoring of the managing member. To date, the OIG has completed audits for ANB Venture, LLC and Corus Construction Venture (CCV), LLC. The FDIC agreed with all of the OIG recommendations and has implemented or is in the process of implementing them. Specifically, the ANB Venture, LLC audit questioned claims have been resolved. The CCV Venture, LLC audit corrective actions are in process and all are expected to be resolved by September 30, 2012.

One important result of FDIC contractor reviews and these OIG audits is the FDIC undertook a comprehensive review of the transaction documents and revised certain provisions to clarify their intent for future transactions. The FDIC's main revisions to transaction agreements in response to the OIG's recommendations were to clarify the calculation of the management fee and to expand on the requirements for documented policies and procedures. These revisions were implemented beginning with transactions that closed in July 2010. Further, field work is ongoing for the audit of the two LLCs managed by an affiliate of Rialto Capital Management and its report is expected to be delivered in late third quarter of this year.

In the event of a managing member's uncured default or its uncured noncompliance with the transaction agreements, the FDIC can declare a default and pursue certain contractual remedies, including removing the managing member or its servicer and appointing a replacement, foreclosing the assets of the LLC or the equity interest of the managing member, initiating a buy-out of the equity interest of the managing member, accelerating the payment due on a PMN, drawing on deposited cash or letters-of-credit posted by the managing member, seeking indemnity for losses, and offsetting costs against amounts otherwise due the managing member. The FDIC has not found the need to exercise such remedies in connection with any of the LLCs.

Treatment of Borrowers/Guarantors

The FDIC understands how disruptive bank failures are to the borrowers of the failed entity and strives to ensure all borrowers are treated fairly and respectfully. Every borrower with a loan from a failed bank in receivership is sent a notice within a few days of the bank's failure that their loan will be sold, with instructions on where to direct their loan payments, and who to contact with any questions. Depending on the type and status of the borrower's loan, a second notice may be sent shortly after the first notice. For example, borrowers that have missed payments or have unfunded commitments will receive further instructions from the FDIC. To the extent borrowers are in the midst of negotiating a workout or resolution of their loan with the FDIC or its interim servicer, borrowers are strongly encouraged to finalize those negotiations before the structured sale cut-off date. In addition, borrowers are also notified when the structured sale is completed and their loan is transferred to the managing member's servicer.

The managing members are required by the transaction agreements to maximize the return on assets of the LLCs. Under the right circumstances, reasonable pay-offs or loan modifications represent the highest net present value disposition options, and we fully expect the managing members to pursue pay-offs and loan modifications, when financial analysis indicates those options would result in the highest return to the LLC.

With respect to single-family owner-occupied residences, the managing members and their servicers are obligated to follow a federally mandated loan modification program designed to assist troubled borrowers in managing their mortgage obligations. Where a pay-off or modification is not feasible or fails, there are other loss mitigation methods available, such as short sales and acceptance of deeds-in-lieu of foreclosure, which may be least loss alternatives to more expensive litigated foreclosures. However, when these loss mitigation methods are not an option, the managing member is left with no other choice but to enforce the terms of the loan contracts, including enforcing any mortgages and guarantees, through the courts and other legal means.

The FDIC clearly communicates its expectations to all managing members that all borrowers or guarantors are to be treated fairly and respectfully and that any concerns the borrowers or guarantors raise are to be addressed in a timely manner. Nevertheless, a number of borrowers and guarantors have raised concerns about the managing members not achieving the resolution the borrower or guarantor would desire. The FDIC investigates every borrower or guarantor inquiry and works with the managing member to address any of the concerns raised. It is important to note that the legal rights and obligations of borrowers and guarantors do not change for any loans or other assets transferred to the LLC. The managing members are only seeking to enforce the default remedies in the loan documents in order to maximize the recovery value of the assets. Borrower and guarantor cooperation with respect to distressed credits is a key to achieving a cooperative resolution. The managing member must have timely and current financial information from the borrowers and guarantors in order to assess their abilities to make a meaningful contribution to any settlement. Additionally, the managing member must assess the current market value of the collateral, and borrower cooperation in this regard can accelerate the time to a mutually agreeable resolution.

Conclusion

As the FDIC does with any resolution of a failed bank, we strive to implement the least costly resolution method in a manner that is the least disruptive to depositors, borrowers, and communities. Further, structured transactions minimize the FDIC's holding and asset management expenses for the assets by transferring the management responsibility to private-sector asset management experts. As the managing member has a significant financial interest in the assets and shares in the costs and risks associated with ownership of the LLC, the managing member's interests are aligned with the FDIC's interests in maximizing the value of the LLC's assets. As noted above, the estimated savings to the FDIC of having entered into the structured transactions instead of selling assets for cash is approximately $4 billion. To ensure the FDIC receives the highest return on the assets and that the managing members treat failed bank borrowers fairly, it monitors the managing member's compliance with the transaction agreements by reviewing regular reports, measuring actual performance against performance projections in the consolidated business plans, conducting regular site visitations, and thoroughly investigating borrower or guarantor complaints with regard to the servicing and dispositions of their loans by the managing members.

Thank you, I would be pleased to respond to any questions.

Randy Neugebauer, TX, *Chairman*
House Financial Services Committee
Oversight and Investigations Subcommittee
U.S. House of Representatives
Washington, DC. 20515

Edward L. Fogg
Fogg Construction Company
Fogg Mortgage Company

Wednesday May 16, 2012

Written Testimony for Hearing entitled "Oversight of the Structured Transaction Program"

Dear Chairman Neugebauer and other Members of the Committee.

Thank you for allowing me to be here today.

I come to you today with my story of banking struggles which began with FDIC closure of the Bank of Clark County and continued on with other bank closures that have now created a cascade effect into all aspects of our Company's financial lives. As you can see from the resume that I provided, I am the owner of Fogg Construction Company since 1999, and have been a Mortgage Broker since 1992. I have owned Fogg Mortgage Company since 1995. I also have 27 rental units and a commercial building having been a landlord since 1995.

It has been 3 ½ exhausting years of constant work to attempt to keep things current. But, after trying to work things out personally and proactively, through legal counsel, attempting to get advice from Senators and our Congresswoman, it has led us to Chapter 11 bankruptcy.

I have heard Ms. Sheila Bair speak about the responsibility of the American public to make their mortgage payments and I can hold my head high in my community knowing that I have made every effort to keep those responsibilities. My integrity to honor the loans is on record.

Despite these struggles, I am a lucky man in that I still have a strong family, and a loving marriage which have unfortunately been the fall out for many other people in this situation. I still have a good reputation in the community since I have always paid my sub-contractors and completed my projects. I have kept all of my rental properties in excellent shape.

In the FDIC book, "Managing the Crisis" it is clear that the FDIC has recognized in the past the need to protect and not hurt communities by not cutting off credit to businesses and working with the local communities. I hope to see those values emphasized in their future actions.

Fogg Construction was forced to file Chapter 11 Bankruptcy May 3, 2012. The Mortgage Company and us personally will follow shortly.

Unfortunately, I have come to learn it is my only viable option. After 3 ½ years of trying to be proactive, keep my business and financial life solvent by communicating and working with banks and the FDIC, **I have found that there are no other options for those of us**

who attempted to do what our government has asked us to do in this very difficult recession; to do our fair share and pay our monthly obligations.

Throughout this entire process, I made sure to keep in communication with all my creditors; I provided suggestions and thousands of pages of documentation. I enlisted help from attorneys, and contacted our local representatives in attempt to find ways to proceed. I made payments even after balloon payments were due. Despite perfect payment histories, my credit was damaged and a snowball effect led me to my filing chapter 11.

FDIC and their structured partnership (Rialto / Lennar)

I believe The FDIC needs to recover as much money from each individual loan to reimburse the American tax payer from failed banks as possible. But, this should never be done by creating further additional economic problems in these communities.

Structured relationships should require the FDIC to be much more careful in selecting a long term structured partner than a standard loan sale. There needs to be well published guidelines on how a partner is to handle the work out process. The partner's goal should be to obtain the best results for the FDIC while not creating more harm to the American tax payer.

In this structured transaction the loans are primarily residential, land development and homes that were speculative in nature. Unfortunately, the private capital markets were paying very little for this type of asset thus giving life to the structured partnership by the FDIC.

Trouble from the start: Rialto / Lennar is given access to the majority of the Developers financial information from when the loan originated. This allows Rialto/ Lennar very privileged access to developer's assets and project information with their direct competition in the home building arena.

Private companies would not be able to obtain the non-recourse, favorable terms in financing provided by the FDIC to the Rialto / Lennar partnership. Their agreement creates little pressure for Rialto to come to any agreement or negotiate quickly with borrowers and come to a favorable resolution for all parties involved.

Also with Rialto / Lennar, it really gives them little incentive to want to see their competition work through the problem loans. If so, is there any incentive for Rialto to work with a borrower of a failed bank? And, If so, could this information become public?

A place for Rialto / Lennar in today's market place

If Rialto / Lennar are given a portfolio of Bank owned REO properties and the goal is to market or develop them and also get the American tax payer back as much as possible, they would be an excellent partner. But this structured partnership does not allow Lennar to purchase or acquire the land for development.

Our Story:

Bank of Clark County

Our problems began when I was approached by the Bank of Clark County. Specifically, Mike Worthy and the CFO David Kennelly about taking out a loan to purchase some distressed property that was held by the bank. The Bank of Clark County asked me to purchase five properties for the development of rental homes to help the bank turn some negative assets into more positive assets.

In October 2008 all 5 lots, and 2 permits were purchased. We started 2 foundations, framed and roofed the first 2 homes. On December 24 Christmas Eve 2008, we closed on 2 more additional construction loans.

The Bank was seized on Jan 16, 2009 just 23 days after securing the second round of financing. Fogg Construction received a portion of the money available under the construction loan agreements from the Bank of Clark County for the initial phases of building of the five rental homes.

We were entitled to receive the remainder of the funds on the loans that would pay the subcontractors to finish the project. For some reason, after the bank was seized, the FDIC was not required to provide the remaining loan funding. Yet the partial amount lent by the Bank of Clark County remained due by Fogg Construction to the FDIC. We learned that the FDIC repudiated our loans with a simple form letter received in the mail.

The week following the bank closure, as an armed security guard watched, I had a meeting with James Colton from Quantum and Kelly Dixon formally of the Bank of Clark County. They told me that bad things happen to good people and to do what it takes to hold my family together during this tough time. I was asked to come up with a business plan to work out my current loans and to provide updated financials.

Our file was turned over to a representative of the FDIC from Quantum Jerry Schlife. Within a week of the request, I submitted a detailed business plan for the construction project with a line-item budget and bids to support it. I provided a complete set of financials. The plan I proposed was to complete 4 homes in the project within the budget provided, with lien releases from all subcontractors showing proof of payment. The FDIC would not have to provide me with construction draws, but only fund approximately 75% of the originally committed loan amount upon completion. Mr. Jerry Schlife told me it was one of the best business plans he had ever had presented and would be getting the pending approval but not to worry.

I held up my end of the bargain. Paid and completed the entire project in record time with every penny we could scrape up, beg for and borrow at higher rates. I kept in contact with Jerry Schlife throughout the construction phase, but when I returned with the signed lien releases, he told me he was sorry but someone up the food chain said it was a bad investment for the FDIC.

At that point, I was shorted $650,000.00

Lot 7 – Received approximately $135,000.00 of $285,000.00 loan – Shortage of $150,000.00
Lot 10- Received approximately $115,000.00 of $285,000.00 loan- Shortage of $150,000.00
Lot 3 – Received approximately $115,000.00 of $285,000.00 loan – Shortage of $175,000.00
Lot 4 – Received approximately $115,000.00 of $285,000.00 loan – Shortage of $175,000.00
Also, a $90,000.00 land loan that had no access to construction funds.

Lot 17 of Zachary's Landing

Fogg Construction built this home in 2008, and we were due to sign extension documents to extend the loan to some reasonable period of time for the real estate market to work itself out. We received a last minute email the very day the Bank of Clark County was seized to come sign the paperwork but we were unable to re-arrange our schedule that day.

We owe $242,000 on this property. After the bank failure, we received an all cash offer of approximately $175,000.00 to purchase the home. Mr. Schlife indicated he would submit the file to the FDIC for approval. He indicated that the file had made it through the many layers of the approval process, but was denied as the loan was sold in a structured transaction. As Mr. Schlife was leaving for another assignment, the FDIC prepaid a one year extension of the note for Lot 17 to help us work with the future purchaser of the note.

FDIC and Rialto

The FDIC transferred the Bank of Clark County loans on the 5 properties to Rialto. Rialto (or MultiBank) hired a servicing company, Quantum; they were in charge of the loans at this point.

Once the transfer occurred we were surprised at the lack of billing statements. We contacted Quantum directly and were told that according to their records we didn't need to make payments until 2013 and not to send a payment until their computer system was corrected.

We continued to send certified payments on all 5 separate loans requesting separate return receipts on each loan. We kept copies of the checks each month. Months would go by without any statements, and then only one or two of the loan statements would come sporadically.

Because of this we were required to calculate our own payments for about a year and a half. Our contact at Rialto at the time was James Tapscot. He told us on several occasions that we were in default on all of our loans and we would have to come up with proof that we made all the payments. He would say that Rialto was going to sue me and my wife and take anything and everything that we have.

When we showed Rialto the copy of the extension issued by the FDIC for Lot 17, they said that they had no record of it and that it was invalid since our copy was not a signed copy. They actually verbally accused me of faking the document.

At this point we obtained legal counsel to help us work with Rialto. Rialto eventually acknowledged that the note on lot 17 had been extended by the FDIC, but they did not have a copy.

Our attorney Scott Anders had a number of deals agreed to in principle with Rialto, but every time he thought the deal was done, they would raise a fee, the rate (or both), or shorten the term.

They finally offered a 1 ½ year extension to our loan at aprox 8% with a $10,000.00 loan fee (which equals 4 points). **This works out to an APR of 38.376%.** We had been working on this process with and without a lawyer for about a year and a half, therefore, a year and a half extension would only make us have to re-start working on the next extension as soon as it was finalized.

As a mortgage broker, this offer, with such high fees, would be considered predatory lending if I were to offer it to one of my mortgage clients. Accepting it would not be a solution, only an extension of our current problem.

The loss of liquidity due to self-funding this construction project and the inability to work out a solution with the FDIC and Rialto caused us to lose a HUD project that was in its last stages of approval. It was a project to build 65 rental houses and would have employed over 200 people for up to 2 years in Clark County. These jobs would have been construction workers and suppliers who were the hardest hit by the economic downturn in our area.

Failure of Frontier and FDIC appointment of Union Bank

Other bank failures overseen by the FDIC have affected our family as well and caused loans to fall into the no-man's land of refinance or modification. We constructed 2 homes in 2006 for rental properties using the Bank of Salem that was later acquired by Frontier Bank.

We finished these homes in 2007 when the bottom started falling out of the mortgage security market. We were unable to get a lender to fund a long-term takeout loan even though we had a strong track record, perfect credit history, verifiable income and a long history of being landlords.

We worked with Frontier Bank to come up with a solution. They asked us to attempt to sell the homes or to look at lease option to purchase clients to rent the homes.

We went on to sell both homes on lease option to purchase:

Lot 1 Mary's Circle: We sold the home to husband and wife with four daughters. They had a few credit issues that could be worked out in the time of the lease option. Both had good jobs and wanted to purchase the home.

Over a year into the contract, the husband was deployed to Iraq. The stress of raising 4 children on her own with her husband deployed overseas in a War was very trying. She came to us asking to get out of the contract; she needed to be closer to her family to help raise her children.

Lot 3 Mary's Circle: We entered into a lease-to-purchase contract with a husband and wife that had transferred from the Midwest. The Future borrowers were in the end of a Chapter 13 Bankruptcy. They applied for a loan through Frontier Bank as their lease-to-purchase agreement was ending.

They were ultimately declined because they paid off their chapter 13 bankruptcy off a few months early which did not meet the terms of the Chapter 13. The wife was diagnosed with Breast cancer so they left the contract and moved back to the Midwest.

We kept the loans current and continued to rent these properties and communicate with the bank regarding ways to refinance the loan before it came due, however, the bank failed and Union Bank was appointed as receiver. We attempted to work with staff at Union regarding our loan problems. We had the 2 Mary's Circle loans in our personal name but also 2 loans in the name of Fogg Construction that needed to be addressed within the next few years that were now owned by Union bank.

We were assigned to a special asset loan officer Patrick Baker for both the personal loans and the Fogg Construction loans. Eventually our personal loans were assigned to Nancy Boyd of Union Bank San Diego office.

She told us that they had to adhere to the FDIC's mandates but that there may be something she could submit within the FDIC's framework. We supplied thousands of pages of paperwork, taxes, financials, resumes, bank statements, we proved every tenant payment of rent/deposit. A year went by. Even after inquiring we were never told what we were applying for but continued to provide the supporting documentation.

Our loan had come due but we continued to supply payments directly to our contact Patrick Baker. We began to contact our local Senators and Congresswoman's offices. The Office of the President at Union Bank assured Patty Murray and Maria Cantwell's office that they would be working with us and would have a timely resolution in the future. However, soon after, despite making payments, Union bank reported over 13 missed mortgages on our credit report. We discovered this after receiving a letter saying that our company credit line would be frozen and payments increased.

The office of the President of Union Bank immediately held a conference call with us and sent us a letter stating that our credit would be corrected, but the damage was done. A few months later, Union Bank, again reported the delinquencies despite receiving payments.

We inquired with Patrick Baker on how to manage the 2 loans in the Construction Company's name but they only wanted to work on the two loans in our personal name for some reason. We were told that the Union Bank staff and the FDIC said that we were nothing but a complainer and a letter writer.

Patrick Baker, I believe, was an advocate for us and wanted to attempt to work something out, but he was let go from the company. After his release, we were never provided a replacement contact, and a after a few months of no contact a formal decline letter was sent to the wrong address. A post office box that has never been a personal or company address for us but someone we know.

This person who owns the post office box delivered it to us personally. Union Bank continues to send statements to that address. As I have said before, we sent thousands of pages of paperwork to them at their request for over a year, and they do not know our address. So how much effort could they really have put into finding a solution for us, if they cannot even get our address correct?

Unsecure lines of credit

Situs companies and our unsecured credit lines, these lines of credit were not sold to any other bank and had been managed by Situs companies for the FDIC after the seizure of the Bank of Clark County. After working for approx. 2 years with Situs to come up with a solution to settle these debts, Situs and I came to a resolution.

They said they would send me the official paperwork in the next few weeks. However, at that point, they stopped all contact for approximately one year. By the time they contacted us again, the damage was done from Union Bank's late reporting of mortgage credit. The loans were then sold to Key Bank, and then sold immediately to WM Partners who's in the process of suing us. This too will now be settled through the chapter 11.

I am simply an average citizen. I pay my bills. I keep my obligations. After all that I have learned, there are still some serious questions that are unanswered:

- How can it be that a person has a contract that has to be held up and honored, but the FDIC or its private sector partner Rialto can walk away from their end of the contractual obligation?
- Within the partnership with the FDIC, Is there any incentive in place for Rialto to work out solutions with the consumer or is there a greater incentive within their agreement to liquidate and sue the borrower at any cost?
- I don't understand why there are contracted representatives of the FDIC available after a Bank take-over who can request your time and request that we present a business plan but they are unable to render a decision or tell you what you are applying for. What purpose does that serve?
- The FDIC has documented in the past that their goal is not to ruin communities and small businesses. Is that still in place? And if not, when did those policies change?

I thank you for your time and attention.

Sincerely,

Ed Fogg
Fogg Construction / Fogg Mortgage

Attachments

A) Lot 17 extension. Bank asking us to sign for an extension 2 hours before FDIC seized Bank of Clark County

B) Email between Ed Fogg and Jerry Schlife the contract employee of FDIC after Bank of Clark County seized. Shows actively trying to sell Lot 17

C) Emails between us and Rialto showing their lack of accounting regarding payment history

D) Email Correspondence between our attorney and Rialto's attorney

E) Email from Rialto representative regarding our payments and responding to Congresswoman Jaime Herrera Beutler's input

F) A letter from Ed Fogg to Ms Larue of the FDIC explaining our situation. She indicated she worked in managing and monitoring the structured sales of the FDIC

G) A letter from Ed Fogg to Sheila Bair explaining our situation and possible affect on multiple banks.

H) Letter from Union Bank responding to Senator Patty Murray's office and letter to us from Patty Murray's office relaying that they were told Union Bank would have a resolution

I) Letter to us from Union Bank after they reported delinquencies on our credit stating that we had made all of our payments and they would correct the mistake. Another letter stating that we had made all of our payments after Union Bank reported against our credit report for a second time

J) Email between Ed Fogg and Patrick Baker – Special Assets Loan Officer September 2011 showing no response regarding our re-finance at that point

Ed Fogg

From: Kelley Dixon [KelleyD@bocc.com]
Sent: Friday, January 16, 2009 4:02 PM
To: Ed Fogg
Subject: Docs are ready for you to sign.

A

Kelley Dixon
ASSISTANT VICE PRESIDENT
RESIDENTIAL CONSTRUCTION & DEVELOPMENT
1307 COLUMBIA STREET
P.O. BOX 61725
VANCOUVER, WA 98666-1725
PHONE: 360-906-9518
FAX: 360-735-0318
www.bocc.com

BANK of Clark County
The Community Business Bank

BANK WAS Shut Down
2 hrs LATER.

Ed

A

emails #1

Ed Fogg

From:	Kelley Dixon [KelleyD@bocc.com]
Sent:	Monday, January 05, 2009 12:04 PM
To:	Ed Fogg
Subject:	RE: Lot 17

A

Thanks Ed, I will see what I can do to extend this out.

Kelley Dixon
ASSISTANT VICE PRESIDENT
RESIDENTIAL CONSTRUCTION & DEVELOPMENT
1307 COLUMBIA STREET
P.O. BOX 61725
VANCOUVER, WA 98666-1725
PHONE: 360-906-9518
FAX: 360-735-0318
www.bocc.com

BANK of Clark County
The Community Business Bank

From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Monday, January 05, 2009 11:35 AM
To: Kelley Dixon
Subject: FW: Lot 17

The sales in the area have basically shut down as I figure you are aware of. I rented the house to a guy that is a perfect example of what is going on.

Money in the bank, good job, perfect credit but does not want to buy at this point. I wish things were different.

I will forward you the information.

Thank you

Ed Fogg

From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Monday, September 15, 2008 8:42 AM
To: 'Kelley Dixon'
Subject: FW: Lot 17

From: Kelley Dixon [mailto:KelleyD@bocc.com]
Sent: Friday, September 12, 2008 9:55 AM
To: Ed Fogg
Subject: Lot 17

Hi Ed,

emails #1

Just following up to my email earlier in the week regarding Lot 17. Do you have the house sold or rented?
I will need to do something with it before month end.

A

Any word on your updated financial info?

Thanks Ed, talk to you soon.

Kelley Dixon
ASSISTANT VICE PRESIDENT
RESIDENTIAL CONSTRUCTION & DEVELOPMENT
1307 COLUMBIA STREET
P.O. BOX 61725
VANCOUVER, WA 98666-1725
PHONE: 360-906-9518
FAX: 360-735-0318
www.bocc.com

BANK of Clark County
The Community Business Bank

emails #1

Ed Fogg

From: Jerry Schlife [jschlife@qfinancial.com]
Sent: Monday, December 07, 2009 3:07 PM
To: Ed Fogg
Subject: RE: Lot 17

B

I'll write the case at $176,000 gross. Need the counter to the contract I have, and an up dated HUD.

Jerry Schlife
Asset Servicing Professional/Quantum Joint Venture
FDIC as Receiver for Bank of Clark County
Phone: (360) 713-6421
E-mail: jschlife@qfinancial.com

-----Original Message-----
From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Mon 12/7/2009 4:08 PM
To: Jerry Schlife
Subject: Lot 17

I just got a verbal from buyer that they will go up $6,000 grand, but I do not have it in writing until tomorrow best case.

Total would be $176,000 all other items remain the same. I have not been able to get a hold of Borrowers loan officer for a updated letter of approval.

So this is where we are at.

Going to doctor's appointment and do not expect to receive anything in writing until we get your verbal.

Thank you

Ed Fogg

503 705 4589 phone

email #2

Ed Fogg

From: Jerry Schlife [jschlife@qfinancial.com]
Sent: Friday, December 18, 2009 9:05 AM
To: Ed Fogg
Subject: RE: lot 17

B

Actually, the case has made it all the way to Irvine. I'm expecting an answer possibly as early as Monday.

Jerry Schlife
Asset Servicing Professional/Quantum Joint Venture
FDIC as Receiver for Bank of Clark County
Phone: (360) 713-6421
E-mail: jschlife@qfinancial.com

-----Original Message-----
From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Fri 12/18/2009 10:57 AM
To: Jerry Schlife
Subject: lot 17

Realtor indicated the borrower will be out of town through the holidays.

>From my notes you thought the FDIC would meet on this file around Christmas.

Thank you

Ed Fogg

email # 2

C

Ed Fogg

From: James Tapscott [james.tapscott@rialtocapital.com]
Sent: Wednesday, December 29, 2010 2:39 PM
To: Ed Fogg
Subject: Updated Pay History
Attachments: Fogg Construction Updated Pay History.pdf; Addendum to Agreement dated November15.pdf

Ed,

I just received the attached updated pay history from Quantum. Most importantly, it includes payments posted 12/27/2010 for two loans. Please use this when reconciling with your checking account and get back to me to discuss when complete.

In addition, I've attached the Addendum to the Pre-Negotiation Agreement which I think I previously sent to you and have not received back. I need this signed and returned before we can further discuss your loans.

Please also include a current Personal Financial Statement and Current Financial Statement for Fogg Construction, Inc.

Finally, you mentioned that you did not file a tax return for 2009. Please send me an e-mail confirming this statement.

Please provide me with the requested documents and get back to me once you have reconciled your loan payments against our records.

Jim

* spreadsheets

* Spreadsheets

Property	Lot 17 Zachary Landing	Lot 7 Fair Haven Estates	Lot 3 Fair Haven Estates	Lot 4 Fair Haven Estates	Lot 10 Fair Haven Estates
Quantum Loan #	7000054408	7000054705	7000054747	7000054754	7000054713
FDIC Loan #	513213	513765	513786	513789	513768
Date	Payments	Payments	Payments	Payments	Payments
5/24/2010	$ 865.71	$ 661.98	$ 575.36	$ 575.91	$ 652.31
6/14/2010	$ 865.71	$ 671.17	$ 583.35	$ 583.91	$ 661.37
6/24/2010	$ 814.80				
7/19/2010	$ 1,273.11	$ 676.15	$ 580.48	$ 583.91	$ 661.37
8/19/2010	$ 1,273.11	$ 676.15	$ 583.35	$ 583.91	$ 661.37
9/13/2010	$ 1,290.79	$ 661.37	$ 583.91		
9/14/2010				$ 583.91	$ 661.37
10/18/2010	$ 1,273.11	$ 676.15	$ 583.35	$ 583.91	$ 661.37
11/22/2010	$ 1,273.11		$ 583.35	$ 583.91	
12/27/2010		$ 676.15			$ 661.37

First spreadsheet provided by Mr Tapscott. It shows erroneous amounts paid which we corrected for him by providing the cancelled checks. It also showed missed payments which we corrected by showing him the cancelled checks.

7000054408		7000054705		7000054747		7000054754		7000054713	
Date received	Amount	Date received	Amount	Date received	Amount	Date received	Amount	Date received	Amount
24-May	865.71	24-May	661.98	24-May	575.36	24-May	575.91	24-May	652.31
14-Jun	865.71	14-Jun	671.17	14-Jun	583.35	14-Jun	583.91	14-Jun	661.37
24-Jun	814.8	19-Jul	676.15	19-Jul	583.35	19-Jul	583.91	19-Jul	661.37
19-Jul	1273.11	19-Aug	676.15	19-Aug	583.35	19-Aug	583.91	19-Aug	661.37
19-Aug	1273.11	13-Sep	661.37	13-Sep	583.91	14-Sep	583.91	14-Sep	661.37
13-Sep	1290.79	18-Oct	676.15	18-Oct	583.35	18-Oct	583.91	18-Oct	661.37
18-Oct	1273.11	22-Nov	676.15	22-Nov	583.35	22-Nov	583.91	22-Nov	661.37
22-Nov	1273.11	27-Dec	676.15					27-Dec	661.37
27-Dec	1273.11								

* Spread sheets

Second Spreadsheet with the corrections we provided for him. The payments that are still showing missing were at Quantum Servicing at the time. They had not put them through. They suddenly cleared the bank the next day.

D

Ed Fogg

From: Anders, Scott [scott.anders@bullivant.com]
Sent: Sunday, March 27, 2011 9:56 AM
To: Kosydar, Christine
Subject: RE: Rialto/Fogg

Christine:
I think it is clear why the continuance was requested. First, I will not even return to town until April 9, a Saturday. Second, Mr. Fogg is in the process of trying to refinance all of his loans involving Rialto. The process is under consideration with a financial institution as we speak. I do not think that qualifies as "contemplating who knows what now."

Mr. Fogg wants as little to do with Rialto/Multibank as possible thus the application through another financial institution. It's not as if Rialto has been some great outfit to work with. Quite frankly Rialto has broken several agreements and so their representations leave much to be desired. My client would prefer to never have to deal with them again.

As for my being out of town it is something that I have planned for quite some time with my daughter.

I respectfully request reconsideration of the continuance decision. By the time I return Mr. Fogg should have an answer from the financial institution that is considering his application. I do not see how a planned, agreed to delay will cost anything additional. It will require no action on the part of you or your client.

Should my client not accept by 10 am on April 12 then the offer is done whether by a negative response or no response. If he does choose to accept the offer then it gives him time to make the arrangements with me for the deposit upon my return to the office.

Regards,
Scott S. Anders

Scott S. Anders | Attorney
Bullivant Houser Bailey PC | 805 Broadway St. | Suite 400 | Vancouver, WA 98660-3310
T 360.737.2308 | F 360.695.8504 | Bio | Email | Website
Seattle . Vancouver . Portland . San Francisco . Las Vegas

From: Kosydar, Christine [mailto:CAKOSYDAR@stoel.com]
Sent: Friday, March 25, 2011 7:11 PM
To: Anders, Scott; Friedman, Todd L.
Cc: Friedman, Todd L.
Subject: RE: Rialto/Fogg

Scott:

This is not acceptable. We spoke weeks ago about these issues and it was left with you to advise if your client wanted to settle this along the lines we discussed, where he provides a $5,000 retainer. The ball has been in his court for weeks. We followed up with you on March 10 and the excuse at that time was that the father-in-law was in surgery but you would respond by March 14. We heard nothing, however, so we followed up again, and this time you want another 2 weeks to contemplate, who knows what now.

It isn't that hard. We have drafted the agreement, and the only issue is whether your client is going to pay for this as required or not with a $5,000 retainer. The excuses are over. Time is up. Your client can pay the $5,000 by Tuesday

Emails #3

noon, or negotiations may well be over and my client may choose to proceed. I must also add that the delays require follow up and this in turn erodes the $5,000 retainer.

Regards,
Chris

D

Christine A. Kosydar | Partner
STOEL RIVES LLP | 900 SW Fifth Ave, Suite 2600 | Portland, OR 97204-1268
Direct: (503) 294-9533 | Fax: (503) 220-2480
cakosydar@stoel.com | www.stoel.com

From: Anders, Scott [mailto:scott.anders@bullivant.com]
Sent: Friday, March 25, 2011 12:30 PM
To: Friedman, Todd L.
Cc: Kosydar, Christine
Subject: RE: Rialto/Fogg

Todd,
I have been out at meetings since yesterday afternoon and just received your e-mail and voice mail. First, I request an extension on behalf of my client for the deadline due to certain circumstances. I will be out of town and not available by phone or e-mail for the bulk of the next two weeks. I will be back in the office on April 11 and so would request an extension until the 12th of April. The other reason is because my client is in the process of a refinance with a financial institution. The process is well under way but it will take some extra time for the financial institution to give Mr. Fogg a decision.

I do have a question about the interest rate as well. My understanding from my previous discussions with Rialto was that the rate was 6.25%. Rialto said they were extending the terms under the existing conditions. Can you tell me how they arrived at 7.5%? It may be correct but I need to make sure for my client.

Sincerely,

Scott S. Anders

Scott S. Anders | Attorney
Bullivant Houser Bailey PC | 805 Broadway St. | Suite 400 | Vancouver, WA 98660-3310
T 360.737.2308 | F 360.695.8504 | Bio | Email | Website
Seattle . Vancouver . Portland . San Francisco . Las Vegas

From: Friedman, Todd L. [mailto:TLFRIEDMAN@stoel.com]
Sent: Thursday, March 24, 2011 3:51 PM
To: Anders, Scott
Cc: Kosydar, Christine
Subject: Rialto/Fogg

Scott,
To follow up on my voicemail from earlier today, please note the following:

1) Per your proposal, interest at the 7.5% per annum rate will accrue as of 1/12/11
2) The first payment under the modified terms will be due on the 10th of the month

emails #3

Ed Fogg

From:	Jon Levy [jonathan.levy@rialtocapital.com]
Sent:	Monday, August 29, 2011 4:23 PM
To:	Ed Fogg
Cc:	michael.yaffe@rialtocapital.com; Leo Abaunza
Subject:	RE: Fogg info for your review

Ed, I am now the asset manager for this loan relationship.

In order to minimize any confusion, all further communication should be directed solely to me.

Jonathan

On Aug 29, 2011 7:18 PM, "Ed Fogg" <ed@foggmortgage.com> wrote:
> You have the copies of the letters as attachment in the last email.
>
> Ed Fogg
>
> -----Original Message-----
> From: michael.yaffe@rialtocapital.com
> [mailto:michael.yaffe@rialtocapital.com]
> Sent: Monday, August 29, 2011 4:02 PM
> To: Ed Fogg; Jonathan Levy
> Subject: Re: Fogg info for your review
>
> The senator isn't your lender or servicer. He wouldn't know when the
> payments were received or when they cleared. Please send his letter you are
> describing. You are in maturity default.
>
> Best,
> Michael
> Sent from my Verizon Wireless BlackBerry
>
> -----Original Message-----
> From: "Ed Fogg" <ed@foggmortgage.com>
> Date: Mon, 29 Aug 2011 15:43:37
> To: 'Jonathan Levy'<jonathan.levy@rialtocapital.com>
> Cc: <leo.abaunza@rialtocapital.com>; <michael.yaffe@rialtocapital.com>
> Subject: Fogg info for your review
>
> Letter from Senator that indicates all payment applied correctly
>
> Letter the same day from Quantum that indicates I am in default on all my
> loans. (received the same day as Senator letter)
>
> Postal receipts for the July payments. (Once again the loan servicer has
> never sent us a payment coupon)
>
> Thank you

F

FDIC
Mrs. Larue
Dallas, Texas
March 28, 2011

RE: Fogg Construction
Loan numbers

Thank you for taking the time to speak with me on Friday regarding our situation that was created from the failure of Bank of Clark County, Jan. 16th, 2009.

During this time we have done what the government has asked every American to do, we have keep up our monthly payments, keep our properties from further devaluing, worked tirelessly to create opportunities for ourselves and others.

History:
We were asked by the BOCC to purchase land and obtain construction loans for rental properties in Sept 08. We have fair number of rentals and have proven to be good property managers, so the loan officer and chief credit officer approached us about purchasing lots for rentals. We knew the bank was in trouble but was assured by all at the bank, that if the Bank was sold or closed our 5 year construction loans would be honored by the new institution, we had never been told about the term repudiation.

We closed on the land in late Oct with 2 construction loans, then we closed on 2 additional construction loans ***Christmas Eve 2008***. (The bank failed Jan 16th.) We had a 5th loan with FDIC that was for $90,000 and we found a buyer for the lot at $60,000 and was 1099 for the difference in income.

At the point of closing the bank we had basically just started the homes and had aprox $620,000 remaining to be drawn out to complete the project.

We worked with the FDIC contractor to come up with a solution to potentially finish the houses / we did finish them with basically every penny we could scrape up, beg for and borrow at higher rates.

During this period, we had loans that other institutions worked out to positive outcomes, and we have had a loan come due with Frontier / Union Bank come due, and with the help of Patrick Baker, special assets LO with Frontier, we are on the verge of an acceptable solution.

Problems as of today:
Loan on Lot 17 of Zachary's landing: This property was built as a spec home, then upon advice from the bank turned into a rental. We had negotiated with the bank a long term refinance (see email s #1)

The loan for Lot 17 came due January of this year and the loan is for more than the value of the home by approximately $40,000 - $60,000. When the FDIC was still with the Bank of Clark County we had an offer of aprox the value of what it is today. (see email #2)

F

For some reason it was not accepted at the time. We thought we had actually worked out deals on all of the FDIC loans but for one reason or another, the contractor indicated he did not have the time to complete the transaction and work with the new owners of the loans.

Problems with Rialto

Loans have been with Rialto since March 2010, during this period of time we have never received an accurate billing statement, the Servicer Quantum, I think, has stopped sending them out in general. They have threatened us with lawsuits, they tell me we are going to take everything we have, and they have been unwilling to compromise to maximize the best possible outcome for all parties. * see spreadsheets

We have good credit, but there is basically no secondary market for mortgage lending for real estate investors with more than 10 properties. We have attempted to sell properties with no luck; Rialto indicates they have zero options to work with us. We are trying to find solutions but they keep threatening us.

See email received from Rialto attorney (email #3).

In our conversation with you regarding the FDIC and these loans, you indicated that the manager gets to make the call as a business decision on that property. When you said this, I totally agree with your statement.

As a business decision to protect my family, we are forced to look at chapter 11, all-the-while having perfect credit. Even after being shorted $620,000 from the bank failure.

Rialto will create a tidal wave of problems for other institutions, as they will be caught up in the fall out. Bank of America, Wells Fargo, Union Bank, US Bank, (small banks) Washington Federal, Pacific West, Riverview Savings Bank. Our goal would be to keep everything we have.

I think the goal of all parties involved should be to attempt to make the situation better not worse and to improve, not worsen the economy. I understand that Rialto's only function in life is to make as much money as they can, but the FDIC as a partner in the transaction, should be looking out for the American public above and beyond all else.

Thank you for looking into this for us.

Ed & Maria Fogg
6405 NE 116th Ave, #103
Vancouver, WA 98662

503 705 4589 mobile
360 882 4776 office
ed@foggmortgage.com
866 667 8768 fax

G

Ms. Sheila Bair
Chairman
FDIC
550 17th Street NW
Washington, DC 20429

Emailed to
Maria Cantwell
Office
3/31/2011

RE: Ed & Maria Fogg

RE: Fogg Construction

RE: Rialto Capital Management

RE: Closing of the Bank of Clark County

Sent to Kim Moore (K. Moore)
NHHB 3/31/11

Dear; Ms. Sheila Bair,

I first want to say that our story is not one you have heard a thousand times before. We have never missed a payment, never, not-paid a sub contractor, and never not-completed a project.

We have heard you speak about the responsibility of the American public to make their mortgage payments. And we have done exactly what you have asked every American to do; we have made every mortgage payment.

So today my wife and I can still hold our heads high in our community and as it appears that we will be doing this in the courts sooner than later. As now with the way the Bank of Clark County was closed and the loans sold off to Rialto Capital Management. They have threatened us with Foreclosure on homes, even when the payments have been always been made. They are threatening us with lawsuits.

We are (what I assume) to the FDIC, statistically insignificant, and the unfortunate fall-out from the closing of a bad Bank. Our loans were repudiated, our projects were completed out of pocket, and we have been able to rent all the properties and not sell a single one.

The FDIC has lost by not working with us; we stand to potentially lose everything.

We understand that it always comes down to a business decision, but your partner's business decisions will not help the economy or monetary outcome for your organization and will ultimately hurt many more financial institutions.

In the FDIC book, 'Managing the Crisis', it is very clear that the FDIC recognized the need not to hurt communities by not cutting off credit to businesses and working with the local communities. I would like you to re-read that book to understand the importance of helping entrepreneurs as they are the backbone of the communities for economic opportunities.

G7

I am writing this letter to you as my wife completes the paperwork for an attorney to evaluate what is the best outcome of a chapter 11 or chapter 13 bankruptcy. It seems odd to us to be forced down this path when we have good credit and have never missed a payment on any of our obligations. We have always felt morally obligated to our responsibilities and have worked tirelessly for several years now, but have come to the realization that we are going to have to educate ourselves and possibly pursue bankruptcy. All from the process of the government closing a Bad Bank, that we had no way of knowing.

What do I tell my children about right and wrong, as this will ultimately have a large impact on their lives?

I am attaching documentation that will substantiate my story for your review.

I hope you actually take the time to read this and the following documentation.

Sincerely

Ed Fogg

15609 SE Rivershore Drive
Vancouver, WA 98683

503 705 4589

CC: Senator Patty Murray

1323 Officer's Row
Vancouver, Washington 98661

CC: Senator Maria Cantwell

Marshall House
1313 Officers Row
Vancouver, WA 98661

CC: Congresswoman Jaime Herrera-Beutler

750 Anderson Street, Suite B
Vancouver, WA 98661

H

UnionBank

Received
NOV - 3 2010

October 27, 2010

Representative David Hodges
SW Washington Representative
1323 Officer's Row
Vancouver, WA 98661

Dear Representative Hodges:

Union Bank is in receipt of your letter dated September 15, 2010 to Mr. Pat Sahey, Pacific Northwest Chairman, which was received on September 22, 2010. Attached to your letter were copies of letters which Ed and Maria Fogg sent to Senator Patty Murray and Senator Maria Cantwell. I am responding to you on behalf of the Office of the President. Thank you for your patience while waiting for a response.

The Office of the President wishes to advise you that Union Bank is working diligently with Mr. and Mrs. Fogg to address their concerns. Mr. and Mrs. Fogg have expressed their gratitude to the Bank for its responsiveness to their concerns.

Thank you, Representative Hodges, for your interest in our client's concerns. We appreciate the opportunity to respond to your letter.

Please do not hesitate to contact me should you have any questions on this matter at 714-985-2603.

Regards,

Maria Avila-Velazquez, Assistant Vice President
Office of the President/Customer Care
Union Bank, N.A.

Office of the President/Customer Care
Mail Code B02-021, P.O. Box 45000
San Francisco, CA 94145
A member of MUFG, a global financial group

Tel. 415 765 3808
Fax 714 985 3764

PATTY MURRAY
WASHINGTON

COMMITTEES:
APPROPRIATIONS
BUDGET
HEALTH, EDUCATION, LABOR, AND PENSIONS
RULES AND ADMINISTRATION
VETERANS' AFFAIRS

United States Senate
WASHINGTON, DC 20510–4704

November 8, 2010

H

Ed and Maria Fogg
Fogg Construction Inc.
6405 NE 116th AVE #103
Vancouver, Washington 98662

Dear Ed and Maria:

Enclosed please find an interim response my office received in response to my inquiry on your behalf to Union Bank. As you can see, they are still working on the issue and have assured me that they will have a timely resolution in the near future.

If you have any questions or concerns please don't hesitate to contact David Hodges in my Southwest Washington office at (360) 696-7797.

Sincerely,

Patty

Patty Murray
United States Senator

PM\dh

I

UnionBank

January 28, 2011

Ed Fogg
Maria Fogg
15609 SE Rivershore Drive
Vancouver, WA 98683

Dear Mr. and Mrs. Fogg:

Union Bank is in receipt of your letter addressed to the Office of the President received today, January 28, 2011.

In your letter you mention, you received notification from US Bank, informing you of a credit limit reduction on your Business Line of Credit, as well as an interest rate increase. You state, US Bank took this action as a result of derogatory credit reporting by Union Bank (formerly, "Frontier Bank"). You indicate you submitted the necessary information for a loan modification request, and have asked this review to be expedited on your behalf. Additionally, you are requesting that Union Bank remove derogatory information from your credit file.

The Office of the President would like to thank you for the opportunity to speak with you today regarding the circumstance on your loan, and the information reflecting on your credit file. Please accept our apologies for the inconvenience this may have caused you.

Upon receipt of your letter, the Office of the President conducted a review of your circumstance and we advise the information submitted to the credit bureaus were as a result of the current status on your loans. In recognition of your loan modification application received by Union Bank, as a courtesy to you, Union Bank has submitted a request to remove derogatory information from your credit file. The update on your credit file will take approximately thirty days to update from the date of this letter. Furthermore, we submitted a request to expedite the credit review process on your loan modification request.

Thank you for the opportunity to review and resolve your concerns, and appreciate your patience while waiting for a resolution on your loan modification request.

Sincerely,

Maria Avila-Velazquez, Assistant Vice President
Office of the President/Customer Care

Office of the President/Customer Care
Mail Code B02-021, P.O. Box 45000
San Francisco, CA 94145
Tel 415 765 3808
Fax 714 985 3764

UnionBank

Consumer Lending Customer Service
P.O. Box 85643, Mail Code M-910
San Diego, CA 92186-5643

I

July 15, 2011

EDWARD FOGG
MARIA FOGG
LOT 3 107TH SPEC
15609 SE RIVERSHORE DRIVE
VANCOUVER WA 98683

Re: Account Number 6015242016 & 6005649014

Dear Customer (s):

This is to confirm that your accounts are in good standing and your payments have been received in a timely manner monthly.

Union Bank's decision to place a hold on the refinance of your accounts referenced above should not have impacted your credit.

You can present this letter to any potential lender as confirmation that your accounts are not delinquent and all derogatory remarks will be removed upon completion of the refinance process.

If we can be of further assistance, please contact our Customer Service Department [redacted].

Sincerely,

Bradshaw

Regina Bradshaw
Customer Service Specialist
Consumer Lending Customer Service

Reported us
w/no payments

Ed Fogg

From: Ed Fogg [ed@foggmortgage.com]
Sent: Wednesday, September 07, 2011 11:08 AM
To: 'Ed Fogg'
Subject: FW: Any news?

J

From: Patrick Baker
Sent: Tuesday, September 06, 2011 3:25 PM
To: Ed Fogg
Subject: RE: Any news?

Sorry no response yet

Baker, Patrick
Special Assets Officer
Special Assets Group

Union Bank | 332 Everett Mall Way
Everett, WA 98204

UnionBank

From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Tuesday, September 06, 2011 02:46 PM
To: Patrick Baker
Subject: Any news?

Ed Fogg

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSHIGHT AND INVESTIGATION

OVERSIGHT OF THE STRUCTURED TRANSACTION PROGRAM
SUMMARY OF TESTIMONY OF SCOTT L. LEVENTHAL
May 16, 2012

Mr. Scott L. Leventhal
President and Chief Executive Officer
TIVOLI PROPERTIES, INC.
One Overton Park, Suite 1150
3625 Cumberland Boulevard
Atlanta, Georgia 30339
Telephone: (770) 272-9495
Telecopy: (770) 272-7460
E-mail: sll@tivoli-properties.com

13441-3

STATEMENT OF INTEREST OF SCOTT L. LEVENTHAL

This summary of testimony (this "**Summary**") is respectfully submitted by Scott L. Leventhal for use in the United States House of Representatives' Committee of Financial Services Subcommittee on Oversight and Investigation hearing on *Oversight of the Structured Transaction Program.*

I am an Atlanta-based real estate investor and developer and the president and chief executive officer of Tivoli Properties, Inc. During my tenure as a real estate investor and developer, I have developed urban high- and mid-rise condominiums, apartments and mixed-use projects, single-family subdivisions, both lifestyle communities and entry-level suburban communities, as well as planned the development of hotels. *See*, Background of Scott L. Leventhal attached hereto. My developments have been primarily financed through the use of recourse and non-recourse debt from banking institutions, insurance companies, real estate investment trusts and equity through funds and private investors.

Since the beginning of the Great Recession, several banks that originated my real estate loans have been seized by federal and state regulators. The Federal Deposit Insurance Corporation (the "**FDIC**") subsequently transferred the loans from the defunct banking institutions to other banks through whole-bank purchase and assumption agreements that have loss-share arrangements with the FDIC or joint ventures between the FDIC and private partners through structured transactions ("**Structured Transactions**"). One was liquidated directly to a private investor.

INTRODUCTION

It is unquestionable that this country is still experiencing significant turmoil in the financial markets that began with the Great Recession. Capital for small-business borrowers, which are the pillars of job creation, still remains scarce and many small-business borrowers have been rendered financially insolvent. Borrowers of failed banking institutions have found themselves in strained relationships with federal regulators and their successors over a myriad of claims. Real-estate values have plummeted and many Americans have seen homes values decline to less than their mortgage. Our nation's ability to heal from the effects of the Great Recession rests, in part, on Washington's and the FDIC's ability to strengthen our banking system and allow our communities to rebuild.

Since January 1, 2008, federal and state banking regulators have closed 449 banks with 67 in Georgia alone. *See*, FDIC website. Many of these were community banks provided funding for small-business borrowers such as local builders and developers. Because the doors to mega-banking institutions are typically not open to smaller builders and developers, many builders and developers have found themselves in desperate situations.

In the modern era, there are many aspects of these bank failures that are worth this Subcommittee's consideration. First, when a bank is closed by federal regulators, federal law allows for the repudiation of the failed bank's contractual obligations with the borrower. This is causing significant damage around the county such as unnecessary litigation between the bank's borrower and the borrower's contractors who cannot be paid without bank funding. Second, Congress should require the FDIC to dispose of the assets of the failed banking institutions in a manner that promotes the best chance for recovery for the nation as a whole.

It is worth looking at the methods that the FDIC utilizes to liquidate the assets of failed banking institutions. One method of liquidation is through arrangements with financially sound banking institutions to transfer the assets of the failed banking institution. These assets are usually transferred by whole-bank purchase and assumptions and the FDIC backstops the losses that may be sustained on the loans of the failed bank. These transfers are to other banks that are still regulated by state and federal agencies and are not competitors of the borrowers.

Another way that the FDIC liquidates assets of failed banking institutions is through Structured Transactions with private partners in a joint venture. These Structured Transactions usually involve attractive financing and are meant to allow private partners with expertise in the real estate industry to recover on the assets.

These private partners are typically non-regulated entities and in some instances are direct competitors of the borrowers' under the loans of the failed bank.

There are several unintended consequences to Structured Transactions that respectfully require examination. First, in many instances, the private partners in Structured Transactions are experienced real estate investors, developers and builders, and are in fact direct competitors to the borrowers of the loans of the failed banking institution. These private-partner competitors are able to gain access to the borrowers' sensitive financial information as a result of these Structured Transactions. Most borrowers would have never applied for a loan from their competitor.

Second, the depth of the litigation over collections between borrowers and joint ventures under Structured Transactions has, in many cases, drastic consequences. This litigation is causing many quality builders and developers to seek insolvency protection.

Third, while the joint ventures attempt to collect on loan guaranties rather than seeking to first recover on the collateral securing the loan, the collateral wastes away and surrounding properties experience depressed values. This results in a vicious cycle that has prolonged the recovery of many local economies, when we should be resurrecting development activity to spur the creation of new jobs.

These joint ventures are purchasing the assets of failed institutions at a fraction of book values. They are doing so with assistance from the federal government. This provides them with the opportunity to use their talents and resources to reinvigorate the assets, not let them waste.

BACKGROUND AND ORGANIZATION OF STRUCTURED TRANSACTIONS

Structured Transactions were created by the FDIC following the FDIC's experiences in the early 1990s when the Resolution Trust Corporation (the "**RTC**") was formed and the FDIC entered into a number of joint ventures or partnerships with the private investors. The purpose of those joint ventures was to facilitate the disposition of assets from primarily failed savings and loan institutions. These joint ventures purported to provide a greater chance of recovery on the assets of failed banks and thrifts by aligning the interests of the FDIC and its private partners, as opposed to liquidating the assets through conventional sales methods.

Since 2008, the FDIC has liquidated certain assets through Structured Transactions with private partners. At least thirty two Structured Transactions have been completed in the last four years involving more than forty-two thousand loans having book values exceeding $25 billion.[1] *See*, FDIC website.

Because the Structured Transactions allow the FDIC to retain an interest in

[1] Approximately 17% of the total book value of loans transferred through Structured Transactions was from the Corus Bank portfolio which was mostly, if not all, non-recourse loans.

the assets that that have been transferred, the FDIC believes that it has a better opportunity to recover on the loans of failed banking institutions than if the loans were just sold to private investors. Most of the FDIC's private investors that participate in Structured Transactions are distressed-debt funds and are not regulated by typical banking regulators.

The FDIC transfers the day-to-day management responsibility to the private partners and are responsible for the managing and servicing the loans held by the joint venture. In consideration of these management responsibilities, the private partner is paid a monthly management fee usually calculated on the gross asset value of the joint venture, as well as a negotiated share of the profits earned by the joint venture upon on the liquidation of its assets. Ostensibly these private partners have little to no incentive to promptly resolve the loans because of the dilution to their fees resulting from early liquidation of the portfolios.

While the private partner is responsible to adhering to reporting requirements to the FDIC, these private partners are not remotely monitored at the same levels as federally insured banking institutions. Additionally they do not operate in the same manner as banking institutions.

Many Structured Transactions also include seller-financing from the FDIC on favorable terms. In some cases the FDIC provides sixty percent of the total capitalization for the joint venture at zero percent interest for five years. The FDIC also then invests a portion of the equity capital necessary to fund the joint venture's acquisition of the loans, thereby leaving as little as twenty percent to be invested by its private partner.

Some Structured Transactions include provisions that provide for the ownership percentage (*i.e.*, the right to profits) to increase in favor of the FDIC once the joint venture has achieved certain return thresholds, as opposed to increasing to the private partner. This is contrary to many traditional equity joint ventures where the manager is incentivized to generate more profits. The design of this structure is intended to prevent the private partners from earning windfalls over the FDIC and is part of the inherent issue in Structured Transactions because.

THE FDIC'S ABILITY TO REPUDIATE LOANS AND ITS EFFECTS

Bank's that are seized by federal and state regulators hold commercial real estate loans such as construction and development loans where the failed bank still remains obligated to advance funds. Because of federal preemption law, the FDIC is however permitted to repudiate those contractual obligations and may force the borrower to scramble to procure capital from other sources to complete the project. All the while the borrower is unable to pay its contractors and vendors because the loan advances have terminated. This, in and of itself, is causing contractors to file liens and litigate to collect the amounts owed from the borrower for the improvements made to the project. In addition to starving the contractor from lack of payment, damages from federal repudiation causes many single-family communities to become abandoned with partially completed homes and negatively impacts values of surrounding properties.

Meanwhile, the successor creditor to the failed banking institution, which in some cases is the FDIC in a receiver capacity, still seeks to collect on the loan despite the fact that the creditor has failed to perform its contractual obligations. Those collection efforts include pursuing the guarantors of the loan for the amount of the funds that were previously advanced by the failed banking institution. Even though the ability to repay the debt was contingent on the completion and sale of the project, these collection efforts are still continuing to be pursued.

CONFLICTS WITHIN STRUCTURED TRANSACTIONS

The FDIC's decision to partner with private partners that are experts in the real estate industry – since many of these loans involve real estate – is very sensible. However, we need to address the conflict when a borrower now has an FDIC private partner, who in some cases is a direct competitor, as its lender.

First, a majority of the loans that are sold through Structural Transactions are recourse to the borrower and/or its principals pursuant to a guaranty. Since the obligations under the guaranties are also transferred, these guarantors are defending collection efforts from a private partner -- and not a regulated bank. Most borrowers or guarantors would not have agreed to provide guarantees to these private partners because they never would have applied for a loan from a competitor. However, now that there competitor holds the loan, the competitor is privy to the confidential and personal financial information of the borrower/guarantor, including sensitive financial information relating not only to the subject loan, but usually also to the global investments that the borrower maintains.

Borrowers should feel comfortable that when they apply for loans that the financial information that is being submitted will remain strictly confidential and not worry that the information will end up in the hands of their competitors. Consider the sensitive financial information that is provided when a loan is sought. A borrower and its principals usually provide, in addition to the financial information of the project, personal and corporate tax returns, bank records and personal financial statements. This financial information is provided based on a clear expectation of confidentiality and incumbent duties of the banking institution to maintain customer records. When regulators close a bank and transfer the assets to a joint venture through Structured Transactions, all of the customers' sensitive financial information is also transferred.

Second, there is tremendous litigation transpiring around the county brought by Structured Transaction joint ventures for claims on guaranties.[2] Under most state laws, guarantors are fully obligated on the guaranties they sign. However, the Great Recession has prevented many willing guarantors from being able to fulfill their obligation. While it is true that some guarantors are capable of paying, but unwilling to do so, a majority are not.

In order to defend collection efforts from this litigation, many borrowers have been forced to seek insolvency protection such as personal bankruptcy. Since it is the goal of the FDIC to maximize recovery on assets of failed institutions, some joint venture partners of Structured Transactions are forcing same to occur. This eliminates competition within the real estate industry and has created an unfair advantage for certain private partners which should not be facilitated by the federal government.

Lastly, by pursuing the loan guarantors without realizing on the collateral first, many communities around the country – and particularly the State of Georgia – have begun wasting away. This waste is causing a prolonged negative effect to a recovery from the Great Recession.

---

[2] Notably, I was a borrower of a failed bank that ended up transferring a recourse loan to a private partner through a Structured Transaction. Litigation ensued over claims against the lender and against me as a guarantor that were ultimately settled.

For example, consider a single-family community where half of the planned homes have been constructed and the other half are vacant lots. The builder/developer of that community has its loan transferred to a joint venture through a Structured Transaction and faces collection efforts from the joint venture on the guaranties. Rather than pursuing the collateral securing the loan (*i.e.*, the vacant lots) and liquidating them to another builder, the joint venture is simply suing on the notes and guaranties. During the time that this litigation is proceeding, the family that lives in one of the completed houses in the subdivision is living next door to a lot or lots that are becoming weed infested and accumulating trash. The value of this family's home is directly impacted by the waste in this community and the uncertainly of the financial stability of the community. When appraisers then value homes for new mortgage financing, they lower the value of properties that are proximate to these troubled communities. In order to rectify this situation, we must stabilize our communities and not let them waste, create jobs and allow real-estate values to increase to pre-recession levels.

EXAMPLES OF SOUND STRUCTURED TRANSACTIONS

Not all Structured Transactions, however, have resulted in the unpleasant situations described above. Because some Structured Transactions are primarily comprised of loans that are non-recourse to the principals' of the borrower, some private partners have focused on collecting and liquidating the collateral as opposed to pursuing guarantors.

For example, a majority of the loans that were made by Chicago-based Corus Bank were non-recourse to the borrowers' principals. Following the closure of Corus Bank, the FDIC transferred the majority of Corus' assets to a joint venture through a Structured Transaction.[3] The joint venture proceeded to take control of the collateral securing the loans and used its skill set to liquidate the properties. Through these efforts in Atlanta, Georgia alone, the joint venture has sold so many condominium units in the last two years Atlanta's condominium inventory is nearing normal levels.

CONCLUSION

The FDIC has done an admirable job working through the effects of the Great Recession. My hope is that the FDIC will consider the unintended consequences of Structured Transactions and the types of debt obligations that are transferred. Bank customers should not be forced to resolve their loan obligations

[3] At the time of Corus' seizure, I had two outstanding loans. I was able to payoff one of the two loans but, because of the dramatic decline in value of the property, was unable to pay the other and the property was foreclosed. The inability to payoff the other loan was despite the fact that the units in this project were intended to be sold as condominiums and I was able to convert the entire project into a rental apartment project, and lease-up the project to over 90% occupancy with positive cash flow. While stabilized and cash flowing, the value of the property had been so severally impacted by the Great Recession that I was still unable to refinance the loan.

with non-regulated entities, many of whom are direct competitors of the borrower. There is significant financial plight that is compounded upon these borrowers. Also, there is collateral damaged that is being sustained within local communities.

It is important that we all focus on rebuilding our economy to bring the Great Recession to conclusion. While the concept of Structured Transactions makes sense, Structured Transactions should be limited to loans that are non-recourse to the principals' of the borrower where private partners who are experts in the real estate industry can improve the assets and create value to the FDIC and local communities. This will permit local economies to start growing by allowing the small-business borrower to resolve its obligations with federally regulated banking institutions and be in a position to focus on the creation of jobs. As we have all seen in so many parts of the world, sometimes we have to accept the reality of our situation, learn from our mistakes and work towards rectifying them.

This 15th day of May, 2012.

Respectfully submitted,

SCOTT L. LEVENTHAL

One Overton Park, Suite 1150
3625 Cumberland Boulevard
Atlanta, Georgia 30339
Telephone: (770) 272-9495
Telecopy: (770) 272-7460
E-mail: sll@tivoli-properties.com

Prepared Testimony of
Stuart Miller – Chief Executive Officer
Lennar Corporation

Committee on Financial Services

Before the Subcommittee on Oversight and Investigations

"The Federal Deposit Insurance Corporation's
Structured Transaction Program"

Room 2220 Rayburn House Office Building

Wednesday, May 16, 2012

INTRODUCTION

Chairman Neugebauer, Ranking Member Capuano, members of the Subcommittee, thank you for the opportunity to testify on the important issue of FDIC structured transactions.

My name is Stuart Miller, and I am the Chief Executive Officer of Lennar Corporation. Lennar is a public company founded in 1954 and traded on the NYSE under the symbol LEN. We are one of the nation's leading builders of quality homes with operations across the country.

In addition to homebuilding activities, we engage in other business lines, and Lennar's Rialto segment is one of those. Rialto Capital Management, LLC, a 100% owned subsidiary of Lennar, is a leading real estate investment and asset management company focused on distressed and value-add investments and asset management, workout and turnaround strategies.

Lennar first entered into the business of managing distressed assets in the 1970s and distressed loans in the early 1990s. Lennar's subsidiary at that time, LNR Property Corporation, was formed and managed by myself and Jeffrey Krasnoff, the current CEO of Rialto, who is here with me today. Since 2007, Rialto and its affiliated entities have underwritten and/or invested in or commenced the workout and/or oversight of billions of dollars of real estate assets, including distressed commercial and residential real estate loans and properties, as well as mortgage backed securities. These investments and management responsibilities include partnerships in structured transactions with the Federal Deposit Insurance Corporation, and Rialto and is a sub-advisor to one of the eight managers of a Fund under the U.S. Department of Treasury's Public Private Investment Partnership Program.

THE FDIC STRUCTURED TRANSACTION PROGRAM

As it has in many past downward real estate cycles, the FDIC faces the challenge of accomplishing its mission of protecting bank depositors who made deposits in failed financial institutions without passing the cost of that protection on to taxpayers. The FDIC states on its website that it has the following responsibility:

- The FDIC, as receiver for a failed institution, has a legal responsibility to maximize recovery on assets.

To fulfill that responsibility, the FDIC has created the structured transaction program, based upon its past successes with public/private partnerships, which the FDIC describes as follows:

- The structured transactions allow the FDIC to retain an interest in the assets, while transferring day-to-day management responsibility to expert private sector professionals who also have a financial interest in the assets and share in the costs and risks associated with ownership.

- Bidders must be pre-qualified, have demonstrated financial capacity and the expertise to manage and dispose of the asset portfolio, and have certified eligibility to purchase FDIC receivership assets.

- The Private Owner acting as the managing partner must adhere to stringent monthly, semiannual, and annual reporting requirements. The FDIC conducts compliance monitoring of the transactions on a regular basis in addition to an annual agreed upon procedures review of entity operations.

THE RIALTO/FDIC TRANSACTION

Rialto is proud to have the opportunity, as one of the successful bidders in a competitive bidding process, to partner with the FDIC in its structured transaction program. Rialto has partnered with the FDIC to maximize the value of a portfolio of loans acquired from failed financial institutions. The loans in this portfolio consist primarily of loans made in commercial transactions with sophisticated business borrowers and real estate investors. Rialto, with the benefit of Mr. Krasnoff's twenty years of experience in these types of transactions, is uniquely capable of assisting the FDIC in accomplishing its mission. Rialto's experience offers the following specific benefits:

- Collection of amounts owed by these sophisticated business borrowers is essential to allow the FDIC to protect bank customer deposits after bank failures, reduce losses to the FDIC's Deposit Insurance Fund and to help prevent losses from being passed along to taxpayers. The failure of a financial institution in no way excuses performance by the borrowers who accepted money to fund business ventures in exchange for a promise to repay that money.

- Rialto operates in accordance with the loan documents negotiated, approved and signed by these sophisticated business borrowers, applicable laws, and the rules of the court system, both in the spirit and the letter of the law. Rialto's experience assures that borrowers and guarantors are treated fairly as required by law, and further assures that borrowers and guarantors receive the benefits and protections afforded them by the loan documents that they negotiated, in most cases with the assistance of legal counsel, with the financial institutions that agreed to extend them credit.

- The process of recovering amounts owed by sophisticated business borrowers who defaulted on their loans is actually helping to stimulate the economy. For example, Rialto often brings current significant deficiencies in property tax payments to often struggling local municipalities and communities, and its collection and foreclosure efforts place unused or underutilized property in the hands of owners who have the financial wherewithal and willingness to put properties to their highest and best economic uses.

- Rialto, because of its extensive experience in this business, is able to respond to and deal effectively with sophisticated business borrowers and loan guarantors who in some cases try to hide their ability to pay debts they legitimately owe through frivolous litigation tactics and by concealing their assets.

- Rialto effectively uses the judicial discovery process, which is often the only mechanism available to lenders to determine the truth of borrower claims and to achieve the collection allowed by law, particularly with sophisticated business borrowers who were well represented by counsel and negotiated transactions with risks and rewards they knowingly undertook.

RIALTO/FDIC TRANSACTION TERMS

In February 2010, the Rialto Investment Segment of Lennar acquired indirectly 40% managing member equity interests in two limited liability companies ("LLCs"), in partnership with the FDIC, for approximately $243 million. The LLCs hold performing and non-performing loans formerly owned by 22 failed financial institutions. The two portfolios originally consisted of more than 5,500 distressed commercial and residential acquisition, development and construction real estate loans with an aggregate unpaid principal balance of approximately $3 billion and an initial total purchase price of approximately $1.2 billion. The FDIC retained a 60% equity interest in the LLCs and provided $626.9 million of notes with 0% interest. The notes are secured by the assets held by the LLCs. Additionally, if the LLCs exceed expectations and meet certain internal rate of return and distribution thresholds, our equity interest in the LLCs could be reduced from 40% down to 30%, with a corresponding increase to the FDIC's equity interest from 60% up to 70%. As of both November 30, 2011 and 2010, the notes payable balance was $626.9 million; however, as of November 30, 2011 and 2010, $219.4 million and $101.3 million, respectively, of cash collections on loans in excess of expenses were deposited in a defeasance account, established for the repayment of the notes payable, under the agreement with the FDIC. The funds in the defeasance account will be used to retire the notes payable upon their maturity. At November 30, 2011, these consolidated LLCs had total combined assets and liabilities of $1.4 billion and $0.7 billion, respectively. As specified in the original bid documents, Rialto/Lennar earns a 0.5% fee to offset its operating costs in performing its duties as manager.

SIX POINTS TO REMEMBER

1. Rialto was awarded the partnership with the FDIC in a pure bid program. The FDIC defined the documents, the pool of assets, the structured finance terms, the fees and the relationship with the manager in a comprehensive program, and we evaluated that program and bid on that basis, as did every other bidder. There was no renegotiation. We took it as defined. We were required to give a conforming bid, and the highest bid won.

2. Rialto/Lennar has invested cash of approximately $250 million in the two FDIC

ventures. Lennar will not receive any money back until the $627 million loan to the FDIC is paid in full first. After the loan is paid in full, Rialto/Lennar and the FDIC will split net cash flow in a 60/40 FDIC/Lennar proportion until all invested cash is returned. Only then, which we expect to be 4-5 years from now, will Lennar begin to receive a return on its investment.

3. The portfolios are predominantly defaulted loans (over 90%). Borrowers entered into loan agreements with their banks. There was a default. The banks depleted capital, failed and were seized. Twenty-two institutions failed and were seized by regulators. The FDIC packaged a portfolio of loans from these twenty-two institutions that were in FDIC receiverships into structured transactions in which it conducted a bid process to sell 40% interests to qualified buyers/managers. We took over the management of these predominantly defaulted loans. We did not cause the defaults or negotiate the loan terms. It was and remains our job to use our expertise to find resolution.

4. These assets are primarily sophisticated commercial transaction loans. They are not consumer residential loans. These were loans where sophisticated business borrowers negotiated for a loan generally with each side represented by competent counsel, to borrow in many cases millions of dollars in order to generate a business profit. The risks and rewards were clearly allocated within the loan documents negotiated at the time, with both parties clearly understanding that all the rewards would be concentrated in the borrowers' hands, and accordingly, the various risks of business proposition would rest with the borrower as well.

5. Because these were business loans for the benefit of the borrower, and because all of the reward would go to the borrower, the banks carefully negotiated that collateral for most of these loans would be both the business assets or properties as well as absolute personal guarantees. Borrowers, to be able to borrow, readily gave those guarantees to pay back the loan whether the business proposition was successful or not.

6. We have over twenty years experience in managing and resolving defaulted loans. Our process is time tested and well organized. It is crafted around professionalism and decency as we endeavor to work with each borrower individually and with propriety as we seek resolution. By definition, the relationship between a defaulted borrower and a lender seeking resolution is adversarial and sometimes contentious. Simply put, the parties have very different objectives. With that said, our program is to work within the four corners of every loan agreement, each individually considered, and as well within the four corners of the rules and the spirit of our court system and the law.

SUMMARY

Lennar and Rialto appreciate the opportunity to be here today. As CEO, I felt it was important to personally come and speak to you, to answer your questions and to consider your input as our Company always endeavors to always be transparent and responsive in all our interactions. Rialto utilizes its extensive experience in management of loan portfolios to assure that the FDIC receives maximum value for the loans it assumed from failed financial institutions, all while complying with applicable laws and meeting obligations owed to borrowers in the collection process. We are doing what the law requires and what our partner, the FDIC, and Americans expect. Thank you for your consideration.

Office of Inspector General

EMBARGOED
For Release on
Delivery Expected at
2 p.m. Wednesday,
May 16, 2012

Testimony

Before the Committee on Financial Services
Subcommittee on Oversight and Investigations
U.S. House of Representatives

Hearing on Oversight of the FDIC's Structured Transaction Program

Statement of Jon T. Rymer
Inspector General
Federal Deposit Insurance Corporation

Statement of Jon T. Rymer
Inspector General, Federal Deposit Insurance Corporation
May 16, 2012

House Financial Services Committee
Subcommittee on Oversight and Investigations

Chairman Neugebauer and Members of the Subcommittee:

Thank you for your interest in the work performed by the Office of Inspector General (OIG) of the Federal Deposit Insurance Corporation (FDIC) relating to the Corporation's structured asset sales program. The FDIC uses structured asset sale transactions as a part of a broader resolution strategy for the assets of failed financial institutions.

The OIG is an independent office within the FDIC, established to conduct audits and investigations to prevent and detect waste, fraud, and abuse relating to the programs and operations of the FDIC, and to improve the efficiency and effectiveness of those programs and operations. I was appointed as the Inspector General of the FDIC by President Bush, and confirmed by the Senate in June 2006.

The OIG conducts audits that address FDIC programs and operations. Some of these audits are required by law; others are initiated based on our assessment of various risks confronting the FDIC. These audits assess such things as program effectiveness, adequacy of internal controls, and compliance with statutory requirements and corporate policies and procedures. We perform our work using internally available resources, supplemented by contracts with independent accounting firms when expertise in a particular area is needed or when internal resources are not available. Our work, as well as that of our contractors, is performed in accordance with Government Auditing Standards.

During the current crisis, the OIG has issued nearly 100 reviews of failed financial institutions. These reviews, pursuant to statute, describe the events that contributed to the institutions' failures and the FDIC's supervision of those failed institutions. While we will continue to review each failure of an FDIC-supervised institution, our approach to that work evolved to taking a more comprehensive view of common characteristics and trends. We communicated those trends to FDIC management, and in response, the FDIC undertook a number of initiatives to enhance the supervision program.

In early 2010, we began to focus our audit attention on the Corporation's rapidly growing resolution and receivership management activities, including such risk-sharing arrangements as shared loss agreements (SLA) and structured asset sale transactions. The FDIC's financial risk exposure pertaining to these risk-sharing arrangements is significant, and we designed our audits to assess compliance with the arrangements and the internal controls that the FDIC has established and implemented to protect the interests of the Deposit Insurance Fund (DIF) in these arrangements.

I am pleased to discuss the results of our work. As requested in your invitation to testify, I will be describing the findings and recommendations of my office's two completed audits of structured asset sale transactions; the scope and methodology of my office's ongoing work on these types of transactions; and, to the extent possible, our review of the complaints filed by borrowers impacted by these transactions. In addition, I will briefly discuss our planned work in this area. Before I begin describing the OIG's work, I would like to discuss, at a high level, the FDIC's resolution process and the tools that it has been using during the financial crisis.

The FDIC's Resolution of Failed Banks

FDIC-insured financial institutions can fail for a number of reasons, including a lack of capital or liquidity, poor management, or fraud. When an institution fails, the FDIC serves as the receiver for the institution's assets and liabilities. Since January 1, 2008, the FDIC has been appointed as receiver for 437 failed institutions, with total assets at inception in excess of $670 billion.

As required by the Federal Deposit Insurance Corporation Improvement Act of 1991, the FDIC must use the least costly alternative when it resolves a failed institution. Specifically, the law requires the FDIC to maximize the net present value return from the sale or disposition of assets of a failed institution and to minimize the amount of loss realized in the resolution of the institution. To fund the cost of resolutions and pay insured depositors when a bank fails, the FDIC maintains the DIF, which has experienced an estimated loss of $88 billion as a result of these 437 failures.

In resolving failed institutions, the FDIC markets failing institutions to all interested and qualified bidders, offering multiple alternative resolution structures. The FDIC's preferred approach is to sell all or a part of the failing institution's assets to an open financial institution that also assumes the failed institution's deposit liabilities. To incentivize the acquiring institution to take on some of the assets of the failed institution, the FDIC may enter into an SLA, a risk-sharing arrangement discussed below.

Any remaining unsold assets become part of the receivership. The FDIC may later market and sell those residual assets to qualified purchasers through a variety of means, including a structured asset sale transaction. This type of risk-sharing arrangement is also discussed below.

Shared Loss Agreements

An SLA, which is part of a purchase and assumption agreement with an acquiring institution, includes provisions under which the FDIC agrees to absorb a portion of the losses experienced by an acquiring institution on a specified pool of assets. While the FDIC generally absorbs 80 percent of certain losses, in some SLAs during the crisis, the FDIC agreed to absorb up to 95 percent of certain losses. As of March 31, 2012, the FDIC reported that it had entered into 285 SLAs with an original principal balance of $212.7 billion in assets.

Given the number of SLAs and the associated risks to the DIF, we initially identified individual, large SLA transactions that, in our judgment, presented significant financial risk to the FDIC, and from which we believed we could derive lessons that would help management to develop and improve controls. We conducted seven audits of individual SLAs, resulting in 93 recommendations, of which numerous recommendations related to the establishment of program level controls. With the development by FDIC management of more robust internal control structures at the transaction level, we later shifted the focus of our work with regard to these agreements to the FDIC's controls at a higher program level. This approach is consistent with the one we undertook for our reviews of failed institutions—that is, a more individual focus followed by a more global view of trends.

Structured Asset Sale Transactions

Not all assets from the failed institutions are sold to acquiring institutions. These residual assets consist largely of distressed and non-performing single-family and commercial real estate loans and real property that pass into and are held in FDIC receiverships. It is the FDIC's objective to return these assets to the private sector as promptly as possible, while maximizing the net present value return from the sale and minimizing loss to the DIF, consistent with the FDIC's statutory obligations.

The FDIC utilizes multiple vehicles to sell these assets, among which are structured asset sale transactions. Structured asset sale transactions involve pools of assets from one or more FDIC receiverships. The FDIC sells or contributes assets to a limited liability company (LLC) formed by the FDIC as receiver. These transactions are competitively bid to prequalified purchasers. The receiver then sells an interest in the LLC to a private third-party, which manages the LLC. The receiver retains either an equity interest in the LLC or a participation interest in the net cash collected through the servicing and liquidation of the LLC's assets. Once ownership of the assets is conveyed to the LLC, control over the LLC is passed to the private third-party.

The FDIC, acting as receiver for failed banks, reported that it has consummated 32 structured sale transactions involving 42,314 assets with a total unpaid principal balance of approximately $25.5 billion, as of April 25, 2012. My testimony today addresses the work my office has completed on two of these structured asset sale transactions and describes the scope and methodology of our ongoing audit of two other such transactions.

Completed OIG Audits of Structured Asset Sale Transactions

The OIG has completed performance audits of two structured asset sale transactions that we selected based on their size and the types of assets involved. The first audit was of ANB Venture, LLC (ANB). ANB involved 1,112 individual assets with an unpaid principal balance at closing of $1.167 billion. The Managing Member of ANB is Kingston Management Services, LLC. We issued a report on this audit in November 2010 and discussed its findings in our semiannual report to the Congress, for the period October 1, 2010 through March 31, 2011.

The second audit my office performed on a structured asset sale transaction was of Corus Construction Venture, LLC (Corus). Corus involved 101 individual assets with an unpaid principal balance at closing of $4.4 billion, and contained an advance funding mechanism of up to $1.15 billion to fund the construction of incomplete buildings and provide other asset-related working capital. The Managing Member of Corus is ST Residential. We issued a report on this audit in April 2012, and summarized its results in an executive summary posted on our public Web site.

My office contracted with CliftonLarsonAllen LLP to conduct the audits of ANB and Corus. The objectives of the audits were to assess compliance with the structured asset sale agreements, and to assess the FDIC's monitoring of the agreements. Specifically, to assess compliance, we:

- reviewed the terms and conditions of the structured asset sale agreements;
- tested the completeness and accuracy of the initial recording of the assets on the books and records of the LLC and the monthly financial reports submitted to the FDIC (including management fees and servicing expenses reported by the Managing Member);
- determined whether the Managing Member employed "customary and usual standards of practice" with respect to managing and liquidating assets; and
- reviewed the allocation of cash flows for compliance with the agreements.

In assessing the FDIC's monitoring of these transactions, we:

- reviewed the FDIC's policies, procedures, and guidance pertaining to structured asset sale transactions;
- interviewed legal and resolutions personnel responsible for negotiating and overseeing the transactions; and
- reviewed the work of FDIC contractors engaged by management to perform quality control services.

We concluded that ANB, Corus, and their respective Managing Members complied with certain provisions of the structured asset sale agreements, and that the FDIC had implemented certain controls for monitoring the transactions. We also noted that the FDIC had planned or was in the process of implementing significant control improvements at the time of our audits. However, our audits identified a number of control deficiencies involving both compliance and monitoring that warranted FDIC management's attention.

With respect to compliance with the agreements, both reports included questioned costs relating to servicing expenses and management fees. In the case of ANB, questioned costs of $634,412 consisted primarily of expenses incurred by the LLC that were inappropriately treated as liquidation costs instead of servicing costs covered by the management fee. In addition, questioned costs included management fees charged on assets that had no value but that had not been written-off by the Managing Member. The report also noted that the FDIC could prospectively achieve an estimated $3.1 million in funds put to better use by addressing issues involving ANB's accounting practices for servicing costs paid to contractors and for worthless assets. The Corus report included $6.3 million in questioned costs, consisting primarily of unallowable servicing costs, such as professional services provided by real estate development firms and travel, meals, and entertainment expenses that were prohibited under the terms of the structured asset sale agreement.

Both audit reports, particularly the report on Corus, found that the policies and procedures used by the Managing Members to service and liquidate the LLC's assets were not consistent with customary and usual standards of practice. The reports also noted that loan servicing practices were not compliant in certain key respects with the servicing standards defined in the agreements. We also concluded that ANB and Corus did not implement customary and usual standards of practice for safeguarding sensitive, personally identifiable information.

With regard to the Corus audit, we determined that the Managing Member for Corus received significant management fees pertaining to nonaccrual and capitalized interest. In the experience of CliftonLarsonAllen, who performed this work on our behalf, paying such fees is not a customary or usual practice. However, the terms of the agreement were not clear on this matter. Because of this lack of clarity, the fees were not questioned, but we recommended that the FDIC review the matter further and provide additional clarification regarding the treatment of nonaccrual or capitalized interest in future structured asset sale agreements.

In the ANB audit, we determined that the Managing Member of ANB did not maintain sufficient documentation regarding its asset disposition strategies, and that for more than a year, the Managing Member did not have ample accounting staff to ensure proper separation of duties when authorizing, recording, reconciling, and reviewing accounting entries and expenses.

Based in large measure on these compliance-related findings, we determined that the FDIC's controls for monitoring structured asset sales needed improvement, particularly in the areas of policies, procedures, and guidance, and compliance monitoring program controls and practices. During or subsequent to our field work on the Corus audit, the FDIC advised us that it had either established or planned a number of control improvements related to its structured asset sale transactions. Such improvements included, among other things, issuing policies and procedures for monitoring structured asset sale transactions, engaging compliance monitoring contractors to perform periodic compliance reviews of LLCs and Managing Members, assigning additional resources for monitoring, and beginning a process for quarterly reporting to the FDIC's Audit Committee, an FDIC Board–level committee.

To summarize, the ANB report contained 10 findings and 24 recommendations. According to the FDIC, actions had been taken to address all of these recommendations, as of October 2011. The Corus report contained 7 findings and 10 recommendations. Corrective actions for all of these recommendations are expected to be completed by September 30, 2012.

Ongoing Work Relating to Rialto Structured Asset Sale Transactions

We are presently conducting an audit of two structured asset sale transactions, both of which are being managed by Rialto Capital Management, LLC (Rialto). The first transaction involves 5,166 residual assets with an unpaid principal balance of $2.3 billion. The majority of these assets pertain to residential acquisition, development, and construction (ADC) projects. The second transaction involves 345 residual assets (primarily commercial ADC projects) with an unpaid principal balance of $799 million.

This audit was requested by FDIC management on October 13, 2011, based on inquiries or complaints that the FDIC had received concerning the transactions. As of April 30, 2012, the FDIC reported that it had received a total of 57 inquiries or complaints associated with approximately 65 loans, from members of the Congress, the public, or the media. The inquiries and complaints dealt with Rialto's aggressiveness in pursuing balances owed on the loans; an unwillingness to compromise with borrowers; Rialto's treatment of the borrowers or guarantors; the FDIC's handling of the loans prior to their transfer to Rialto; the servicing of the loans by the loan servicer engaged by Rialto; and other general inquiries regarding Rialto's operations.

The objectives of the Rialto audit include the same two objectives of the ANB and Corus audits, namely to assess compliance with the structured asset sale agreements and to assess the FDIC's monitoring of the agreements. In addition, we will assess the FDIC's bidding and selection process, and the terms and conditions of the structured asset sale agreements themselves. Based on the nature of some of the inquiries and complaints pertaining to these transactions, we placed particular emphasis on the Managing Member's controls over transactions with affiliates in designing our audit procedures for this audit. We also selected a representative sample of assets that were the subject of the inquiries and complaints of which we were aware at the time we initiated our work.

Field work for this audit is scheduled to be completed in June 2012. We plan to issue a draft report in July, and a final report incorporating FDIC management's comments will be issued at the end of August 2012. Consistent with our practices, the final report will not be publicly available, but the report's Executive Summary will be posted on our Web site.

Audit Work Going Forward

We intend to continue audits of individual SLA and structured asset sale transactions going forward because of the dollar value of the transactions and to provide a deterrent effect as it relates to the risk of fraud. However, we also anticipate a shift in the focus of our work regarding structured asset sale transactions. That is, we have not yet assessed the effectiveness of all of the control improvements we recommended for that program and that the FDIC has advised it has implemented. As the structured asset sale program matures and as resources permit, we plan to elevate our focus to a program-level review that assesses overall monitoring and oversight controls. Such an approach is consistent with our earlier work examining institution failures and our more recent review of the SLA program. Upon completing such a review, as a next step, we are considering taking a broad, comparative look at the various resolution strategies that the FDIC has employed during the crisis in order to assist the Corporation in carrying out future resolution and receivership activities.

* * * * *

This concludes my prepared statement. Thank you for the opportunity to discuss our work in these areas. I am prepared to answer any questions that you may have.

Statement of Representative Lynn Westmoreland
Hearing: "Oversight of the Federal Deposit Insurance Corporation's Structured Transaction Program"
May 16, 2012

Attached is a submission for the record submitted by American Land Rights Association. This includes the personal testimonies of borrowers who have been impacted the FDIC's structured transaction program.

American Land Rights Association
National Inholders Association

"Unlock the Bureaucracy."

National Headquarters:
30218 NE 82nd Avenue (PO Box 400)
Battle Ground, Washington 98604
Phone: (360) 687-3087
ALRA@pacifier.com

Legislative Office:
507 Seward Square SE
Washington, DC 20003
FAX: (360) 687-2973
www.landrights.org

Honorable Robert R. "Randy" Neugebauer, Chairman,
Michael Eerett "Mike" Capuano, Ranking Member

Testimony For The Record On FDIC Oversight
For the Hearing held May 16, 2012
House Financial Services Committee
Subcommittee On Oversight and Investigations

US House of Representatives, Washington, DC 20515
Updated Testimony by Chuck Cushman, Executive Director of American Land Rights and Chris Pridgen.

American Land Rights Association -- May 11, 2012

FDIC Bank Closure Policies and FDIC Authorized Aggressive Tactics by FDIC Partners Lennar, Rialto and Others Are Destroying Jobs, Small Businesses, and Communities—Holding Back Economic Recovery and Job Creation

Problem: The FDIC's methodology, policies, and procedures, while closing an average of two banks per week have created significant, unnecessary hardships on American citizens, borrowers, and vendors of failed banks. FDIC policies have been a driving force in the destruction of local and the national economies, markets and industries, destroyed hundreds of thousands of jobs and promoted the growth and market share increases of national banks (too big to fail) to the detriment of community banks, the American people and the free market system.

The FDIC's use of Loss Share Banks (Banks or equity group formed banks, that purchase failed bank assets at deep discounts, which are further indemnified up to 80% of collection loses by the FDIC – **(Loss share banks receive reimbursement of 80% to 95% of losses on assets that don't yield a stated return**) and Public-Private Investment Program or PPIP's [partnerships with publicly-traded Wall Street hedge fund companies (such as Rialto/Lennar Multibank, Colony, Kingston, Starwood, Roundpoint, and other FDIC partners)].

These partnerships have fueled and accelerated the degradation of market economies and real estate values, artificially prolonged and deepened the current economic recession currently impacting the country. All this for the profit of the FDIC's private hedge fund partners. **The FDIC has apparently unintentionally become an active partner in victimizing hard working Americans and businesses.**

The statutory powers of the FDIC do not entitle them to pick winners and losers or to create different classes of citizens (borrowers versus depositors or the wealthy few versus the American public) especially with taxpayer money in violation of federal law (see TARP) Troubled Asset Relief Program requirements). In addition, FDIC procedures and methods have squandered the Deposit Insurance Fund in the conduct of their Receiverships and Loss Share Bank Agreements. **Finally, let's face it, the FDIC has been inconsistent and done a poor job regulating the banking industry.**

With regards to the PPIP's, the FDIC is using taxpayer/US Treasury funded interest free loans to finance the public/private structured sales, with little or no return to the taxpayer. The FDIC has shown no consideration of the unintended consequences to quality small businesses with strong track records (who were in good standing before the bank closure) and all for the profit of the FDIC and their publicly traded partners. These businesses are being destroyed by foreclosures created by FDIC policy of choosing to partner with the huge Wall Street hedge funds.

These local businesses are ultimately forced into bankruptcy eliminating most from hiring workers and rebuilding the economy.

The FDIC drafted the PPIP documents, which require the minority structured sale participant, Rialto/Lennar (in this partnership called Multibank 2009-1), to pursue borrowers without regard or consideration of to the circumstances surrounding their individual loans) until they cannot be legally pursued anymore. **FDIC policy does not even consider whether most borrowers were current on their** loans.

Rialto, Multibank, and other FDIC PPIP partners aggressively litigate borrowers, attempt to force them into bankruptcy, obtain judgments and further pursue those judgments against personal assets and savings and generally attempt to ruin all borrowers and guarantors, unless they pay the loans off or gain an unappealable court decision in the borrower's favor. **They aggressively use the court system in their tactics and will punish and outspend borrowers with legal fees until they are broken as their legal budget is unlimited and paid by the FDIC using taxpayer dollars. There is no way for the average citizen to fight back in court when all the court costs and legal fees are being paid by the FDIC (taxpayer).**

These unlucky borrowers had their loan at a bank that just happened to be closed by the FDIC. Overwhelmingly these borrowers were current with their loans but the FDIC bank receivership froze all loans, funding, and loan provisions. Rialto (FDIC Partner) aggressively uses the threat of the IRS as part of their tactics and they fund their efforts with taxpayer dollars at no cost to them. **There is no effort to work with borrowers already damaged by the FDIC's tactics.**

All of this economic disaster has been orchestrated by the FDIC. The FDIC policy requires full pursuit of all judgments as a condition for the participating PPIP minority partner to get paid its share. (This statement is repeated below in context.) (See attached statements by affected borrowers.)

The PPIP's are rewarded for employing FDIC scorched earth tactics against the borrowers of the failed banks and the effect of destroying local economies, jobs, and property values in addition to the borrowers' ability to support themselves going-forward. The borrowers did not cause the bank to fail and did not cause the disruption of their loans that result from the FDIC's process and use of outside contractors with little or no oversight from FDIC or Congress.

Solution: The FDIC sponsored attacks on small business must stop. Congress must limit the ability of the FDIC and their partners to go after deficiencies and personal assets. Collections must be limited to collateral securing the loans they acquire.

What is needed is a simple amendment to the FDI Act and FIRREA, that is a variation on the "Bridge Bank" concept, which is already in the FDIC playbook. This will eliminate the waste and misery forced on the American public and economy by the FDIC and its partner companies. Together, they are destroying local businesses (borrower's) and other members of the local communities, victims of the bank closures that were not direct customers of the failed banks nationwide.

Without diminishing the FDIC's authority or autonomy, **this amendment** provides a **Preferred Least Cost Resolution** methodology, which protects depositors, borrowers and vendors of failed banks and the markets they serve and the people living and working within those markets whether they banked at the failed institution or not. The **Preferred Least Cost Resolution** protects everyone.

It treats everyone fairly, equally and with respect. It eliminates the need for Loss Share Banks and FDIC PPIP's partners such as Rialto and Multibank. It does not create different classes of citizens and it does not favor equity groups and hedge funds over the borrowers and jobs producers in the local market, as do current FDIC methods. It is demonstrably less expensive to the deposit insurance fund than current methods utilized by the FDIC. However, if the FDIC is allowed by Congress "to do things the way they have always been done", which is clearly not the Least Cost Resolution as required by statute, then the destructive effects of their efforts and alliances are reduced and contained by limiting the extent of their collections to realizing on the collateral securing the loans they acquire. It is still their choice.

PROPOSED LEGISLATION

THE PERFERRED LEAST COST RESOLUTION AMENDMENT

Without diminishing the role, historical purpose or authority of the FDIC as defined within the FDI Act and or FIRREA, we propose the following supplemental provision to the body of law known as The FDI Act and 12 USC 1821(e) and its various counterparts in their entirety known as FIRREA referred to herein as "THE ACTS":

"Notwithstanding anything contained within THE ACTS to the contrary, in which case this provision shall control and govern: The ***Preferred Least Cost Resolution*** for the resolution of the Receivership's assets shall be the contribution of capital by the FDIC, from the Deposit Insurance Fund, in an amount sufficient to adequately capitalize the Receivership's Capital Account as defined by prevailing regulatory standards for banks, in return for a preferred return not to exceed 10% per annum. During the term of the investment:

-----1. The Receiver shall retain the former bank's name, management and employees to operate the Receivership and manage the Receiver's assets and liabilities in the ordinary course and to honor all agreements, contracts and responsibilities including but not limited to all depository accounts and loan relationships of the former institution, thereby protecting all depositors, borrowers and vendors of the Receivership. The Receivership will also continue to make advances against valid loan contracts and renew loans for qualified borrowers in the ordinary course.

-----2. The Receiver shall not allow incentive compensation or excessive salary compensation to be paid to or accrued for the future payment to the former bank's management, now Receivership managers. Shareholder dividends will cease. Committee Member / Director compensation will be limited. The Receiver will employ a new Executive Manager to supervise the activities of the Receivership's managers and implementation of the regulator's safety and soundness recommendations by the Receiver's managers on the operation. The Executive Manager shall report solely to the FDIC as regulator in all matters and insure the implementation of the FDIC's policies and regulations.

-----3. Upon payment of the preferred return and return of all contributions of capital to the Deposit Insurance Fund managed by the FDIC, the Receiver and related State Banking Department will return sole control of the capital stock to the shareholders and reinstate the charter of the former bank to the shareholders and then managers of the former Receivership.

In the event the FDIC, in its sole discretion, pursues an alternate method as the Least Cost Resolution in lieu of the ***Preferred Least Cost Resolution*** for the assets of the Receivership, then the collection efforts of the Receiver, and any assignees of or successors-in-interest to the Receiver, by statute, will be limited to the disposition of collateral securing the Receivership's, assignee's and or successors-in-interest's note(s) in full satisfaction of Borrower's and Guarantor's obligations for the debt outstanding without exception.

No deficiency will be allowed or sought by the Receiver or it's assignees or successors-in- interest as a condition of note acquisition. If the Borrower desires to retain the collateral and maintain the loan payments on a current basis, then the Receiver will renew the note at a fixed market rate of interest limited to a maximum of 6% per annum including fees, for a term to maturity of not less than 60 months, on the same terms, conditions and amortization that were contained in the original contract as of the day of the Receiver's appointment, in which case a default by borrower will reinstate the Receiver's contractual right to pursue deficiencies and any other remedy allowed by law and enumerated in the original loan contract, in the event of borrower default."

CURRENT ACTIVITY OF PPIP'S PENDING INVESTIGATION

Federal law, state law and the Uniform Commercial Code prohibit a party to a contract from benefiting from any illegality. It appears that Multibank and other FDIC created PPIP structured sale entities are clearly benefiting from an illegal act.

The transaction funding the FDIC PPIP's appears to be illegal because it does not meet the requirements of TARP to borrow from the US Treasury. TARP required the borrower to provide the US Treasury with an equity interest in the borrower, so that the US Treasury could participate in the up side if a profit was realized. It is an essential component of the TARP program.

The FDIC publicly advertised that these PPIP's would be funded by TARP. These PPIP's failed to comply with the law and therefore, their use of taxpayer money appears to be illegal under the law (Troubled Asset Relief Program). The US Treasury / taxpayers were not provided an equity ownership position in the PPIP borrowers, that received the public funds interest free. THE TAXPAYER IS NOT EVEN EARNING A RETURN ON THE RISK OF TAXPAYER DOLLARS. The Multibank / Rialto PPIP alone spans 11 states across the country, representing 22 failed banks and 5,500 borrowers and $3.02 Billion Dollars.

To date, there are **31** FDIC PPIP's impacting some 39,000 borrowers nationwide and represent over $23 billion of loans and property in jeopardy. Many borrowers have already lost deficiency judgments, assets and everything they own to these tactics and many more litigations are on-going.

We respectfully request our elected representative in Congress:

-----1. Halt all funding by the US Treasury for the FDIC Public Private Partnership program until a complete audit is made by the FDIC Inspector General and the GAO (Government Accountability Office). Further, that the Congress freeze the lands taken by the FDIC and their partners with the ultimate goal of revesting these properties with the original owners where the abuse of power by FDIC and its partner companies have resulted in taking lands inappropriately and using the FDIC extreme powers inappropriately.

-----2. Congress must intervene to stop the attack on private owner assets and guarantees until these public audits are complete. The mass slaughter of small businesses and the damage to local communities must be brought to an end as quickly as possible. In other words, impose an immediate injunction against their collection activities and lawsuits until a thorough investigation can be performed.

-----3. Defund the Multibank /, and any PPIP's not in compliance with TARP, or using TARP funds.

-----4. Intervene and mandate that judgments already awarded to the Multibank & other PPIP's against borrowers be vacated due to their participation in an illegal act central to their benefit.

-----5. Intervene for a mass settlement between the Multibank & PPIP's and borrowers based solely on the transfer of collateral in full satisfaction of the debt.

-----6. Pass immediate Federal Anti-Deficiency Law that is based on recently approved Nevada Law AB 273- Anti-Deficiency Law. *This law* **limits** *PPIP*'s (like Multibank/Rialto/Lennar) *or Private Loan Speculators who re-purchase these notes for pennies on the dollar at depressed market values and make immense profits. These Loan speculators would be prevented from then also suing local borrowers for the personal deficiencies to make even more obscene profits after buying already depressed valued property or "double dipping".*

Background Explanation: RE: Amendment to the FDI Act and FIRREA: The FDI Act and FIRREA allow the FDIC in its sole discretion to resolve the assets for the failed bank in any way it sees fit. It has absolutely no responsibility for its results and impact on the economy. It is allowed to violate the most basic concepts of common law and contract law with immunity. It has no constraints on its methods or procedures and has demonstrated a preference for procedures that are slow in performance, waste Deposit Insurance Fund Dollars 3:1 or 4:1 as compared to the Preferred Least Cost Resolution proposed, aggregates foreclosures, destroys local markets, businesses and jobs and rewards the monied partners at the expense of the local borrowers, who have lost their investment. These results are completely unnecessary.

Moreover, absolute power corrupts absolutely. The FDIC will pursue its agenda and make claims of default against borrowers that are simply not true, in an effort to mask or defeat claims of "repudiation" by the Receiver, which by statute charges the default against the Receiver and effectively eliminates the Receiver's claims against the borrower and guarantor.

Since that is undesirable from their perspective (according to the FDIC and its partners everyone is guilty of something if they borrowed), the FDIC will persist in their claims in hopes of getting their way in court or using litigation as a means to get the borrower to stop **delete the borrower from** fighting their will. To those ends, the FDIC prefers to hide behind others to obfuscate the truth, their actions and intentions. They routinely use contractors in failed banks to talk with Borrowers and dispense the line the FDIC wants to project. They hide behind minority partners like Rialto/Lennar in the PPIP's or Loss Share Banks for the same reasons.

The FDIC managers are career bureaucrats and do not want to be accountable for making decisions to their superiors. So they will literally defer a resolution offer from a borrower that may be 75-85% of the loan balance in favor of selling assets off in the debt auctions for pennies on the dollar or for 20-35 cents on the dollar to PPIP's or Loss Share Banks, so they can hide behind the claim that it was out of their hands. The lesser sum was just the result of the "market" mechanism. They have literally refused 100 cent recoveries from borrowers because it was inconvenient to remove the loan from a block of loans going to auction or because they worked an alternate deal with some loan participant behind the scenes, that resulted in a discount.

The FDIC and PPIP partners' methods of operating receiverships is very disruptive to the operation and administrative processes of the loan portfolios they take over. Borrowers are often caught in the act of renewing their loans just prior to the bank's failure and those maturing loans don't get renewed. So the loan matures in the Receiver's possession or with an over-whelmed Loss Share Bank and the borrower is declared in default due to maturity.

Once the bank fails and routine loan billing is interrupted for any reason, the loans that are shown as past due in the system without regard to reason are placed on non-accrual at 3 months and statements stop being generated by the loan system, assuming statements were being sent from the outset. The point is closing a bank is very disruptive to the borrower and the administration of his note. People not receiving statements and are reluctant to send money into the big black hole and hope it gets applied properly. Months and literally a year can go by before the new, often overwhelmed note holder gets to you regarding your loan, by which time you are in default.

The FDIC requires their partners to pursue a borrower until they cannot be pursued legally anymore. They reward their partners with Loss Share arrangements that reimburse them for "losses" realized when an asset brings less than the loan balance as a result of foreclosure. The Loss Share Banks typically get an 80% reimbursement for such losses. Here is an easy example. The loan has a $100,000 balance. The Loss Share Bank only paid $35,000for it. The collateral is appraised for $50,000 in a spiral down market heavily influenced by the FDIC's procedures and impact in that market.

So the Loss Share Bank gets a $50,000 asset FMV(fair market value) for a $35,000 investment and the FDIC reimburses them $40,000 cash (80% of a $50,000 loss). The Loss Share Bank just realized $90,000 ($50,000 FMV + $40,000 cash) on a $35,000 investment. That's a 257% return with no risk. . The FDIC only offers this kind of deal to Loss Share Banks, not other smaller businesses.

The PPIP's are back-stopped or 100% guaranteed against deficiency losses using the same formula so they make even more. Meanwhile, the borrower has lost his or her investment and the note-holder is going after all of the loan holder's remaining assets to make up for a theoretical $50,000 loss. This is required by the FDIC in return for being back-stopped. In theory, it allows the PPIP a way to minimize the FDIC's back-stop exposure because the PPIP's are pursuing a **scorched earth collection policy**.

The Preferred Least Cost Resolution would have the FDIC using Deposit Insurance Fund (DIF) dollars to invest the amount of capital needed to heal the bank's capital account at a preferred return. Then, the Deposit Insurance Fund would have an earning asset instead of a loss related to the receivership of the bank. Example: American Southern Bank failed April 24, 2009. The FDIC estimated the loss to the Deposit Insurance Fund would be $41.9 Million Dollars.

American Southern had been attempting to raise $14 Million Dollars to heal its capital account and meet regulatory standards. Therefore, the Least Cost Resolution would have the FDIC investing $14 Million at 10% preferred return to the fund instead of doing it their way and losing $41.9 Million. That's a $27.9 Million savings before considering a preferred 10% return on $14 Million invested. Community Bank of West Georgia failed 6/26/2009. It was estimated that they needed $25 Million to recapitalize their capital account. The FDIC was appointed receiver and estimated a $85 Million loss to the fund. That's a 3.5:1 loss versus using the Preferred Least Cost Resolution.

This is the end of part one of the American Land Rights Association Corrected House FDIC Testimony.

Look to Part Two. The pages will start again at number one in Part Two. Thank you.

Part Two – 5.11.12 Corrected FDIC Testimony for the House Oversight and Investigations Subcommittee

This document has new page number starting at one.

By Chuck Cushman, Executive Director, and Chris Pridgen for the American Land Rights Association. PO Box 400, Battle Ground, WA 989604.
(360) 6873087 ccushman@pacifier.com.

To demonstrate the impact on local markets and the aggregating of foreclosures, consider this. It is estimated that the 2009 - 2010 Loss Share Banks will dump $3.5 Billion Dollars of real estate on the **north Georgia** foreclosure market in 2014 to take advantage of and maximize the 80% Loss Share reimbursement before it expires. The Loss Share Agreements only last for 5 years. This one single event will crush the north Georgia economy again in 2014 and delay the state's full recovery until 2025 or 2030.

In addition, it is estimated that there is a current 2012 over-hang of troubled real estate assets held by all note-holders (FDIC, PPIP's, Loss Share Banks and non-failed banks) of $10 Billion in north Georgia alone. All of the assets held by Loss Share banks, PPIP's and FDIC will get dumped prior to losing access to Loss Share Agreements and taxpayer dollars. This is not the market at work.

This is a designed failure that uses artificial terms and methods to clear assets from failed banks that benefit a powerful few, at a far greater expense than simply selling the assets on the open market, using tax payer dollars at the expense of the tax payer, local borrowers and innocent members of the communities so destroyed by these tactics.

Congress must stop the madness.

Congress must investigate and curtail funding the PPIP's in violation of TARP, suspend PPIP Collection Activity of all FDIC PPIP's (like 2009-1 Multibank RES-ADC Venture, LLC and 2009-1 Multibank CML-ADC Venture, LLC 40% owned by Rialto/Lennar,) and promote a class settlement between all PPIP's and borrowers.

For example, two FDIC PPIP's entities known as Multibank 2009-1 RES-ADC Venture, LLC and Multibank 2009-1 CML-ADC Venture, LLC, purchased $3.02 Billion dollars of distressed loans in bulk, with knowledge of the loans' distressed condition, using taxpayer dollars at 0% interest for up to 7 years under the TARP program. The FDIC PPIP's are Public Private Partnerships in which FDIC retains a 60% interest and the private hedge funds (like Rialto/Lennar) retains a 40% interest). There are 27 PPIP's affecting over 39,000 borrowers and $23 Billion in loans.

The Multibank 2009 RES-ADC borrowed $441,698,466 and Multibank 2009 CML-ADC borrowed $185,207,975 from the US Treasury and both have arranged the opportunity to borrow more. Together Multibank RES and Multibank CML alone have borrowed more than ½ Billion Dollars. The American taxpayer earns no interest or return on the use of its money. Only Wall Street traded company hedge funds like Rialto Capital, a wholly owned subsidiary of a NYSE traded national homebuilder called Lennar Corporation profit from free use of taxpayer money.

(This is a restatement from the Problem section above.) The FDIC drafted the PPIP documents, which require the minority structured sale participant, Rialto (in this partnership called Multibank 2009-1), to pursue borrowers (without regard to the facts surrounding their individual loans) until they cannot be legally pursued anymore. Never mind that many if not most were current on their loans.

Rialto/Lennar, Multibank, and others aggressively litigate borrowers, attempt to force them into bankruptcy, obtain judgments and further pursue those judgments and generally attempt to ruin all borrowers and guarantors, unless they pay the loans off or gain an unappealable court decision in the borrower's favor. They aggressively use the court system in their tactics and will punish and outspend borrowers with legal fees until they are broken as their legal budget is unlimited and paid by the FDIC using tax payer dollars.

These are unlucky borrowers who had their loan at a bank that just happened to be closed by the FDIC. Overwhelmingly these borrowers were current with their loans but the FDIC bank receivership froze all loans, funding, and loan provisions.

Rialto aggressively uses the threat of the IRS as part of their tactics and they fund their efforts with taxpayer dollars at no cost to them. There is no effort to work with borrowers already damaged by the FDIC's tactics.

All of this has been orchestrated by the FDIC, required by the FDIC and performed with the FDIC's full knowledge and requirement as a condition for the minority partner(like Rialto/Lennar) to participate in the PPIP.

The FDIC further guarantees to fund any deficiency realized after collateral is sold, so Multibank and the participant Rialto have **no risk** of loss on the loans. They are 100% guaranteed against loss by the FDIC. NO RISK.

They not only take the collateral for pennies on the dollar to make a guaranteed profit but also seek to take all assets of the borrowers in addition to the collateral on the loan. The PPIP are indemnified against loss on the disposition of collateral relative to the loan balance, which guarantee that the FDIC will reimburse the private speculators for any losses in their attempt to foreclose" on loans, and the FDIC pays all bloated legal / litigation expenses and loan management fees of the private speculator minority partners (like Rialto/Lennar).

Multibank, Rialto and other PPIP's are rewarded for employing scorched earth tactics (total destruction of an borrower's resources, purely for historic FDIC anti-business policy reasons rather than economic solution orientated reasons) **against the borrowers of the failed banks and the effect is to destroy local economies, jobs, and property values in addition to the borrowers' ability to support themselves going-forward. The borrowers did not cause the bank to fail and did not cause the disruption of their loans that result from the FDIC's process and use of outside contractors.**

The transaction funding the Multibank PPIP's appears to be illegal because it does not meet the federal requirements of TARP to borrow from the US Treasury. Delete the sentence here and add this: The FDIC arranged for financing from the US Treasury under TARP. TARP required the borrower to provide the US Treasury with an equity interest in the borrower, so that the US Treasury could participate in the upside if a profit was realized. It is an essential component of the TARP program . The FDIC publicly advertised that these PPIP's would be funded by TARP.

The borrowing entities, Multibank ADC and Multibank CML (FDIC and Rialto Capital members) borrowed approximately $627MM from the US Treasury but failed to give the US treasury an equity stake or ownership in the borrowing entities Mutlibank ADC and Multibank CML.

Therefore, these PPIP's appear to have failed to comply with the law. Therefore, their use of taxpayer money is illegal under the law (Troubled Asset Relief Program). Just the Multibank 2009-1/Rialto transaction spans 11 states across the country, representing 22 failed banks. As of March 2011 May 2012, the FDIC has closed a total of 3127 (illegal) structured sale transactions transferring almost 39,000 asset loans and $23.3 billion in unpaid principal balance. This spans a majority of the states and represents hundreds of failed banks across the US.

The **National Anti-Deficiency Law** *would limit the impacts of the FDIC/Federal Government policy especially when creating public/private structured partnerships with national* hedge fund speculators *(like FDIC partners Multibank/Rialto/Lennar).*

This legislation needs to be adopted in conjunction with the Preferred Least Cost Resolution Amendment proposed. It would allow the original lender the right to pursue a personal deficiency as long as the original lender was allowed to continue to operate in Receivership under the proposed amendment, provided FMV of the underlying collateral was deducted from the outstanding loan balance.

If the FDIC decides to close the bank in lieu of the Preferred Least Cost Resolution, then the FDIC as Receiver would lose the right to pursue deficiencies. This legislation needs to be adopted as Federal Law as it must also apply to Federal Agencies, the FDIC and PPIP's who have already started to claim that they are not subject to state Laws like AB 273- Anti-Deficiency Law.

It is critical that the Congress take immediate action to stop the abuses by the FDIC and its partner companies. Please consider and support the recommendations contained within this testimony and proposed legislation. The FDIC and their partners are destroying small businesses, killing jobs, and worsening our chance for recovery.

Regarding FDIC openness and accountability. Numerous letters were sent by various borrowers to the FDIC Chairman Sheila Bair over more than a year. To our knowledge, none were responded to. So much for transparency.

Respectfully submitted for your consideration,

Chuck Cushman, Executive Director, American Land Rights Association
(360) 687-3087 - ccushman@pacifier.com - www.landrights.org

Contact the two coalitions working to stop this extreme FDIC abuse: FDIC Rialto Affected Borrowers Coalition (FRABCo), 10013 NE Hazel Dell Ave #237, Vancouver, WA 98685—FRABCo.org@gmail.com -- 503-972-4080. Check out the Frabco website: http://reactioncommittee.com/

Second coalition is the FDIC Bank Closure and Foreclosure Coalition section, formed by the American Land Rights Association, PO Box 400, Battle Ground, WA 98604, (360) 687-3087
It is operating under American Land Rights. Website: www.landrights.org
Contact: Chuck Cushman at ccushman@pacifier.com

See attached testimony by other FDIC Bank Closure Victims and other information below.

Other attachments, links, and references that show impact to almost 39,000 FDIC failed bank borrowers across the US:

http://www.nytimes.com/2009/04/07/business/07sorkin.html
The New FDIC Partner "Banks" **FDIC Structured Sales Transactions**
Since May of 2008, the FDIC turned to a **"partnership model to sell large numbers of distressed assets (primarily non-performing single family and commercial real estate loans and related real property) held by recently failed financial institutions." (Editors note: Many of the commercial real estate loans were performing but were bundled up in the structured sales giving tens of thousands of innocent small businesses no way out.)**

As of March 2011, the FDIC has closed 24 structured sale transactions transferring 38,800 assets and $23.3 billion in unpaid principal balance. The FDIC stays on as a partner in these transactions with the stated goal of capturing upside and appreciation as the loans are worked through and the economy and asset values recover.

For the borrowers of failed banks whose loans were acquired in the structured transactions, the new FDIC entities have become, in essence, the borrower's new bank as the loans are worked out and resolved with the new owners. (However, they are rarely worked out. Rialto, Multibank, and other PPIP' throw so many roadblocks into the process that they appear to be deliberately forcing foreclosure and bankruptcy.

Four investor groups (highlighted in yellow below) have dominated the bidding, in some cases winning multiple bids, and together accounting for nearly 60% of the book value purchased in structured transactions as well as now controlling over 50% of loans assumed by the FDIC LLC's.

Winning FDIC Structured Sale Bidder	**No. of Loans**	**Implied Price (millions)**	**Book Value (millions)**
Cache Valley Bank	761	$63	$279
Colony Capital Acquisitions, LLC	**5,104**	**$1,904**	**$4,035**
Diversified Business Strategies	147	$205	$702
Gulf Coast Bank & Trust	733	$48	$146
Hudson Realty Capital Fund V LP	110	$19	$102
Kingston Management Services	1,112	$101	$1,120
Mariner Real Estate Partners, LLC	1,062	$264	$762
OneWest Ventures Holdings LLC	3,044	$271	$1,652
PennyMac	2,829	$215	$558
PMO Loan Acquisition Venture, LLC (OakTree Capital)	279	$695	$1,703
Residential Credit Solutions, Inc.	**9,230**	**$1,191**	**$2,218**
Rialto Capital Management LLC	**5,511**	**$1,235**	**$3,052**
Roundpoint Capital Group	6,786	$416	$1,094
Square Mile Capital LLC	57	$346	$421
Starwood (Northwest Operating Company) LLC	**101**	**$2,725**	**$4,402**
Stearns Bank	520	$161	$733
Turning Point Asset Management, LP	1,456	$111	$314
Totals	**38,842**	**$9,971**	**$ 23,293**

We urge and support Congress to pass immediate Federal Anti-Deficiency Law Legislation that is based on recently approved Nevada Law AB 273- Anti-Deficiency Law –

*This law **limits** by National Builders or Private Loan Speculators (like Multibank/Rialto/Lennar) who re-purchase these notes for pennies on the dollar at depressed market values and make immense profits. These Loan speculators would be prevented from then also suing local borrowers for the personal deficiencies to make profits that are even more obscene after buying already depressed valued property or "double dipping". The original lender still has the right to pursue a personal deficiency as long as the fair market value of the property is deducted from the note value.*

*A national **Anti-Deficiency Law** will help put local businesses on a level playing field with the national competitors builders/private speculators who are trying to drive local businesses out of the market. This legislation needs to be adopted as Federal Law as it must also apply to Federal Agencies (like the FDIC) who through use of taxpayer/US Treasury funded techniques of public/private structured sales try to dispose of FDIC closed bank assets with no consideration of the unintended consequences.*

*The **Anti-Deficiency Law** would limit the impacts of the FDIC/Federal Government policy especially when creating public/private structured partnerships with national homebuilder competitors (like Multibank/Rialto/Lennar).*

The FDIC has been giving away 7-year, no-interest, non-recourse guaranteed loans with attached Loss Share Agreements, which guarantee that the Federal government will reimburse the private speculators for any losses in their attempt to "double dip" on loans, and the FDIC also agrees to pay bloated legal fees and loan management of the private speculators.

In the case of Bulk Sale Portfolio Loans, the aggregate price paid for a portfolio of loans will be pro-rated and applied to each individual loan in the portfolio. (e.g. if Loan Purchaser purchased $100 Million dollars in loans for $20 Million dollars, the assigned price paid for each loan in the portfolio would equal 20 cents on the dollar.)

*The **Anti-Deficiency Law Federal Legislation will also add provisions to give borrowers the option to get back the ownership foreclosed properties if desired (now held by the FDIC/Multibank/Rialto/Lennar) who were previously wrongfully stripped of their property by unjust foreclosure actions that this Anti-Deficiency Law Federal Legislation would now prevent.***

This Nevada Law is explained in a video interview at:
http://www.vegasinc.com/videos/2011/jun/13/5227/

A link to the text of the Law is at:
http://www.leg.state.nv.us/76th2011/Reports/history.cfm?ID=586

What does loss share mean and how it works.
The FDIC uses two forms of loss sharing. The first is for commercial assets and the other is for residential mortgages.

For commercial assets, the agreements typically cover an eight-year period with the first five years for losses and recoveries and the final 3 years for recoveries only. FDIC will reimburse 80 percent of losses incurred by acquirer on covered assets up to a stated threshold amount (generally FDIC's dollar estimate of the total projected losses on loss share assets), with the assuming bank picking up 20 percent. Any losses above the stated threshold amount will be reimbursed at 95 percent of the losses booked by the acquirer.

For single family mortgages, the length of the agreements tend to run for 10 years and have the same 80/20 and 95/5 split as the commercial assets. The FDIC provides coverage for four basic loss events: modification, short sale, foreclosure, and charge-off for some second liens. Loss coverage is also provided for loan sales but such sales require prior approval by the FDIC. Recoveries on loans which experience loss events are shared in the same proportion as the original loss.

End of Part Two, Testimony by Chuck Cushman and Chris Pridgen for the American Land Rights Association.

See additional testimony by other victims sent separately.

Chuck Cushman, American Land Rights Testimony Part Three

Honorable Robert R. "Randy" Neugebauer, Chairman,
Michael Everett "Mike" Capuano, Ranking Member

Testimony For The Record On FDIC Oversight
For the Hearing held May 16, 2012
House Financial Services Committee
Subcommittee On Oversight and Investigations

US House of Representatives, Washington, DC 20515

Land Rights Network
American Land Rights Association
PO Box 400 – Battle Ground, WA 98604
Phone: 360-687-3087 – Fax: 360-687-2973
E-mail: alra@pacifier.com
Web Address: http://www.landrights.org
Legislative Office: 507 Seward Square SE – Washington, DC 20003

FDIC, Lennar, Rialto Wall Street Deals Killing Jobs And Undermining Recovery

Please read attorney Bryan Knight's "Lennar-Rialto Incentive Analysis" below this FDIC Bank Closure Victim overview written by Chuck Cushman.

The FDIC is closing an average of two banks a week. In the process they are damaging thousands of landowners and small businesses.

The FDIC bank closure loan resolution partnership with Lennar. Rialto and other Wall Street hedge funds is forcing the closure of thousands of businesses and destroying hundreds of thousands of jobs as well as preventing the creation of hundreds of thousands of new jobs to help the US through the economic recovery.

The FDIC designed incentives for Lennar, Rialto and other FDIC partners are all wrong.

Below is a document written by attorney Bryan Knight who has had numerous cases dealing with Lennar and Rialto. It looks at why the incentives created by the FDIC to get its partners to help resolve the loans involved in the bank-closing crisis are actually working against the economic recovery and destroying jobs. Lennar and Rialto and other FDIC partners are destroying thousands of businesses costing the country many thousands of jobs while being unwilling to work with borrower-victims of Banks closed by the FDIC.

This document will help the reader understand the poorly designed incentives created by FDIC to deal with their closing an average of two banks a week over the past two years. This bank closure process is continuing now. The FDIC created process is undermining the economic recovery and destroying thousands of jobs.

This is why Lennar and Rialto and other FDIC partners are forcing borrowers into foreclosure and going after their homes and other personal assets.

This process, in which the Obama FDIC is an active 60% partner, is working against the stated plan of President Obama to create jobs. It is destroying businessmen who, after losing their personal assets, cannot come back and hire people in the future to help the economy recovery. The overall FDIC bank closure loan resolution process is undermining the economic recovery, not helping it.

Chuck Cushman, American Land Rights Association
(360) 687-3087 – ccushman@pacifier.com

Lennar-Rialto Incentive Analysis

By Bryan Knight

Here's a synopsis of my thoughts on Lennar/Rialto's role in the FDIC take over of banks:

In this country right now the biggest waste of government spending and most damaging program to the American public is the FDIC's partnership with various Private-Public Investment Programs ("PPIP's"), such as Lennar/Rialto. Through the FDIC's compensation structure to Rialto, the sole motivation for the PPIPs is money rather than helping Americans through this country's worst financial crisis.

The FDIC and companies like Rialto seek to flush out all troubled assets of failed banks by immediately filing suit, refusing to work out the loan and refusing to agree to a payment plan that benefits all parties. This uncompromising and litigious strategy is implemented by Rialto because it produces the most money for them, which I explain more fully.

There is an inherent conflict of interest between Lennar/Rialto and their duties to collect on loans of failed banks. First, Lennar/Rialto are paid asset management fees based on the amount of assets under management, which provides incentive for them to either do nothing or sue, rather than work out a settlement with the borrower. If a settlement if achieved, Lennar/Rialto do not get paid management fees.

Second, Rialto was given a $600 Million interest free non recourse loan by the Federal Government to purchase assets of failed banks. Therefore, Rialto has no risk in collecting on assets because no interest is accruing and Rialto is not liable to pay back the loan since the loan is a non-recourse. This gives Rialto even more incentive to refuse loan workouts and to collect asset management fees. It is not rocket science, a bank that has risk of taking a loss is more likely work with a borrower. Here Rialto has no risk.

Typically when a bank fails the FDIC allows other banks to bid on the assets. The winning bank then enters into a Loss-Share Agreement where the FDIC agrees to pay 85% of any losses the bank takes on the assets.

This structure gives the bank incentive to work out a loan and entertain settlement because they have the potential for a 15% loss. This is how the first of the failed banks were handled by the FDIC. The PPIP program stemmed from the onslaught of bank failures. Unlike the loss-share agreements, PPIPs like Rialto have no risk of a loss due to the interest free non-recourse loan, giving them no incentive to compromise.

Third, Rialto is paid at least 60% of its attorneys' fees and sometimes 100%. Given the fact that Rialto will incur little to no attorneys' fees motivates Rialto to sue first and ask questions later because instituting litigation keeps the assets under management for years. Even if Rialto is required to pay a portion of their attorneys' fees, it is paid by the Federal Government's $680 Million dollar interest free, non-recourse loan.

Inequitable federal laws provide the FDIC and Rialto with additional leverage against borrowers because almost all defenses and counterclaims are precluded by D'Oench Duhme Doctrine and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIERREA"). The D'Oench Duhme doctrine stems from D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447, 459 (1942), which is a product of the Great Depression and the creation of the FDIC. This case sought to invalidate secret agreements between borrowers and a failed bank.

The purpose of the D'Oench Duhme doctrine is to provide the FDIC with notice of any loan modifications or variances from loan documents. D'Oench Duhme prohibits any claim or defense against a predecessor bank or the FDIC unless it is: (1) in writing, (2) executed by the bank, (3) approved by the board of directors of the bank and (4) the writing was maintained as an official record of the bank. Porras v. Petroplex Sav. Ass'n, 903 F.2d 379 (5th Cir. 1990).

This doctrine precludes all claims and defenses against the bank or FDIC that don't meet all four elements, which include verbal loan extensions, modifications and payment modifications, fraudulent representations by the bank and negligent lending practices.

For instance, if a bank tells a borrower that their loan will be extended, modified or that lesser payments will be allowable and then the bank is taken over by the FDIC, the borrower cannot enforce these representations. An even more egregious example is if a bank induces a borrower to enter into an acquisition and development loan with the promise that the bank will provide a construction loan and later refuses, the borrower is stuck with the loan and cannot claim damages resulting from the fraudulent representation.

During the Savings and Loan crisis of the 1980's Congress passed FIERREA to provide powers and procedures for the FDIC to follow, See 12 U.S.C. 1821. One procedural hurdle, codified by 12 USC 1821(d), requires a borrower to file any claim against a predecessor bank or the FDIC within 90 days of the FDIC taking over the predecessor bank, even though the FDIC does not have to give notice of this requirement. See FDIC v. Vernon Real Estate Invs., Ltd, 798 F. Supp. 1009, 1017 (S.D.N.Y. 1992); McCarthy v. FDIC, 348 F.3d 1075 (2003).

If the borrower fails to make a claim with the FDIC within 90 days of take over, all claims are waived. Here, there are due process concerns since the FDIC does not even have to give notice of this procedure. Most citizens are not aware of FIERREA and almost always waive their claims.

D'Oench Duhme solely affects those borrowers that have trusted relations with their banks, such that would not require written modifications or documentation for payment adjustments. Most banks that have been taken over by the FDIC are small community banks that tend to have this precise relationship with their clients.

FIERREA wipes out a borrowers ability to make any kind of claim even if it is in writing sufficient to pass D'Oench Duhme. Everyday citizens cannot be expected to know about this 90 day deadline. The FDIC at the very leaset should be responsible for sending notice of the claims deadline.

These two legal doctrines have in essence invalided hundreds of years of legal precedent concerning contract and tort law, which gives Lennar/Rialto tremendous leverage against borrowers, because borrowers are stripped of any defense or counterclaim and left to the mercy of Lennar/Rialto who take full advantage of this power.

The big picture is that no one could have foreseen the real estate crash or this financial crisis, which is why the federal government bailed out the big banks that were too big to fail. However, the everyday citizen has received no semblance of help, but instead has been forced to bare the brunt of these negligent lending practices.

Rather than give Rialto $600 Million in interest free loans and millions in asset management fees, the federal government should put that money into programs to help workout these loans to keep citizens from finical ruin and businesses from closing, similar to Obama's mortgage laws.

Bryan M. Knight, Esq.
KNIGHT JOHNSON, LLC
Promenade Two |19th Floor
1230 Peachtree Street
Atlanta, Georgia 30309
P: (404) 228-4822
F: (404) 228-4821
bknight@knightjohnson.com
www.knightjohnson.com

For more information go to www.landrights.org or
http://reactioncommittee.com/ or call Chuck Cushman at (360) 687-3087 at the American Land Rights Association.

Social Networking Update: The American Land Rights Association has a Page on Facebook. Please sign on as a Friend or Fan. Please click on the Like button.

Also Executive Director Chuck Cushman is also on Facebook.com. You can also find the American Land Rights Association and Chuck Cushman on LinkedIn.com. We are especially active on LinkedIn.com so send an invitation to connect and join up.

American Land Rights and Chuck Cushman are on Twitter as AmLandrights.

Chuck Cushman
Executive Director
American Land Rights Association
(360) 687-3087
ccushman@pacifier.com

FROM FDIC WEB SITE

Press Releases

Joint Statement by Secretary of the Treasury Timothy F. Geithner, Chairman of the Board of Governors of the Federal Reserve System Ben S. Bernanke, and Chairman of the Federal Deposit Insurance Corporation Sheila Bair

Contact: Andrew Gray (202) 898-7192

Legacy Asset Program

To view the Letter of Intent and Term Sheets, please visit link - PDF 417K (PDF Help).
To view the Conflict of Interest Rules, please visit link - PDF (PDF Help).
To view the Legacy Securities FAQs, please visit link - PDF (PDF Help).

The Financial Stability Plan, announced in February, outlined a framework to bring capital into the financial system and address the problem of legacy real estate-related assets.

On March 23, 2009, the Treasury Department, the Federal Reserve, and the FDIC announced the detailed designs for the Legacy Loan and Legacy Securities Programs. Since that announcement, we have been working jointly to put in place the operational structure for these programs, including setting guidelines to ensure that the taxpayer is adequately protected, addressing compensation matters, setting program participation limits, and establishing stringent conflict of interest rules and procedures. Recently released rules are detailed separately in the **Summary of Conflicts of Interest Rules and Ethical Guidelines.**

Go to page 4 for Legacy Loan PPIP program.

Today, the Treasury Department, the Federal Reserve, and the FDIC are pleased to describe the continued progress on implementing these programs including Treasury's launch of the Legacy Securities Public-Private Investment Program.

Financial market conditions have improved since the early part of this year, and many financial institutions have raised substantial amounts of capital as a buffer against weaker than expected economic conditions. While utilization of legacy asset programs will depend on how actual economic and financial market conditions evolve, the programs are capable of being quickly expanded if these conditions deteriorate. Thus, while the programs will initially be modest in size, we are prepared to expand the amount of resources committed to these programs.

Legacy Securities Program

The Legacy Securities program is designed to support market functioning and facilitate price discovery in the asset-backed securities markets, allowing banks and other financial institutions to re-deploy capital and extend new credit to households and businesses. Improved market function and increased price discovery should serve to reinforce the progress made by U.S. financial institutions in raising private capital in the wake of the Supervisory Capital Assessment Program (SCAP) completed in May 2009.

The Legacy Securities Program consists of two related parts, each of which is designed to draw private capital into these markets.

Legacy Securities Public-Private Investment Program ("PPIP")

Under this program, Treasury will invest up to $30 billion of equity and debt in PPIFs established with private sector fund managers and private investors for the purpose of purchasing legacy securities. Thus, Legacy Securities PPIP allows the Treasury to partner with leading investment management firms in a way that increases the flow of private capital into these markets while maintaining equity "upside" for US taxpayers.

— TARP Required Treasury to be given equity stak to protect tax pay. & allow tax payers to participate in any upside return

Initially, the Legacy Securities PPIP will participate in the market for commercial mortgage-backed securities and non-agency residential mortgage-backed securities. To qualify, for purchase by a Legacy Securities PPIP, these securities must have been issued prior to 2009 and have originally been rated AAA – or an equivalent rating by two or more nationally recognized statistical rating organizations – without ratings enhancement and must be secured directly by the actual mortgage loans, leases, or other assets ("Eligible Assets").

Following a comprehensive two-month application evaluation and selection process, during which over 100 unique applications to participate in Legacy Securities PPIP were received, Treasury has pre-qualified the following firms (in alphabetical order) to participate as 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.

Rialto is in the Legacy Securities PPIP too.

Treasury evaluated these applications according to established criteria, including: (i) demonstrated capacity to raise at least $500 million of private capital; (ii) demonstrated experience investing in Eligible Assets, including through performance track records; (iii) a minimum of $10 billion (market value) of Eligible Assets under management; (iv) demonstrated operational capacity to manage the Legacy Securities PPIP funds in a manner consistent with Treasury's stated Investment Objective while also protecting taxpayers; and (iv) headquartered in the United States. To ensure robust participation by both small and large firms, these criteria were evaluated on a holistic basis and failure to meet any one criterion did not necessarily disqualify an application

application.

Each Legacy Securities PPIP fund manager will receive an equal allocation of capital from Treasury. These Legacy Securities PPIP fund managers have also established meaningful partnership roles for small-, veteran-, minority-, and women-owned businesses. These roles include, among others, asset management, capital raising, broker-dealer, investment sourcing, research, advisory, cash management and fund administration services. Collectively, the nine pre-qualified PPIP fund managers have established 10 unique relationships with leading small-, veteran-, minority-, and women-owned financial services businesses, located in five different states, pursuant to the Legacy Securities PPIP. Moreover, as Treasury previously announced, small-, veteran-, minority-, and women-owned businesses will continue to have the opportunity to partner with selected fund managers following pre-qualification. Set forth below is a list (in alphabetical order) of the established small-, veteran-, minority-, and women-owned businesses partnerships:

- Advent Capital Management, LLC;
- Altura Capital Group LLC;
- Arctic Slope Regional Corporation;
- Atlanta Life Financial Group, through its subsidiary Jackson Securities LLC;
- Blaylock Robert Van, L.L.C.;
- CastleOak Securities, LP;
- Muriel Siebert & Co., Inc.;
- Park Madison Partners LLC;
- The Williams Capital Group, L.P.; and
- Utendahl Capital Management.

In addition to the evaluation of applications, Treasury has conducted legal, compliance and business due diligence on each pre-qualified Legacy Securities PPIP fund manager. The due diligence process encompassed, among other things, in-person management presentations and limited partner reference calls. Treasury has negotiated equity and debt term sheets (see attached link for the terms of Treasury's equity and debt investments in the Legacy Securities PPIP funds) for each pre-qualified Legacy Securities PPIP fund manager. Treasury will continue to negotiate final documentation with each pre-qualified fund manager with the expectation of announcing a first closing of a PPIF in early August.

Each pre-qualified Legacy Securities PPIP fund manager will have up to 12 weeks to raise at least $500 million of capital from private investors for the PPIF. The equity capital raised from private investors will be matched by Treasury. Each pre-qualified Legacy Securities PPIP fund manager will also invest a minimum of $20 million of firm capital into the PPIF. Upon raising this private capital, pre-qualified Legacy Securities PPIP fund managers can begin purchasing Eligible Assets. Treasury will also provide debt financing up to 100% of the total equity of the PPIF. In addition, PPIFs will be able to obtain debt financing raised from private sources, and leverage through the Federal Reserve's and Treasury's Term Asset-Backed Securities Loan Facility (TALF), for those assets eligible for that program, subject to total leverage limits and covenants.

Legacy Securities and the Term Asset-Backed Securities Loan Facility

On May 19, 2009, the Federal Reserve Board announced that, starting in July 2009, certain high-quality commercial mortgage-backed securities issued

July 2009, certain high-quality commercial mortgage-backed securities issued before January 1, 2009 ("legacy CMBS") would become eligible collateral under the TALF. The Federal Reserve and the Treasury also continue to assess whether to expand TALF to include legacy residential mortgage-backed securities as an eligible asset class.

The CMBS market, which has financed approximately 20 percent of outstanding commercial mortgages, including mortgages on offices and multi-family residential, retail and industrial properties, came to a standstill in mid-2008. The extension of eligible TALF collateral to include legacy CMBS is intended to promote price discovery and liquidity for legacy CMBS. The announcements about the acceptance of CMBS as TALF collateral are already having a notable impact on markets for eligible securities.

Legacy Loan Program

In order to help cleanse bank balance sheets of troubled legacy loans and reduce the overhang of uncertainty associated with these assets, the FDIC and Treasury designed the Legacy Loan Program alongside the Legacy Securities PPIP.

→ not really b/c the Legacy Loan PPIPs' Are using tax $'s without giving Treasu An equity stake.

The Legacy Loan Program is intended to boost private demand for distressed assets and facilitate market-priced sales of troubled assets. 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. The FDIC's guarantee would be collateralized by the purchased assets. The FDIC would receive a fee in return for its guarantee.

** This is the only way the Legacy Loan Program is being used, to buy loans from FDIC using PPIP's like Multibank & partne like Rialto.

On March 26, 2009, the FDIC announced a comment period for the Legacy Loan Program, and has now incorporated this feedback into the design of the program. The FDIC has announced that it will test the funding mechanism contemplated by the LLP in a sale of receivership assets this summer. This funding mechanism draws upon concepts successfully employed by the Resolution Trust Corporation in the 1990s, which routinely assisted in the financing of asset sales through responsible use of leverage. The FDIC expects to solicit bids for this sale of receivership assets in July. The FDIC remains committed to building a successful Legacy Loan Program for open banks and will be prepared to offer it in the future as needed to cleanse bank balance sheets and bolster their ability to support the credit needs of the economy. In addition, the FDIC will continue to work on ways to increase the utilization of this program by open banks and investors.

###

Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 8,246 banks and savings associations and it promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars insured financial institutions fund its operations.

FDIC press releases and other information are available on the Internet at www.fdic.gov, by subscription electronically (go to www.fdic.gov/about/subscriptions/index.html) and may also be obtained

Public-Private Investment Program for Legacy Assets

From Wikipedia, the free encyclopedia

On March 23, 2009, the United States Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, and the United States Treasury Department announced the **Public-Private Investment Program for Legacy Assets**. The program is designed to provide liquidity for so-called "toxic assets" on the balance sheets of financial institutions. This program is one of the initiatives coming out of the implementation of the Troubled Asset Relief Program (TARP) as implemented by the U.S. Treasury under Secretary Timothy Geithner. The major stock market indexes in the United States rallied on the day of the announcement rising by over six percent with the shares of bank stocks leading the way.[1] As of early June 2009, the program had not been implemented yet and is considered delayed.[2] Yet, the Legacy Securities Program implemented by the Federal Reserve has begun by fall 2009 and the Legacy Loans Program is being tested by the FDIC. The proposed size of the program has been drastically reduced relative to its proposed size when it was rolled out.

Contents

Background

One major proximate cause of the Financial crisis of 2007-2008 is the problem of "legacy assets" both real estate loai held directly on the books of banks ("legacy loans") and securities (ABS's and MBS's) backed by loan portfolios ("legacy securities"). These assets create uncertainty around the balance sheets of these financial institutions, compromising their ability to raise capital and their willingness to increase lending.

Earlier in the decade, in response to the economic downturn caused by the September 11, 2001 attacks, the Federal Reserve lowered its target interest rates which, along with securitized credit instruments (legacy assets), caused increased credit availability for real estate loans. This increase in the availability of credit pushed up housing prices, causing a bubble.

The problem came with the bursting of the housing bubble in 2007, which generated losses for investors and banks. Losses were compounded by the lax underwriting standards that had been used by some lenders and by the proliferation of the complex securitization instruments, some of whose risks were not fully understood. The resulting need by investors and banks to reduce risk triggered a wide-scale deleveraging in these markets and led to fire sales. As prices declined, many traditional investors exited these markets, causing declines in market liquidity. As a result, a negative cycle developed where declining asset prices have triggered further deleveraging, which has in turn led to further price declines. The excessive discounts embedded in some legacy asset prices are now straining the capital of U.S. financial institutions, limiting their ability to lend and increasing the cost of credit throughout the financial system. The lack of clarity about the value of these legacy assets also made it difficult for some financial institutions to raise new private capital on their own.

It is widely but not universally held that the true value of each asset can be determined by swift, scrupulous research using appropriate software; and that many banks' and financial firms' unwillingness to do this is caused by their refusal to acknowledge responsibility for dangerously sloppy past sales and purchase practices.[citation needed]

Three basic principles

Using $75 to $100 billion in TARP capital and capital from private investors, the Public-Private Investment Program (P-PIP) will generate $500 billion in purchasing power to buy legacy assets with the potential to expand to $1 trillion over time.[3] The Public-Private Investment Program will be designed around three basic principles:

- Maximizing the impact of each taxpayer dollar: first, by using government financing in partnership with the FDIC and Federal Reserve and co-investment with private sector investors, substantial purchasing power will be created, making the most of taxpayer resources.
- Shared risk and profits with private sector participants: second, the Public-Private Investment Program ensures that private sector participants invest alongside the taxpayer, with the private sector investors standing to lose their entire investment in a downside scenario and the taxpayer sharing in profitable returns.
- Private sector price discovery: third, to reduce the likelihood that the government will overpay for these assets, private sector investors competing with one another will establish the price of the loans and securities purchased under the program.[citation needed]

Two assets types

The Public-Private Investment Program has two parts, addressing both the legacy loans and legacy securities clogging the balance sheets of financial firms. The funds will come in many instances in equal parts from the U.S. Treasury's Troubled Asset Relief Program monies, private investors, and from loans from the Federal Reserve's Term Asset-Backed Securities Loan Facility (TALF).

Legacy loans

The overhang of troubled legacy loans stuck on bank balance sheets has made it difficult for banks to access private markets for new capital and limited their ability to lend. To cleanse bank balance sheets of troubled legacy loans and reduce the overhang of uncertainty associated with these assets, they will attract private capital to purchase eligible legacy loans from participating banks through the provision of FDIC debt guarantees and Treasury equity co-investment. The Treasury Department currently anticipates that approximately half of the TARP resources for legacy assets will be devoted to the Legacy Loans Program, but the program will allow for flexibility to allocate resources for the greatest impact.

A broad array of investors are expected to participate in the Legacy Loans Program. The participation of individual investors, pension plans, insurance companies and other long-term investors is particularly encouraged. The Legacy Loans Program will facilitate the creation of individual Public-Private Investment Funds which will purchase asset pools on a discrete basis. The program will boost private demand for distressed assets that are currently held by banks and facilitate market-priced sales of troubled assets.

The FDIC will provide oversight for the formation, funding, and operation of these new funds that will purchase assets from banks. Treasury and private capital will provide equity financing and the FDIC will provide a guarantee for debt financing issued by the Public-Private Investment Funds to fund asset purchases. The Treasury will manage its investment on behalf of taxpayers to ensure the public interest is protected. The Treasury intends to provide 50 percent of the equity capital for each fund, but private managers will retain control of asset management subject to oversight from the FDIC.

Purchasing assets in the Legacy Loans Program will occur through the following process:

- Banks identify the assets they wish to sell: to start the process, banks will decide which assets usually a pool of loans they would like to sell. The FDIC will conduct an analysis to determine the amount of funding it is willing to guarantee. Leverage will not exceed a 6-to-1 debt-to-equity ratio. Assets eligible for purchase will be determined by the participating banks, their primary regulators, the FDIC and Treasury. Financial institutions o all sizes will be eligible to sell assets.
- Pools are auctioned off to the highest bidder: the FDIC will conduct an auction for these pools of loans. The highest bidder will have access to the Public-Private Investment Program to fund 50 percent of the equity requirement of their purchase.
- Financing is provided through FDIC guarantee: if the seller accepts the purchase price, the buyer would receiv financing by issuing debt guaranteed by the FDIC. The FDIC-guaranteed debt would be collateralized by the purchased assets and the FDIC would receive a fee in return for its guarantee.
- Private sector partners manage the assets: once the assets have been sold, private fund managers will control and manage the assets until final liquidation, subject to strict FDIC oversight.

Legacy securities

Secondary markets have become highly illiquid, and are trading at prices below where they would be in normally functioning markets. These securities are held by banks as well as insurance companies, pension funds, mutual funds, and funds held in individual retirement accounts.

The goal of the Legacy Securities Program is to restart the market for legacy securities, allowing banks and other financial institutions to free up capital and stimulate the extension of new credit. The Treasury anticipates that the resulting process of price discovery will also reduce the uncertainty surrounding the financial institutions holding these securities, potentially enabling them to raise new private capital. The Legacy Securities Program consists of two relat parts designed to draw private capital into these markets by providing debt financing from the Federal Reserve unde the Term Asset-Backed Securities Loan Facility (TALF) and through matching private capital raised for dedicated funds targeting legacy securities. The lending program will address the broken markets for securities tied to residenti

Financial Recovery
Alert - March 26, 2009

U.S. Treasury Department Releases Details on Public-Private Partnership Investment Program to Purchase Distressed/Legacy Assets From Financial Institutions Nationwide

March 26, 2009

U.S. Treasury Department Releases Details on Public-Private Partnership Investment Program to Purchase Distressed/Legacy Assets From Financial Institutions Nationwide

Background

In a continuing effort to encourage financial institutions to increase their lending activities and in order to jump start credit markets throughout the country, the U.S Treasury Department (Treasury) in conjunction with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve has announced the Public-Private Investment Program (PPIP).

Set forth below is an overview of PPIP which was rolled out earlier this week. As more details with respect to PPIP become available, Holland & Knight's Financial Recovery Team will provide further information.

Three Basic Principles

Using $75 to $100 billion in Troubled Assets Relief Program (TARP) funding supplemented by an infusion of capital from private investors, PPIP is intended to generate over $500 billion in purchasing power to buy what are characterized by the Administration as "Legacy Assets" (formerly "toxic assets"). Legacy Assets will include whole loans secured by real estate, additional bank assets and commercial mortgage-backed securities and residential mortgage-backed securities issued prior to 2009, but limited to such securities originally rated AAA or equivalent by a least two nationally recognized rating agencies. PIPP has been designed around three basic principles:

1. Leveraging the Impact of the Government Funds: By using government financing as well as co-investment by private sector investors, substantial purchasing power will be created, making the most of government resources and incentivizing private investment.

2. Sharing of Both Risk and Profits With Private Sector Participants: PPIP enables private sector participants to invest alongside the government agencies. Private sector investors loss is capped at their equity investment and they will share in profits along with the government.

Ratto →

3. Private Sector Sets Pricing: In order to reduce the likelihood that the government may overpay for these assets, private sector investors will bid against one another in auctions to establish the price of the asset pools and securities purchased under the PPIP.

A Two-Pronged Approach to Get Legacy Assets Off of Balance Sheets

Two Components for Two Types of Assets

PIPP has two parts, addressing both legacy loans and legacy securities on the balance sheets of financial firms:

1. **Legacy Loans:** The glut of troubled legacy loans remaining on bank balance sheets has made it difficult for banks to access private markets for new capital and, coupled with reserve requirements, has limited their ability to lend.

2. **Legacy Securities:** Secondary markets have become highly illiquid, and, to the extent they are trading at all, are trading at prices below those expected in normally functioning markets. These securities are currently held by banks as well as insurance companies, pension funds, mutual funds and funds held in individual retirement accounts.

Part One: *The Legacy Loans Program*

To assist banks in clearing balance sheets of troubled legacy loans, the FDIC and Treasury are seeking to attract private capital to purchase eligible legacy loans from participating banks through the provision of FDIC debt guarantees and Treasury equity co-investment. The criteria for bank loans and assets which constitute Eligible Assets" will be set by the FDIC. Treasury currently anticipates that approximately half of the TARP resources for legacy assets will be devoted to the Legacy Loans Program, but the bifurcated PPIP permits flexibility in allocating government resources among the Legacy Loans and Legacy Securities portions of the Program to maximize the Program s impact.

- ***Private Investors Set Prices:*** Prospective participants in the Program will be subject to FDIC qualification; however the Administration has stated that executive compensation restrictions will not apply to passive private investors. ***The participation of individual investors, pension plans, insurance companies and other long-term investors is being encouraged.*** The Legacy Loans Program will create individual Public-Private Investment Funds which will purchase asset pools on a discrete basis. The aim of the Program is to boost private demand for distressed assets that are currently held by banks and facilitate market-priced sales of the troubled loans and other bank assets. The FDIC will seek public comment concerning the Legacy Loans Program and while no start date has been set, the Administration has indicated that it hopes to launch the Program as quickly as possible.

- ***FDIC to Provide Oversight:*** The FDIC will provide oversight for the formation, funding and operation of these new funds that will purchase pools of Eligible Assets from banks.

- ***Joint Financing From Treasury, Private Capital and FDIC:*** Treasury and private capital will provide matching infusions of equity and the FDIC will provide a guarantee for debt financing issued by the Public-Private Investment Funds to fund the purchase of pools of assets. Treasury intends to provide 50 percent of the equity capital for each fund. Under this Prograr private managers will retain control of asset management subject to oversight by the FDIC.

- ***Purchasing Assets Through the Legacy Loans Program:***
  - ***Banks Identify the Assets They Wish to Sell:***
    To start the process, banks will designate those assets that they would like to sell usually a pool of loans (and based upon the information released by the Administration this week, such loans are likely to include, in large part, real estate mortgage loans). The FDIC will conduct an analysis to determine the amount of funding it is willing to guarantee. Leverage will not exceed a 6-to-1 debt-to-equity ratio. Assets eligible for purchase will be determined by the participating banks, their primary regulators, the FDIC and Treasury. The Program is intended to include financial institutions of all sizes.

  - ***Pools Are Auctioned to the Highest Bidder:***
    A third-party valuation firm, selected by the FDIC, will provide independent valuation advice to the FDIC with respect to each pool c Eligible Assets. The FDIC will conduct an auction for these pools of Eligible Assets. The highest bidder will have access to PPIP to fund 5 percent of the equity required for purchase.

- ***Financing Is Supported by FDIC Guarantee:***
  If the seller accepts the purchase price, the buyer will receive financing by issuing debt guaranteed by the FDIC. The FDIC-guaranteed debt will be collateralized by the purchased assets. The FDIC will receive a fee for issuing its guarantee.

RIALTO →

- ***Private Sector Fund Managers Manage the Assets:***
  Once the assets have been sold, private fund managers will control and manage the assets until final liquidation, subject to FDIC oversight.

Sample Investment Under the Legacy Loans Program

Step 1: If a bank has a pool of residential mortgages with $100 face value that it is seeking to divest, the bank would approach the FDIC.

Step 2: The FDIC would determine, according to the above process and for this example, that they would be willing to leverage the pool at a 6-to-1 debt-to-equity ratio (the maximum permitted leverage allowed under PPIP).

Step 3: The pool would then be auctioned by the FDIC, with several private sector bidders submitting bids. The highest bi from the private sector - in this example, $84 - would be the winner and would form a Public-Private Investment Fund to purchase the pool of mortgages.

Step 4: Of this $84 purchase price, the FDIC would provide guarantees for $72 of financing, leaving $12 of equity.

Step 5: Treasury would then provide 50 percent of the equity funding required on a side-by-side basis with the investor. In this example, Treasury would invest approximately $6, with the private investor contributing $6.

Step 6: The private investor would then manage the servicing of the asset pool and the timing of its disposition on an ongoing basis - using asset managers approved and subject to oversight by the FDIC.

Part Two: *The Legacy Securities Program*

The goal of this program is to restart the currently dormant market for legacy securities, allowing banks and other financial institutions to free up capital and stimulate the extension of new credit. The Legacy Securities Program consists of two related parts designed to draw private capital into these markets. Debt financing will be provided by the Federal Reserve under the Term Asset-Backed Securities Loan Facility (TALF) introduced by the Administration earlier this month and through matching private capital raised for dedicated funds targeting Legacy Securities.

1. ***Expanding TALF to AAA rated Securities Issued Prior to 2009:*** The Legacy Securities Program will focus on the markets for mortgage-backed securities tied to residential and commercial real estate. The intention is to expand the previously announced TALF Program to include Legacy Securities.

   - ***Encouraging Investors to Have Greater Confidence and to Purchase Legacy Assets:*** It is expected that the provisio of leverage through this program will encourage investors to purchase these assets and as a result will increase market liquidity.

   - ***Funding Purchase of Legacy Securities:*** Through the Legacy Securities Program, non-recourse loans will be made available to investors to fund purchases of legacy securitization assets. These assets are expected to include certain non-agency residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities originated prior to 2009 that were originally rated AAA, or its equivalent, by at least two nationally recognized rating agencies, and outstanding commercial mortgage-backed securities (CMBS) and asset-backed securities (ABS) that are rated AAA.

   - ***Working with Market Participants:*** Investors will need to meet specific eligibility criteria. Lending rates, minimum loan sizes and loan durations have not been determined. These ar other terms of the programs remain to be finalized after agency discussions with market participants.

2. ***Treasury to Partner With Private Investors in Legacy Securities Investment Funds:*** **Treasury will make co-investment and non-recourse loans available to partner wit private capital providers such as private equity firms, hedg**

News Wire

Opportunities For Real Estate Funds In Troubled Assets Program.

Article from: Mondaq Business Briefing | March 30, 2009 | Copyright

Article by James M. Broderick , Philip H. Ebling , Gilbert G. Menna , Andrew C. Sucoff , Jacob A. Warden and Adam N. Weisenberg

This week, the U.S. Treasury announced the much-anticipated details of the Public Private Investment Program ("PPIP") that was introduced in summary form by Treasury Secretary Timothy Geithner last month.1 The program, which is part of the Obama Administration's broader "Financial Stability Plan," focuses on the purchase of what were described as "troubled assets" under the Troubled Assets Relief Program ("TARP"), part of the Emergency Economic Stabilization Act of 2008 ("EESA") enacted last October. Although the TARP was originally proposed as a purchase program for troubled loans and mortgage-backed securities, the Bush Administration applied the first portion of the TARP proceeds toward direct capital infusions into banking institutions. The objectives of the PPIP are much closer to the original objectives of the TARP: to thaw the nation's credit markets by moving legacy assets off the balance sheets of financial institutions so those financial institutions can expand their lending activities.

The PPIP consists of two core programs the Legacy Loans Program and the Legacy Securities Program. Both are built around the same basic concepts: pricing established by private investors and credit support provided by the government. Treasury, using TARP funds, will create a series of joint venture Public Private Investment Funds ("PPIFs") to purchase pools of loans and asset-backed securities. Treasury's initial investment will be \$75 to \$100 billion, which when combined with private capital and a series of leverage mechanisms is expected to generate at least \$500 billion in purchasing power for the PPIP that may be expanded to as much as \$1 trillion. As part of the Legacy Securities Program, Treasury also announced an expansion of the Federal Reserve's existing Term Asset-Backed Securities Loan Facility ("TALF") to support purchases of legacy asset-backed securities, including legacy RMBS and CMBS.

The details of the PPIP are discussed in Goodwin Procter's March 24, 2009 Financial Services Alert. In this Advisory, we address potential opportunities for real estate investors in each of the two types of PPIFs. We also present our thoughts on the planned expansion of the TALF as part of the Legacy Securities Program.

* * * * *

Legacy Loans Program The Legacy Loans Program is a joint program established by Treasury and the FDIC to enable domestic banks and savings institutions to sell pools of distressed loans in portfolio auctions run by the FDIC. It is expected that bidders will include pension funds, mutual funds, hedge funds, private equity funds, insurance companies and other long-term real estate investors. Successful bidders will get equity co-investment from Treasury using TARP funds and debt guarantees provided by the FDIC. Although the detailed requirements of the Legacy Loans Program will be subject to notice and comment rulemaking (comments will be accepted until April 10, 2009), Treasury has laid out the following basic structure.

FDIC and Treasury will establish minimum requirements for loan pools

Related newspaper, magazine, and journal articles

News Wire

FDIC Seeks Comments From Banking Industry And Investors For Legacy Loans Program.
Mondaq Business Briefing; March 31, 2009; 700+ words ...Deposit Insurance Corporation (**FDIC**) announced the opening of the...comment period for the Legacy **Loans Program** (LLP), a key effort in the...Private Investment Program. The **FDIC** is requesting comment from interested...that the initial focus of the **FDIC** is expected to be loans related...

Summary of Public-Private Investment Program
Friday, April 3, 2009
Written by Andrew Auerbach

On March 23, 2009, the U.S. Treasury Department (Treasury") announced the details of the Public-Private Investment Program (PPIP"). The program is designed to purchase mortgage backed securities and certain troubled loans from U.S. banks. PPIP is part of the broader Financial Stability Plan" introduced by President Obama. The goal of PPIP is to cleanse the balance sheets of U.S. banks of troubled assets as part of the Troubled Asset Relief Program (TARP") and to create access to liquidity for banks and other financial institutions in order to cause the extension of new credit. PPIP is broken up into two key components the Legacy Loans Program and the Legacy Securities Program.

Legacy Loans Program

The Legacy Loans Program will be launched by Treasury and the Federal Deposit Insurance Corporation (FDIC"). The intent of this joint program is to combine (i) private capital, (ii) equity co-investment from Treasury and (iii) FDIC debt guarantees in order to assist market priced sales of distressed assets and improve the private demand for distressed assets. The FDIC will supervise the formation, funding and operation of a series of Public-Private Investment Funds (PPIFs") which will purchase assets from U.S. banks. Each PPIF will be comprised of a joint venture between private investors and the Treasury. Treasury will manage its investment in the PPIF to ensure that the interest of the public is protected and preserved. However, private investors will retain control of the asset management subject to rigorous supervision" of the FDIC.

Private investors in the Legacy Loans Program are expected to include but are not limited to financial institutions, individuals, insurance companies, mutual funds, publicly managed investment funds, pension funds, foreign investors with a headquarters in the United States, private equity funds, hedge funds and other long-term real estate investors. U.S. banks of all sizes will be eligible to participate in the program. U.S. banks participating in the program will consult with the FDIC, banking regulators and Treasury to identify assets that they propose to sell. Eligible assets are required to be predominately situated in the United States. The FDIC will hire third party valuation consultants to analyze the assets and determine the level of debt that the FDIC will be willing to guarantee on such properties. The debt guaranteed by the FDIC will not exceed a 6 to 1 debt-to-equity ratio. The FDIC will receive an annual fee for providing the guaranty and such guaranty will be collateralized by the pool of assets purchased.

Private investors that are pre-qualified with the FDIC will bid for the assets in an auction conducted by the FDIC. Each bidder will be required to post a deposit equal to 5% of its bid value which will be refunded if such bid is not accepted. In an effort to maintain fairness, private investors will be prohibited from cooperating with one another once the auction process is commenced. The equity contribution together with the amount of debt previously agree to be guaranteed by the FDIC will comprise the purchase price of the assets. The U.S. bank selling such assets wil then be permitted to decide whether or not to accept the offer price.

If the bid is accepted by the bank selling the assets, the private investors that won the bid will contribute 50% of the equity to the PPIF, and Treasury will contribute the remaining 50%. However, private investors may be permitted to accept a smaller equity contribution from Treasury subject to a minimum equity contribution yet to be determined

In accordance with the Emergency Economic Stabilization Act of 2008 (the EESA"), Treasury will also receive warrants in the PPIF for its equity contributions. The terms of such warrants have yet to be disclosed by Treasury. The debt issued by a PPIF in connection with the purchase of a pool of assets is expected to be initially placed at the bank that sold such pool of assets. The selling bank will be able to resell the debt into the market. It is contemplated that the credit-enhancement of the FDIC guaranty will make the debt more attractive to potential buyers in the market.

The executive compensation restrictions that currently apply to TARP will not apply to a passive private investor" in this program. At this stage it is unclear whether or not the entities that manage the PPIF will be impacted by the executive compensation restrictions. The exact structure of the Legacy Loans Program will be subject to the standard comment and rulemaking procedures of the FDIC. The FDIC is currently in the process of accepting public comments until April 10, 2009.

Legacy Securities Program

The Legacy Securities Program, which will be administered by Treasury, is designed to provide both equity and debt financing to make it possible to acquire legacy securities that will initially include residential and commercial mortgage backed securities. The Legacy Securities Program consists of two components. The first component involves the selection of approximately five (5) fund managers (each an FM") by Treasury with which Treasury will co-invest in PPIFs to acquire legacy securities. The other component is the expansion of the Term Asset-Backed Securities Loan Facility (TALF") to provide non-recourse loans to investors to be utilized in the purchase of legacy security assets.

Legacy Securities PPIFs

The Legacy Securities PPIFs component of the program will provide each of the FMs a limited period of time to raise at least $500 million in private equity capital through a private investment vehicle. Private investors will be prohibited from withdrawing any money invested in the private investment vehicle for three years after the private investment vehicle s first investment in a legacy security. ERISA plans will be permitted to invest in the private investment vehicles, but the amounts of such investments will be left to the FM to determine. Once the FM raises at least $500 million, the FM would contribute the private equity capital raised by it to a PPIF. Treasury would invest TARP funds in the newly created PPIF matching the funds raised by the FM dollar-for-dollar. One major concern that FMs need to be aware of is that Treasury maintains the right, in its sole discretion, to refuse to fund any committed but undrawn Treasury equity capital and debt financing (described below) at any time. In addition to Treasury s equity interest in the PPIF, Treasury will receive warrants in accordance with the EESA for its investment in the PPIF. The terms of such warrants have yet to be disclosed by Treasury.

Provided that the structure of the PPIF meets certain guidelines yet to be determined, the FMs will have the opportunity to apply for senior debt from Treasury in amount up to 50% of the PPIF s total equity capital, but Treasury will consider requests for up to 100% of the PPIF s equity capital subject to asset level leverage, redemption rights, disposition priorities and any other factors deemed relevant by Treasury. Treasury intends this debt to have the same duration as the underlying fund and such debt shall be repaid on a pro-rata basis as proceeds are realized by the PPIF. The loans described above will be structurally subordinated to any loans made by the

New York Federal Reserve under TALF.

Treasury expects the PPIFs to initially target commercial mortgaged back securities and residential mortgaged backed securities that received an AAA rating or an equivalent rating by at least two nationally recognized ratings organizations which are secured directly by the actual mortgage loans, leases and other assets. Nevertheless, each FM will control the asset selection, pricing, liquidation, trading and disposition of such assets. The PPIFs will be prohibited from purchasing legacy securities from (i) affiliates of its FM, (ii) 10%-or-larger private investors investe in the PPIF or (iii) any other FM or such FM s affiliates. FMs will be permitted to charge a fixed management fee t Treasury and private investors based on a percentage of equity capital invested by such party. All fees and expenses paid by Treasury in connection with the PPIF will be paid out of the equity contributions made by Treasur to the PPIF.

Treasury plans to make its preliminary selections of FMs by May 1, 2009. Fund managers interested in participatin in the Legacy Securities Program have until April 10, 2009 to submit an application to Treasury. Per Treasury, eac candidate must (i) be able to raise at least $500 million of private equity capital, (ii) have experience and a track record investing in comparable assets, (iii) have $10 billion of comparable assets under management and (iv) demonstrate the capacity to manage the PPIF in accordance with guidelines established by Treasury.

TALF Expansion

The second component of the Legacy Securities Program deals with the expansion of TALF eligible assets to include certain non-agency commercial and residential mortgaged back securities that were originally AAA rated. TALF is currently governed by the New York Federal Reserve. Although the interest rates, minimum loan size and term of TALF loans for this program have not been established, Treasury has indicated that it is working with the New York Federal Reserve to modify the current structure of TALF loans so that TALF can accommodate this new class of eligible assets. Borrowers will need to meet certain criteria in order to be eligible for TALF funds, but this criteria has yet to be established. As stated earlier, all TALF loans will be structurally senior to any Treasury loans made under the Legacy Securities Program because of certain requirements of the New York Federal Reserve. Many additional questions regarding the expansion of the TALF program will hopefully be addressed when program specifics are disseminated by the New York Federal Reserve and Treasury.

Conclusion

Treasury plans to initially invest an aggregate of $75 to $100 billion of TARP funds between both the Legacy Loan Program and the Legacy Securities Program. This investment, together with the capital invested by private investor will produce $500 billion in purchasing power with the ability to expand to $1 trillion over time to help improve the health of financial institutions and unlock the credit markets.

Resources:

- ~~Public-Private Investment Program Fact Sheet, March 23, 2009~~
- Public-Private Investment Program Press Release, March 23, 2009
- ~~Public-Private Investment Program White Paper, March 23, 2009~~
- ~~Legacy Loans Program Term Sheet, March 23, 2009~~

FROM :PERFORMANCEREAL ESTATE GRP FAX NO. :7706490193 Jun. 15 2011 10:46AM P16

Calculated Risk: The PPIP and the FDIC

CalculatedRISK
FINANCE & ECONOMICS

About | Advertising | Email CR | Graph Galleries | Rants | Weekly Schedule | Sponsored Offers

Subscribe via email | Twitter | RSS Feed

TUESDAY, APRIL 07, 2009

The PPIP and the FDIC

by CalculatedRisk on 4/07/2009 09:10:00 AM

Why are the PPIP loans coming from the FDIC?
Apparently to avoid asking Congress for additional funds

...

Andrew Sorkin writes in the NY Times: 'No-Risk' Insurance at F.D.I.C.

> [The F.D.I.C. is] going to be insuring 85 percent of the debt, provided by the Treasury, that private investors will use to subsidize their acquisitions of toxic assets. The program ... is the equivalent of TARP 2.0. Only this time, Congress didn't get a chance to vote.
>
> ...
>
> The F.D.I.C. is insuring the program, called the Public-Private Investment Program, by using a special provision in its charter that allows it to take extraordinary steps when an emergency determination by secretary of the Treasury" is made to mitigate systemic risk."
>
> ...
>
> [H]ow much does the F.D.I.C. think it might lose?
>
> We project no losses," Sheila Bair, the chairwoman, told me in an interview. Zero? Really? Our accountants have signed off on no net losses," she said.
>
> ...
>
> Here's the F.D.I.C.'s explanation: It says it plans to carefully vet every loan that gets made and it will receive fees and collateral in exchange. And then there's the safety net: If it loses money from insuring those investments, it will assess the financial industry a fee to pay the agency back.

These potentially higher fees must make a few banks nervous. And if the losses really pile up, the FDIC will be bailed out, and it will be the taxpayers on the hook.

Last 10 Posts

- May 10 at 5:19 PM JPM: $2 billion trading loss on synthetic credit position
- May 10 at 4:44 PM Lawler: Table of Short Sales and Foreclosures for Selected Cities
- May 10 at 2:30 PM Sacramento: Percentage of Distressed House Sales increases slightly in April
- May 10 at 12:36 PM NAHB: Builder Confidence in the 55+ Housing Market Increases
- May 10 at 9:05 AM Trade Deficit increased in March to $51.8 Billion
- May 10 at 8:30 AM Weekly Initial Unemployment Claims at 367,000
- May 09 at 9:59 PM Look Ahead: Trade Deficit, Unemployment Claims
- May 09 at 8:06 PM Greece Updates: Policy Failure
- May 09 at 2:55 PM Lawler: REO Inventory of "the F's" and PLS
- May 09 at 10:47 AM Fannie Mae reports $2.7 billion in income, REO inventory declines in Q1 2012

Weekly Schedule | Graph Galleries | European Bond Yields

Enhanced Deposit Insurance Extended Through 2013

Thursday, May 21, 2009
Written by Robert Klingler

On May 20, 2009, President Obama signed the Helping Families Save Their Homes Act of 2009 (Senate Bill 896) Among other things, the Act:

- extended the $250,000 deposit insurance limit through December 31, 2013;
- extended the length of time the FDIC has to restore the Deposit Insurance Fund from five to eight years;
- increased the FDIC s borrowing authority with the Treasury Department from $30 billion to $100 billion;
- increased the SIGTARP s authority vis-a-vis public-private investment finds under PPIP (including the implementation of conflict of interest requirements, quarterly reporting obligations, coordination with the TALF program); and
- removed the requirement, implemented by the American Recovery and Reinvestment Act of 2009, for the Treasury to liquidate warrants of companies that redeemed TARP Capital Purchase Program preferred investments. The Treasury is now permitted to liquidate such warrants at current market values, but is not required to do so.

This extension does not affect the Transaction Account Guarantee provided by the FDIC s Temporary Liquidity Guarantee. The Transaction Account Guarantee, which provides an unlimited guarantee of funds held in noninteres bearing transaction accounts, is still scheduled to expire on December 31, 2009.

The FDIC has not revised the official FDIC Insurance sign, which still speaks of insurance limits of up to $100,000. However, if a financial institution has previously posted a notice of the increase to $250,000 through December 31, 2009, it should update that notice. As stated by the FDIC, a financial institution may post the following statement next to the official FDIC sign:

> The standard insurance amount of $250,000 per depositor is in effect through December 31, 2013. On January 1, 2014, the standard insurance amount will return to $100,000 per depositor for all account categories except IRAs and other certain retirement accounts, which will remain at $250,000 per depositor.

Daily Finance

New FDIC toxic asset plan: Sell the assets of failed banks

By Lita Epstein
Posted 2:00PM 05/05/09
Posted under: Economy, Investing

AOL

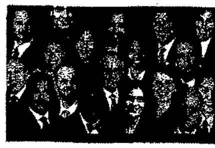
Now that the banks have their training wheels on -- now that they've shown they can raise private funds and clean up their balance sheets without depending on the FDIC's Legacy Loan Program (a.k.a., "toxic-assets program") -- the FDIC plans to use the TARP funds slated for the program to sell troubled assets of failed banks.

The revised program is expected to look something like the process developed for the Resolution Trust Corporation, which shut failed savings-and-loans in the 1980s and 1990s. Yesterday, it looked like the LLP may be dead. But it's not dead. It's just being reborn as something else. The FDIC is expected to solicit the first bids in July to start assessing the details of the troubled-asset programs. The funds to be used are part of the Public-Private Investment Program, which President Obama announced in March as a centerpiece in his effort to shore up the financial system. Funding from the program will include $75 billion to $100 billion from TARP, which means the program won't have to be supported completely by the FDIC's insurance fund.

PPIP is a combination of federal money and funds raised from private investors. The combined funds would be used to buy troubled mortgage-backed assets. Banks balked at participating in the FDIC's toxic-assets program because they were concerned about government interference in the process. When PPIP legislation was passed, it included conflict-of-interest restrictions on buyers and sellers. Banks clearly want to get away from any kind of government interference, making applications to rid themselves of TARP completely.

But setting aside these funds to clean up the mess that the FDIC is already dealing with on failed banks' toxic assets makes more sense anyway. Why should we continue to fuel the big banks, which already have taken billions of dollars and still won't work with the government to free up consumer and small business credit access? Instead, the funds can be used more appropriately to prevent a problem with FDIC's insurance fund -- the true backbone of U.S. consumer deposit protection.

Lita Epstein has written more than 25 books, including Trading for Dummies *and*



*

Public-Private Investment Program

Public-Private Investment Program

- $75 to 100 billion of TARP/FSP capital
- With financing from the FDIC and Federal Reserve, leverage $500 billion with potential to expand to $1 trillion of purchasing power

Legacy Loans Program

Capital
Public-Private Investment Funds

- Combines USG and private capital

Financing
Funds Will Raise FDIC Guaranteed Debt

- FDIC will guarantee debt
- Leverage up to 6:1

Legacy Securities Program

Capital
Public-Private Investment Funds

- Combines private capital with USG capital and potential USG leverage

Financing
Leverage from Federal Reserve

- Builds on existing TALF framework

* Winning private investor bid forms a Public – Private Investment Fund to purchase the pool of loans from the bank.

** For every $84, private investors put up $6, government puts up $6 and the fund borrows up to $72 with a FDIC guarantee.

Pepper Hamilton LLP
Attorneys at Law

JONES DAY®

United States: FDIC Delays The PPIP Legacy Loan Program To Focus On Public-Private Programs To Sell Assets From Failed Banks

10 June 2009

Article by Ralph F. MacDonald III, Glenn S. Arden, Valerie P. Roberts, Brett P. Barragate, Mark V. Minton, James C. Olson and Sarah H. Eberhard

On June 3, the Federal Deposit Insurance Corporation (the "FDIC") announced that a pilot sale of assets under the Legacy Loans Program component of the Public-Private Investment Program ("PPIP"), initially scheduled for June, will be postponed indefinitely. The FDIC indicated it will continue to work to develop the Legacy Loans Program as banks take "additional time to assess the magnitude and timing of troubled asset sales." It appears that the FDIC's focus will turn to developing and applying the funding mechanisms of the Legacy Loans Program for sales of failed bank assets held by the FDIC, as receiver.

Receivership Public-Private Partnerships

The FDIC, as the receiver of failed depository institutions, has the obligation to structure a "least cost" resolution. Many banks have failed, and the FDIC has had to take, for later sale, a large amount of the failed banks' loans and other assets. The FDIC traditionally sells pools of loans with similar characteristics to the highest bidders through outside financial advisors such as First Financial Network and DebtX, and potentially others.

DIFFERENT DEAL NO TARP $'s

In May 2008, the FDIC launched a public-private partnership structure (the "Receivership PPP") by selling a pool of loans from the NetBank receivership in a "structured sale transaction." The FDIC has completed five Receivership PPP transactions to dispose of loans acquired from failed banks, and it has sold $681 million of interests in loans to private purchasers for a total sales price of $156 million. The total par value of the underlying loans in these transactions was $3.2 billion. The Receivership PPP has its origins in the Resolution Trust Company ("RTC") equity partnership program.

Resolution Trust Company Equity Partnership Program

In the 1990s, the RTC developed an "equity partnership program" to dispose of assets that it held as a result of failed thrifts. The RTC established numerous joint ventures, in which it was the limited partner, and according to *Managing the Crisis* (FDIC, August 1998),a private-sector investor, typically a joint venture between an equity investor and an asset management company, was the general partner. The RTC contributed asset pools (typically subperforming loans, nonperforming loans, and other real estate owned ("OREO")) and arranged financing for the partnership. The general partner contributed equity capital and performed asset management services. These equity partnerships required that cash proceeds generated from the liquidation of assets be applied first to the retirement of bonds held by the RTC, and then to the partners, *pro rata* according to each partner's percentage interest in the partnership. Unlike a direct asset sale, the RTC retained an interest, which entitled it to receive proceeds at closing and a percentage of subsequent income from the assets, including sales of the assets.

The FDIC has stated that the RTC equity partnerships were established to increase the present value of recoveries by capturing the management efficiencies and expertise of the private sector, while reserving for the RTC potential profit from improvements in inefficient or illiquid markets or unexpected events. This strategy also enabled the RTC to successfully move a large number of assets off of its books.

The RTC created 72 equity partnerships between December 1992 and October 1995, with assets having a total book value of $21.4 billion. Similarly, the FDIC was a partner in two partnerships with $3.7 billion of assets based on book values under Asset Management and Disposition Agreements.

The RTC and FDIC measured sales results using the net rate of recovery on the book value (the "Recovery Rate") of the assets. The Recovery Rates achieved by equity partnerships holding commercial and multifamily real estate assets produced better results than other disposition strategies employed by the RTC. Interestingly, the RTC equity partnerships had substantially poorer results than auctions of loans with riskier, illiquid assets such as construction and land loans. In contrast, the average collections as a percentage of book value was 54 percent by equity partnerships holding commercial and multifamily real estate assets, compared to 45 percent using auctions, 43 percent using multiasset sales transaction seller financing, and 42 percent using sealed bids. The average collections as a percentage of book value by equity partnerships was lower than most other strategies when the underlying assets were land and construction assets, which was 27 percent compared to 47 percent using auctions, 30 percent using sealed bids. Only multiasset sales transaction using seller financing had a lower collection rate at 26%.

Managing the Crisis assessed the effectiveness of the equity partnerships. The FDIC's conclusions included, among other things, that:

- Recoveries were generally higher for smaller pools.
- Recoveries were also higher where the assets were identified in advance of bidding as opposed to blind pools.
- Equity partnership structures can transfer large volumes of assets to the private sector quickly.
- The receiver's and the investors' and managers' interests need to be aligned in the structure.
- Financing provided by the RTC promoted and speeded sales, reduced financing costs, and increased competition, demand, and pricing for the assets held as receiver.

Legacy Loans Program and the Receivership PPP

We believe that the Receivership PPP and the RTC equity partnership programs may provide a roadmap for how the Legacy Loans Program ultimately will be structured and utilized.

General Receivership PPP Terms

Key terms of the Receivership PPP include the following:

- **Legal Entity.** The FDIC, as the receiver of a failed depository institution, forms a limited liability company (the "LLC") and contributes loans from the failed depository institution. In exchange for the contributed loans, the LLC issues the FDIC 100 percent of the membership interests in the LLC.
- **Participation Agreement.** The LLC enters into a Participation and Servicing Agreement with the FDIC and issues a participation interest to the FDIC (the "Participation Interest) in the loans. The Participation Interest is typically 80 percent, but the actual amount varies by transaction. The LLC services the loans through a Servicing Agreement with a qualified servicer. The LLC also enters into a Custodial Agreement with a qualified document custodian.
- **Eligibility to Bid.** The FDIC auctions its 100 percent membership interest in the LLC to pre-qualified bidders ("Eligible Buyers"). Eligible Buyers must have demonstrated financial capacity, the ability to manage and dispose of similar loans, and be eligible generally to purchase FDIC receivership assets.
- **Membership Interest.** The winning bidder (the "Private Purchaser"), acquires 100 percent membership of the LLC's interest, subject to the FDIC's Participation Interest in the LLC's loans. The Private Purchaser is entitled to the income from the loans other than the FDIC's Participation Interest.
- **Guaranty.** The Private Purchaser is required to guarantee its and the LLC's obligations as the sole managing member of the LLC.
- **Management Fee.** The LLC is entitled to a monthly management fee in an amount determined by the FDIC prior to the bidding process.
- **Distributions.** Cash flows from the loans, after deducting the monthly management fee and advances for taxes, insurance, and property protection expenses, are distributed monthly to the FDIC and the Private Purchaser based on their Participation Interests.
- **Reduced FDIC Interest.** Upon the later of the date (i) on which the aggregate distributions (including the initial purchase price paid by the Private Purchaser) to the FDIC reach a certain threshold, specific to each transaction and established and disclosed by the FDIC prior to the bid date, and (ii) which is one year after the closing date of the transaction, the FDIC's participation interest is reduced by a specific percentage and the participation of the Private Purchaser increases by an equivalent percentage.
- **Clean-up Call.** The FDIC has the right to require the liquidation and sale of any remaining loans held by the LLC at any time after the earlier of (i) seven years (10 years for single-family residential loans) after the date of the Participation and Servicing Agreement, and (ii) the date on which the unpaid principal balance has been reduced to 10 percent of the balance at closing of the sale of the LLC Membership Interests.
- **Assignment and Resale.** The FDIC may sell or assign all (but not part) of its participation interest in the loans. The Private Purchaser may dispose of all (but not part) of its membership interest (or permit any change in control) only if, among other things, the transferee (i) is a special purpose entity with (a) a net worth of more than $5 million, (b) has the licenses and other governmental approvals necessary to perform its obligations as a sole member of the LLC, (c) has knowledge and experience in the origination, servicing, sale, and/or purchase of performing and nonperforming or distressed loans, and (d) the ability to bear the economic risks of the investment (including a total loss); (ii) the transferee is acquiring the membership interest for its own account and not with a view toward resale; and (iii) the transferee has obtained the prior written consent of the FDIC.

To date, the FDIC has engaged two primary outside financial advisors to market the LLC membership interests to potential bidders, GlassRatner and Keefe, Bruyette & Woods.

Comparison of the Receivership PPP to Legacy Loan Program

The Receivership PPPs, which have been operating since May 2008, with the enhanced funding and leverage contemplated by the FDIC, now are expected to provide even more clues to how the FDIC will structure and fund the PPIP's Legacy Loans Program. We have highlighted below certain key terms of both programs. The FDIC may make significant changes to the Legacy Loans Program based on its experiences with the Receivership PPPs.

FROM :PERFORMANCEREAL ESTATE GRP FAX NO. :7706490193 Jun. 15 2011 10:50AM P22

	Receivership PPP	Legacy Loans Program
Legal Entity/Vehicle	The LLC that will hold loans the FDIC decides to sell. The 100 percent membership interest will be sold to a private purchaser.	The type of entity to be used by the public-private investment funds ("PPIFs") has yet to be determined. PPIFs will finance the purchase of eligible asset pools by issuing debt guaranteed by the FDIC, and half of the equity stakes in the PPIFs will be sold to private investors, and the other half will be funded by the Treasury from TARP.
Eligibility of Private Investors	Qualified bidders must have demonstrated financial capacity and the experience in managing and disposing of similar loan portfolios. Bidders must be eligible generally to purchase from the FDIC, as receiver.	The specific eligibility requirements for private investors have not been delineated, but the FDIC has indicated that prospective bidders will need to qualify separately for each individual loan purchase transactions. Private investors are expected to include an array of different investors, including, but not limited to, financial institutions, individuals, insurance companies, mutual funds, publicly managed investment funds, and pension funds, including private investor groups. The FDIC chairman recently indicated that banks may not be eligible to be purchasers in the Legacy Loans Program. Private investors may not participate in any PPIF that purchases assets from sellers that are affiliates of such investors or that represent 10 percent or more of the aggregate private capital in the PPIF. For a bid to be considered in the auction process, the bid must be accompanied by a refundable cash deposit for 5 percent of the bid value.
Servicing	The LLC is obligated to service the loans by entering into a servicing agreement with a qualified servicer and a custodian agreement with a document custodian for a monthly management fee.	Servicing initially will be provided by the bank that sells the legacy loans to the PPIF, unless otherwise provided. The PPIF will control servicing, subject to relevant agreements.
Management and Governance	The Private Purchaser will become the sole member and manager of the LLC and have full and exclusive power and discretion to manage the business and affairs of the LLC under an Operating Agreement.	PPIFs will be managed (by the private purchaser or a manager retained by the private purchaser) within parameters to be established by the FDIC and the Treasury, with reporting to the FDIC and oversight by FDIC. The FDIC will be responsible for providing information required by the Treasury.
Change in Public Participation Interests	Upon the later of the date (i) on which the aggregate distributions (including the initial purchase price paid by the Private Purchaser) to the FDIC reaches a certain threshold, specific to each transaction and established and disclosed by the FDIC prior to the bid date, and (ii) which is one year after the closing date of the transaction, the FDIC's participation interest will be reduced by a specific percentage, and the participation of the Private Purchaser will increase by the corresponding percentage.	The Treasury will have a fixed equity participation throughout the term of the PPIF. The Treasury will receive warrants as part of the PPIF transaction. The issuer and terms of the warrants have yet to be determined.
Due Diligence and Evaluation	Each Private Purchaser is responsible for making its own independent investigation and evaluation of the LLC membership interest and the loans held by the LLC. Permissible leverage to be developed by the FDIC, based in part on the PPIP	A third-party valuation firm selected by the FDIC will provide independent valuation advice to the FDIC on each eligible asset pool. Upon determination of an eligible asset pool for sale by a participant bank, the FDIC will oversee initial due diligence, preparation of required marketing materials and

← Treasury fro TARP.

THIS DID NOT HAPPEN in LEGACY Loan PPIP'S. It o happened in LEGACY Secur. PPIP's.

THAT's PART o THE problem illegal under TARP.

	Legacy Loans Program.	conduct the auction process. It is unclear whether the information collected by the FDIC will be made public to the eligible bidders in connection with the auction process. The FDIC will make its own determination as to available leverage, not to exceed 6 times the PPIF's equity.
Management Fees	The LLC will charge a monthly management fee. Cash flows from the loans will be used to pay the monthly management fee and advances for taxes, insurance, and property protection expenses before distribution.	The FDIC will be reimbursed for all expenses related to conducting auctions. The PPIFs will pay ongoing administration fees of a currently unknown amount or percentage to the FDIC for oversight functions performed by the FDIC.
Guaranties	The Private Purchaser needs to provide a guaranty of its and the LLC's obligations as the sole managing member of the LLC.	The FDIC will guarantee debt issued by the PPIFs to participant banks or in the market as consideration for eligible asset pool purchases. In exchange for the debt guarantee, the FDIC will charge the PPIFs an annual guarantee fee.
TARP	Not subject to TARP or PPIP restrictions or oversight.	TARP monies were expected to be used, but TARP executive compensation limits will not apply to passive investors. Subject to FDIC oversight and to the Public-Private Investment Program Improvement and Oversight Act of 2009 (the "PPIP Oversight Act"), including conflict of interest rules, periodic reporting to Treasury, inspection of books and records by SIGTARP, fiduciary duties to public and private investors, ethics policies, investor screening, and indemnification of 10 percent or greater interest in the PPIF.

Conclusions

RECEIVERSHIP PPPs are different from Legacy Loan PPIP program. See chart

Receivership PPPs, organized by the FDIC alone without TARP funding, may provide an investment alternative for sophisticated investors interested in investing in legacy loans that the FDIC has acquired through resolving failed depository institutions. Receivership PPPs may help reduce the estimated $21 billion of assets held by the FDIC as receiver of failed banks and thrifts. The Receivership PPP structure and administrative process, which have been used since last May and trace their origins to the RTC equity partnership program, may be useful in determining the way in which the FDIC and the Treasury will structure and operate the PPIP's Legacy Loans Program.

It is not surprising that the Legacy Loan Program has been deferred. The PPIP Oversight Act increases the complexity of, and the conditions to, the Legacy Loan Program. Any use of TARP funding in the Legacy Loan Program includes the uncertainty of accompanying regulation, which reduces the appeal of this Program to sellers, investors, and asset managers. It is possible that a more market-driven Legacy Loan Program that does not utilize TARP, and is more attractive to asset sellers and investors, may result. We hope that the FDIC will consider using the Legacy Loan Program to assist banks in funding good bank/bad bank structures.

For more information on the PPIP, please see our *Jones Day Commentary*, "The Public-Private Partnership Investment Program," at www.jonesday.com/pubs/pubs_detail.aspx?pubID=S6070, and for more information on the PPIP Oversight Act, please see our *Jones Day Commentary*, "The Helping Families Save Their Homes Act of 2009 Significantly Changes the TARP, PPIP and TALF Programs and FDIC Insurance," at www.jonesday.com/pubs/pubs_detail.aspx?pubID=S6303. Jones Day will continue to update you as further developments occur.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Specific Questions relating to this article should be addressed directly to the author.

Home > Legal Library > Article

Is Half a PPIP Better than None?

by:
Harold P. Reichwald
Ellen Marshall
Manatt, Phelps & Phillips, LLP – Los Angeles Office

August 3, 2009

Previously published on July 10, 2009

After months of preparation, the Treasury has finally announced its program for dealing with so-called legacy assets on the books of the nation s banks. However, the program as announced addresses only a narrow class of troubled securities.

The revised plan does not cover troubled whole loans and banks holding these assets will get no immediate benefit from the plan. Originally, PPIP was supposed to cover both toxic securities and toxic loans, but potential purchasers of whole loans balked at the potential risks, including political risks, and decided that as proposed that portion of the PPIP was not worth it.

The revised program also does not cover all types of troubled securities, or even all types of troubled asset-backed securities. Only mortgage-backed securities in a class that was originally rated AAA are included. Omitted are securities backed by other types of indebtedness, such as auto loans and credit card loans. Also omitted are classes of securities issued in mortgage securitizations that were originally rated below AAA.

Purpose

The revised PPIP plan has as its stated goal to support market functioning and facilitate price discovery in the asset-backed securities markets." Given that these markets continue to be frozen because of price disparity between what potential purchasers are willing to bid and the price that sellers are willing to accept, the latest proposal offers the hope that with Treasury capital and financing, private equity will find the leverage attractive enough to warrant higher bid prices.

Proposed Structure

The proposed structure contemplates the formation of a series of funds, each to be managed by a sponsor chosen by the Treasury. The Treasury has chosen nine well-known asset managers to form the funds and manage the acquisition and disposition of the legacy securities. Each manager will invest $20 million of its own capital in the fund it will sponsor and has indicated an intention to raise at least $500 million of capital from private sources for the fund, with the Treasury matching that dollar for dollar. Once up and running, each fund is expected to begin purchasing legacy securities utilizing a combination of debt financing up to the amount of the total equity of the fund, with additional leverage available through the existing Term Asset-Backed Securities Loan Facility.

Eligible Assets are limited to commercial mortgage-backed securities and nonagency residential mortgage-backed securities issued prior to 2009 that were originally rated AAA or the equivalent, 90% of which are U.S. assets. Selling institutions are contemplated to be U.S. financial institutions, not foreign government agencies.

The Term Sheet accompanying the Treasury s announcement also covers matters such as the diversification and investment limitations of each fund, restriction on the fund sponsors, permitted distributions and expenses, exclusivity and avoidance of potential conflicts.

Whether this newest plan achieves its stated goal remains to be seen. Some of the concerns earlier expressed remain. The Government will have the right to audit the books and records of the funds and those affiliated with it. On the other hand, the Treasury has announced that the executive compensation limitations of existing legislation will not apply to investors in the funds as long as the funds are structured such that asset managers themselves and their employees are not employees of or controlling investors in the funds." Passive investors will not be subject to these restrictions.

The political dimension to this revised plan remains. The Treasury wants the private market to become significant players in this version of PPIP. Private players have to be convinced that by participating they will not become scapegoats because government funding will enable them to make a profit. The possibility of some type of after the fact" criticism or limitations about the potential profitability of this plan for the private sector is still worrisome to many.

Loss of PPIP for Whole Loans

If it was not already clear from the comments of the FDIC last month, a PPIP for purchases of whole loans is no longer on the drawing board. In the latest Treasury announcement, the Treasury made mention of a possible future expansion of the program to whole loans later in the year, but only for loans that would be sold by the FDIC from the receiverships of failed banks. No details of the timing, scope or nature of even that program were provided. For now, there seems at most to be a possibility that the FDIC would be the sole seller into any such program that may eventually be created. That would not, of course, serve the purported goal of the PPIP to assist operating banks in cleansing their balance sheets of toxic assets.

PPIP Ready To Pop

Joshua Zumbrun, 09.11.09, 07:15 AM EDT

Treasury says a scaled down version of its public-private investment plan may begin purchasing assets 'very soon.'

WASHINGTON -- Treasury Secretary Henry Paulson's original plan was to rescue the financial system by buying toxic assets off of bank balance sheets. When Timothy Geithner took over in February, he revived the idea. His Public-Private Investment Partnership would use $100 billion from the Treasury plus leverage from the Federal Reserve and the FDIC to create a $1 trillion toxic asset fund.

Nearly a year after the idea first surfaced, a clipped version of the program may finally get underway by the end of September.

Geithner's PPIP was originally envisioned with two components--one to purchase entire loans and one to purchase securities. The loans would be purchased through an FDIC program and the securities through a Fed program.

But now the FDIC half of the program is on ice. "Since banks were able to raise capital there's not the same urgency in having the program out there," says Andrew Gray, a spokesman for the FDIC. Still, Gray says the FDIC has been testing the process using assets it acquired from bank failures to "get the framework in place in case it's needed."

← FDIC PPIP LEGACY LOAN PROGRAM

Despite rumors that the PPIP will be completely abandoned, the Treasury and funds involved say the Fed's part of the plan is moving forward. "We expect transactions to begin very soon," says Meg Reilly, a spokeswoman for Treasury, in an e-mail. The period for the funds to raise their money ends in September.

Geithner says the scaled back program is the result of improvements in the securities market. As the financial system has stabilized, the value of many so-called toxic assets has increased--the Treasury and Fed long contended that the securities were undervalued. In a summary of TARP efforts on Thursday, Geithner pointed out that prime fixed-rate securities, the sort once envisioned as purchases for the program, have increased in value by 40% as liquidity has come back to markets.

In July the Treasury selected nine managers to each raise at least $500 million. That sum will be combined with as much as $30 billion of Treasury equity and debt to begin purchasing troubled assets.

The nine selected funds are Alliance Bernstein, Angelo Bernstein, **BlackRock** (BLK - news - people), Invesco, Marathon Asset Management, Oaktree Capital Management, RLJ Western Asset Management, Trust Company of the West and Wellington Management. (This reporter has assets in a Wellington bond fund.)

Fund managers contacted by *Forbes* declined to speak on the record and deferred questions to Treasury. Speaking on background, one manager said that although Treasury has been slow, they seem committed to the program and have an impressive team working on it. There has been a healthy amount of interest in investing through the funds, he said.

The smaller version of PPIP raises the question of what will happen to the unused funds. The Treasury says it has $128 billion of unallocated TARP funds. Many of the intended programs are unlikely to reach their allocated size, freeing up even more funds, and the amount of available billions would continue to grow as banks repay the TARP. If the Treasury has plans for the money, it is keeping mum, saying only that the funds "remain available."

Geithner's Deadbeats

New Leadership at Morgan Stanley

Jobs Data, Earnings Outlook Fuels Gains

Morgan Stanley CEO Steps Down

Intelligent Investing | Data | Knowledge | Insight | Wisdom

Today On Forbes.com

An Insider's Take On Apple In The Post-Steve Jobs Era

Forbes Blogs

Anyone predicting the company will falter without its CEO should take a closer look at the team he has put in place, a former Apple senior vice president says.

GO

Content Management Software
Email Marketing Software
Project Management Software
Accounting Software
eCommerce Software
Help Desk Software

>> Browse All Directories

Most Popular

1. How I Became A 21-Year-Old Business Executive | blog
2. The Six Enemies of Greatness (and Happiness) | blog
3. John Travolta: More Proof He Was In New York, Not L.A., on Day of Alleged Assault | blog
4. 'Don't Go To Law School,' 'Move To Asia,' And 28 Other Pearls Of Wisdom For 2012 Grads | blog
5. Scott Walker Using $100 Million Of Taxpayer Money To Fight Off Recall? | blog
6. Nine Dangerous Things You Were Taught In School | blog
7. Top Executive Recruiters Agree There Are Only Three True Job Interview Questions | blog
8. Twitter Fights Prosecutors Seeking Occupy Protester's Data Without Warrant | blog
9. Intelligence Is Overrated: What You Really Need To Succeed | blog
10. Billionaires' Tips For New Grads: Advice From Jobs, Oprah, Zuckerberg And More | blogslide

Testimony – G&M Daniel Family Limited Partnership

In September of 2007 Silver State Bank loaned me $4,000,000 to start construction on an 11,000 SF retail building. After the project was completed the economy and commercial retail market was not looking healthy. Because of that, I found it difficult to lease the retail units. The entire economic forecast of Nevada changed drastically after the recession. Approximately fifty percent of the building remains unoccupied after 5 years of aggressive marketing. During the term of my note, Sliver State Bank when bankrupt and the FDIC took over the note. When the FDIC took over the note, they demanded that I make the interest payments current. I was not able to repay any of these debts at the time and I tried to negotiate with the FDIC, but they said I must pay immediately otherwise they would not considering extending the term of my note. I was then forced to take out another loan at $1,120,000. From this $1.2 million dollar loan, I paid the FDIC approximately $550,000 to make the note current. The FDIC told me that after I made the interest payments current they would work with me. Approximately a year later the FDIC did not work with me and they ended up selling the note to Rialto. When I received my first call from Rialto, they demanded that I fly to New York to discuss the note. First, I contacted my attorney to get a better understanding of the situation. My attorney contacted Rialto and requested that we have a phone conference to discuss these matters. Rialto said that they will not have a conversation over the phone and that we must fly to New York immediately. My attorney and I flew to New York for a meeting with Rialto which lasted only 20 minutes in which nothing was accomplished. At this meeting Rialto said that they want the note paid in full. They also said that they do not care if I file for bankruptcy or take any legal action because they would still foreclose the property and attacked every single one of my unencumbered assets to pursue any deficiencies. The meeting was not intended to discuss a plan to pay off the note in which both the lender and borrower are comfortable. Instead, the meeting was intended to threaten me into paying off the note immediately. My attorney started negotiating with Rialto in September of 2010. Rialto requested that all revenues generated by the shopping center be sent directly to them each month. I have made 8 payments of $18,000 to Rialto. For the past 4 month our consultants have sent numerous proposals to Rialto. Rialto has rejected all of the proposals we have sent, but they have not given us any type of direction as to what they are willing to accept. About 1 month ago I received a notice of foreclosure. I am not asking Rialto or the FDIC to sell me back the property at pennies on the dollar. I am simply asking that they take my situation and the current market value into account. I am not trying to walk away from my financial responsibilities. I am only asking for a chance to get back on my feet and stabilize my investments. I fully intend on paying my debts and honoring my commitments to the best of my abilities.

Update May 14, 2012

Summary

> ***Lennar has continued to use tactics that approach extortion in order cower note holders to pay them more money not to sue them under their personal guarantees. This approach is not in the FDIC's or the US tax payer's best interest. New management that knows how to work with debt holders to work out these loans needs to be installed in these programs. The debt holders know best how to maximize the value of the property.***

Discussion (see prior letter to Sheila Blair below for more background)

It took four more confirmation hearings and over a year and a half in Chapter 11 before Lennar would agree to a Ch 11 confirmation plan. After Lennar changed law firms we were able to get the seventh amended plan confirmed at a cost of over $500,000 to us, over $100,000 to the NTCIC and close to $1,000,000 spent by Lennar (the FDIC and US Tax payers). During the course of these hearings Lennar continued to try every means they could think of to stop the plan from being confirmed. There was no reason for them not to accept an earlier plan or negotiate in good faith for changes. But their model was to maximize their return by forcing us into bankruptcy and taking the property. If they were able to do that then they wouldn't have to pay the Portland Development Commission the $700,000 they were owned. Nor would they have to pay any of the other investors that were owed money on the project. Under the plan these taxpayers all received some level of payment and the Portland Development Commission received almost $700,000.

The principals in the property had to invest another $300,000 in the property under the bankruptcy rules in order to maintain their equity position in the project. Lennar has now informed us that they have added over $1,400,000 in penalties and default interest to the project and is suing the principals in the project under their personal guarantees for a total of $10,400,000. This is on a project that was not in default when the bank failed and only had a loan on it of $8.1M. In fact the only reason he project went into default was because the new note holder, Lennar, would not honor the bank's commitment to convert the construction loan to a permanent loan.

These tactics of increasing the loan amount are nothing more that extortion by Lennar to get the principals to pay more or face unbridled and continuous litigation by Lennar. Guarantors have no choice but to continue to litigate until they can't any longer and declare personal bankruptcy. How is this approach helping US tax payers? Entrepreneurs are using the last vestiges of their capital that could be used to start a new business to defend themselves in court until they have no resources left. This capital could be used to start new businesses and create new jobs but instead it is going to pay attorney's to defend themselves from Lennar's litigation machine. Once entrepreneurs exhausted their capital and have destroyed their credit by declaring bankruptcy they have very few options left.

The FDIC should not allow structured debt buyers the ability to buy notes at a discount and then inflate their value through excessive default interest, penalties and legal fees, only to sell the property to themselves at a discount on the court house steps. And then pursue inflated deficiency amounts from private citizens. This approach has only exacerbated the economic slump and the unemployment in many areas of the country. Nevada's AB273 is one approach to limit this type of injustice.

The FDIC only needs to look at how other firms have negotiated and worked out their notes with the various note holders to see that Lennar's approach is not good for the FDIC, the economy, or the American taxpayer. The FDIC needs to dismiss Lennar as the manager and bring in management that understands they need to work-out these loans with the people that know them best, the current debtors. They are the ones that can bring the jobs back and find the most value out of these projects that are now in the FDIC's hands due to bank failures.

Below is more background on the project and the unintended consequences of the current approach outlined in my prior correspondence with Ms. Sheila Blair dated March 14, 2011.

March 14, 2011

Ms. Sheila Bair
Chairman
FDIC
550 17th Street NW
Washington, DC 20429

Dear Ms. Bair:

Subject: Rialto Capital Management, Lennar, Multibank

Summary:

> ***The unintended consequence of the Multibank structured loan sale in cooperation with the FDIC is not maximizing the return to the FDIC or tax payers. In addition, it is prolonging the high unemployment rate affecting local communities by bankrupting local entrepreneurs and investors. The big winners from this relationship appear to be Wall Street debt collectors and a Florida land developer.***
>
> ***As you will read, Lennar/Rialto is a bad partner and the FDIC needs to be aware of the consequences of the partnership with them. We have done nothing wrong and do not deserve to be treated in this manner. You need to look into this matter.***

Background:

For the last 20 years I have been involved in helping small businesses find capital in the Portland Metro Area. Portland Venture Group's members have invested in over 100 companies in the Portland metro area helping small businesses grow and proposer. This is vital to the Portland metro area since entrepreneurship is the key to employment growth throughout this country.

In 2005 I made a significant investment in a real estate project managed by Foundation Real Estate and Development (FRED) to bring commercial condos to the Portland, Oregon, downtown core. The construction loan was with the Bank of Clark County which failed in January of 2009. Although the project had guarantees from the Bank of Clark County to convert that loan from a construction loan to a term loan, neither the FDIC receiver nor the subsequent purchaser of the note, Multibank, agreed to honor that commitment.

In January of 2010 the loan was sold to Lennar/Multibank who have pursued a path of minimizing the value of the property while attempting to bankrupt the entrepreneurs who have created jobs in our community in order to ingratiate themselves.

Discussion

In January 2009 the FDIC placed into Receivership the Bank of Clark County ("BOCC"). BOCC had provided an $8,160,000 construction loan for the renovation of a historic, seven-story, 35,000 sq.ft. office building located in Portland, Oregon. At the time of the failure the loan was performing. FRED, I and others have invested over $2.2 million in the building. The renovation generated historic tax credits that were sold through a partnership with The National Trust for Historic Preservation (NTCIC). This provided an additional $2.4 million that is contingent upon procuring a permanent loan that was originally committed to by BOCC. After the failure, the FDIC continued to withdraw interest payments from the construction loan but funds to finish improvements already underway were unavailable. Working cooperatively with the FDIC we used net rents and additional funds I provided to pay off contractors and remove workman's liens.

Over the next several months we worked with the FDIC to purchase our note with funding from a new bank. In December 2009 the FDIC agreed to allow us to purchase our note for $5.6 million – a value $500,000 greater than the asset value determined by two FDIC appraisals. Given the status of the financial markets in December 2009, we were able to secure only a fraction of the value of the building from new lenders and had to combine our tax credit money to reach the $5.6M purchase price. It should also be noted at this time the FDIC was making it a policy to accept offers of at least 80% or more of the appraised value. Our offer which was accepted on December 5 was $500,000 over the appraised value.

Less than 15 days after agreeing to the purchase price, the FDIC placed our note in a pool to be sold to Lennar/Multibank. That sale was consummated by the end of January, way short of the time we needed to close on a new loan.

Upon reading about the purchase in the Wall Street Journal, I contacted Lennar to find out what our options were. They said I needed to talk with Rialto in NYC. April was the earliest they would meet, and prior to the meeting they required us to sign a pre-negotiation agreement as a condition of speaking with them. At my expense I traveled to New York with the Developer and provided a complete financial picture of the asset and our personal financials to senior Rialto management. At this meeting Rialto management stated that it was unfortunate we hadn't closed the deal with the FDIC, that they would not honor it and that they would seek full payment on the note, plus default interest calculated from a year prior when the loan termed, attorney fees, etc. The FDIC with whom we had been working with prior to Rialto never put our loan into default, clearly seeking to optimize the FDIC's return. However, Rialto calculated default interest from the time the loan termed out and has indicated the total owed is now in excess of $9.4M on an asset worth approximately $3.5M in an auction. Further, any shortfall from the sale of the asset they said would be made up by pursuing the guarantors.

Our tax credit structure with the NTCIC is extremely complicated and any change in ownership triggers recapture and loss of the $2.4 million cash that is ready to fund subject to a permanent loan. It was clear that $5.6 million was our total resources available to satisfy the debt and was approximately $2 million higher than the value they would realize through foreclosure. Our financial statements which we had provided also clearly demonstrated that our guarantees have nominal value.

At the end of the meeting, Rialto management said "send us the income based upon a budget we will approve, we won't move to appoint a receiver and we'll work toward a resolution". For the next several months we complied with their requests but at the end of July - in spite of the commitment they made in April and without warning – Rialto moved to foreclose and simultaneously sued the guarantors. They showed neither understanding nor concern with the loss of the tax credit funds. In order to protect the tax credits I retained council and filed Chapter 11. Since August this has cost over $300K in legal fees. Rather than these funds going to resolve the purchase of the note they are going to attorneys. These legal costs have significantly sapped my resources and that of FRED's, ruined our credit, complicated our ability to obtain financing, and further reduced the building's value. I wonder what Rialtos legal fees have cost the FDIC; my guess they are in excess of $500K on this case alone.

Rialto obtained two broker opinions of value that estimated the building would sell for no more than $3.5 million. Furthermore, in a foreclosure Rialto will incur hundreds of thousands of dollars in future tenant improvement costs and leasing commissions. In order to keep the existing tenant/owners they will need to reduce the rents up to 50% to equal rents in similar nearby buildings. Rialto has never even toured the property and appears to be focused on driving towards a foreclosure. Free money makes for strange business decisions.

On my second trip to NYC (at my expense) to try to negotiate a resolution, Rialto made it clear that they pay nothing for capital – it is provided by the FDIC at no charge – and therefore they have no incentive to settle. In addition, their management fees from the partnership and our $30K a month rent checks to them are more than enough of a return on free money to keep the legal process moving forward at full steam and not negotiate a settlement. Clearly these actions are designed to do nothing more than pressure us to raise more money to purchase a building for much more than it is worth. We have offered $5M on a building that has a market value of $3.5 and they still want to continue the legal maneuvering. For Rialto cost is no object and their goal is to extract as much as possible out of the local community at any cost to fill their own coffers.

Is Rialto helping the FDIC or US tax Payers?

Rialto's tactics discussed in the attachment shows a litigious approach focused on bankrupting the job creation engine of this country. With legal fees in excess of $500K on a property that is worth between $3.5M and $4.5M, it is hard to see this as a good use of resources, especially when they have been offered $5M for the asset. The business rational to continue to pursue a legal resolution and not negotiate a settlement is not fathomable.

During the construction and renovation of our building we were employing well over 100 workers for two years. Many of these firms were minority owned and small sole proprietors, others were businesses that have had a long standing in the community. Below is a listing of some of the types of firm and skills we employed during the 24 month construction period including but not limited to: carpenters, plumbers, electricians, painters, installers, appraisers, metal workers, geotechnical engineers, architects, roofers, mechanical HVAC contractors, etc.

Over $10M of rehabilitation services were spent on this building because of the vision and financial resources of the project owners. Once these entrepreneurs and visionaries, the backbone of the community, are bankrupt who will provide the needed capital and expertise to hire these workers in the future - the debt collectors sitting in the high rise offices in NYC? It will take a long time for the Portland Metro market to recover from the devastation caused by Rialto's scorched earth strategy.

What to do and Where to start

Recently, Senator Cantwell met with several companies currently dealing with Rialto so I have copied her on this letter and spoken personally with Brad Bare on her staff. There needs to be a congressional inquiry for our legislators to better understand the implications of this program:

- Are all communities being impacted by the unintended consequences of this structure?
- Are other managers performing more in the spirit of the structure to solve problems quickly and efficiently to maximize returns to the FDIC?
- What is Rialto spending on legal fees compared to other managers?
- How many loans have been resolved by Rialto vs other mangers?
- How has the resolution of these loans effected job creation in the local communities?
- How is Lennar benefiting beyond the financial gain from Rialto?
    - Low cost land for future development?
    - Use of tax payer money to grow their business and improve their balance sheet?

I have also been in contact with Senators Ron Wyden and Jeff Merkley. If you have any questions about this matter, please contact them or if I can offer further insights or assistance of any kind, please do not hesitate to contact me.

MEROLLA & GOLD, LLP
ATTORNEYS AT LAW

A. Todd Merolla, P.C. (GA, FL & NY)

Ronald T. Gold, P.C. (GA & FL)

2018 POWERS FERRY ROAD
PARKWOOD POINT, SUITE 800
ATLANTA, GEORGIA 30339

TELEPHONE: 770-984-2300
FACSIMILE: 770-984-0098
www.merollagold.com

e-mail: atm@merollagold.com

May 15, 2012

Congressman Lynn A. Westmoreland
2433 Rayburn House Office Building
Washington, DC 20515

RE: ***Federal Deposit Insurance Corporation's Structured Transaction Program***
House Committee on Financial Services Hearing on May 16, 2012

Dear Congressman Westmoreland:

Please accept this letter and enclosure as testimony on behalf of my clients regarding the Oversight of the Federal Deposit Insurance Corporation's Structured Transaction Program hearing, currently scheduled for May 16, 2012 before the House Committee on Financial Services. I am privileged to represent Mssrs. Ron, Avi, and Moshe Manoah, as well as their companies, in litigation with an affiliated company of Lennar Corporation ("Lennar") and Rialto Capital Management, LLC ("Rialto") in the civil action pending in the Superior Court of DeKalb County, Georgia, styled *CML-GA Rame, LLC v. Rame Properties, LLC*, Case No. 10-cv-9919-8 (the "Manaoh Litigation"). I am expressly authorized to tender this testimony on their behalves.

In my professional experience in Georgia with Lennar/Rialto affiliated-plaintiffs, which are partners with the Federal Deposit Insurance Corporation (the "FDIC") on a 40-60 ownership basis, they have engaged in the following strategy:

- Ignore debtor's requests to "work-out" existing loans, regardless of whether they are performing.
- Sue on the notes and guaranties, rather than foreclose on the property.
  - Georgia is a non-judicial foreclosure state with a confirmation statute regarding proof of the foreclosure price being "fair market value" before pursuing any alleged deficiency.
- Seek the immediate appointment of a receiver, sometimes without notice and a hearing to the debtor, thereby seeking to control the asset without securing legal title.
  - Only if a receiver is not appointed will they foreclose.
  - After foreclosure, then confirm the sale and pursue deficiency judgments against the guarantors.
- Pursue a judgment against the makers of the note and the guarantors.
- Should a judgment be entered, they would then be able to foreclose on the property

at some price well below "fair market value," as the foreclosure would NOT be subject to a confirmation proceeding in order to pursue a deficiency – instead, the actual foreclosure price is simply deducted from the outstanding judgment.

I had the opportunity to review the prepared testimony of Stuart Miller, the Chief Executive Officer of Lennar Corporation for May 16, 2012 and take issue with at least two of his statements based on my personal experience. The first being on page three, where he states "Rialto operates in accordance with the loan documents negotiated, approved and signed by these sophisticated business borrowers, applicable laws, and the rules of the court system, both in the spirit and the letter of the law." The second being the last sentence on page six, he states "our program is to work within the four corners of every loan agreement, each individually considered, and as well within the four corners of the rules and the spirit of our court system and the law."

As you can see in the enclosed memorandum, which is a summary of our statement of underlying facts for a motion summary judgment, currently *sub judice*, the Lennar/Rialto affiliated Plaintiff cannot state with any accuracy the alleged principal balance due: (1) when they delivered demand letters on May 21, 2010 (about 3 months after closing on the $3.05BB deal with the FDIC); (2) when they received the immediate appointment of a receiver without notice and a hearing on August 17, 2010; or (3) today –nearly twenty-one months after they initiated litigation. In fact, they do not even possess the loan history with Omni National Bank or the FDIC for the loans at issue.

In this case, which involves seven commercial properties in the metro-Atlanta area having loans with the failed Omni National Bank (where some former executives were convicted of federal crimes), the FDIC admittedly incorrectly overcharged my clients over $300,000.00 in principal and interest before assigning the loan documents to its new business partner, Lennar/Rialto. Thereafter, Lennar/Rialto did not engage in any good-faith discussions regarding the overpayment before wrongfully and maliciously seizing control of the properties in August 2010. I submit these undisputed facts do not evidence working "within the four corners of every loan agreement," nor "the spirit of our court system."

Thank you, on behalf of my clients and myself, for the opportunity to be heard on an issue that not only affects these individuals, but also our great Nation at large, which continues to struggle to recover, in part, from the failure of so many community banks. If you have any questions, please contact me at your convenience.

Sincerely,

A. Todd Merolla

/no
Enclosure
CC: Clients

168

MEMORANDUM

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

CML-GA RAME, LLC, Plaintiff, v. RAME PROPERTIES, LLC, et.al. Defendants.	)	CIVIL ACTION FILE NO. 10-CV-9919-8

Plaintiff initiated this action on August 16, 2010 against 13 defendants relating to 7 properties developed in the metro-Atlanta area, and immediately received the appointment of a receiver without notice to any defendant. The following day, on August 17, 2010, Plaintiff served the summons and complaint, along with the motion and order appointing a receiver. Approximately a month later, one of the Defendants, William Brinson, died of a stroke. Thereafter, Plaintiff sought to substitute in as a party the Widow Brinson as the executor of the Brinson estate. This despite the fact that there were no identifiable assets in the Brinson estate and the Widow Brinson being soon evicted from her home after a reverse mortgage foreclosure.

The gravamen of the complaint, which contains twenty nine counts, lies in alleged breach of contract based upon promissory notes and guaranties Plaintiff received after its parent company (Lennar Corporation (NYSE: LEN) purchased $3.05 BILLION dollars in real estate related debt from the Federal Deposit Insurance Company as Receiver ("FDIC-R") for 40 cents on the dollar, borrowing half of the $1.22BB purchase price from the United States taxpayers through a seven-year interest free loan from its partner – the FDIC.

The undisputed evidence in this case indicates that Plaintiff failed to deliver adequate and proper notices of default to accelerate the total indebtedness under the applicable loan documents. Further, and more importantly, Plaintiff had no right to seize the properties at issue from the control of the Moving Defendants on August 16, 2010, and in so doing committed an unlawful conversion. In addition, the loan guaranties at issue were procured through fraud by the loan originators, Omni National Bank ("Omni"), which was closed by the Office of the Comptroller of the Currency on March 29, 2012, and appointed the FDIC-R as receiver thereof. One of Omni's co-founders, Jeffrey L. Levine, is currently serving a five-year sentence in federal prison related to his activities in Omni, and its former CEO Stephen M. Klein, the signatory to the Consolidated Loan Agreement at issue in this case, was recently sued by the FDIC seeking $37.2 million dollars in damages.

STATEMENT OF FACTS

I. RAME Properties and the Manoah Brothers.

RAME Properties, LLC is a Georgia limited liability company owned and managed by three of the individual defendants that are brothers: Ron Manoah, Avi Manoah, and Moshe Manoah. RAME Properties, LLC owns an interest in the seven other limited liability company defendants herein, and sought to develop real estate through loans from Omni from 2005 through 2007. The original loans from Omni are summarized in the following table:

Property/Borrower	Date	Loan Amount	Guarantor(s)
Hwy I-85	January 4, 2007	$ 340,000.00	Ron Manoah William Brinson Brinson Fmy Partners
Scales	January 6, 2005	$ 2,035,000.00	Ron Manoah
East Atlanta	March 29, 2006	$ 650,000.00	Moshe Manoah
Chattahoochee	June 16, 2005	$ 1,250,000.00	Avi Manoah
McGinnis Ferry	November 6, 2006	$ 5,083,000.00	Ron Manoah William Brinson Brinson Fmy Partners
Ridgeview	November 2, 2006	$ 1,312,500.00	Avi Manoah
Ashford Dunwoody	September 28, 2006	$ 1,782,400.00	Moshe Manoah
	TOTAL LOANS:	**$12,452,900.00**	

In the Summer and Fall of 2008, the above-referenced loans being in good standing, Omni and the RAME entities entered into a Consolidated Loan Agreement dated December 1, 2008 extending the term for the outstanding loans. As of December 1, 2008, the loans and their appraised values were as follows:

Property/Borrower	Loan Amount	Appraised Value	Date of Appraisal
Hwy I-85	$ 318,500.00	$ 490,000.00	June 19, 2008
Scales	$ 2,035,000.00	$ 2,800,000.00	June 23, 2008
East Atlanta	$ 448,500.00	$ 690,000.00	June 19, 2008
Chattahoochee	$ 1,242,642.00	$ 2,600,000.00	June 4, 2008
McGinnis Ferry	$ 5,500,000.00	$ 7,500,000.00	December 18, 2008
Ridgeview	$ 1,107,500.00	$ 1,740,000.00	June 20, 2008
Ashford Dunwoody	$ 3,200,000.00	$ 4,000,000.00	October 10, 2008
TOTAL:	**$13,852,142.00**	**$19,820,000.00**	**LTV: 70.0%**

While Plaintiff contends that all three Manoah's executed guaranties related to all seven loans in connection with the December 1, 2008 Consolidated Loan Agreement, this is denied by all three brothers. Rather, they each only continued to personally guaranty the original loans; as aptly stated by Moshe Manoah:

> RAME at Chattahoochee, I mean, this is not my loan, so I would never – again, after the fact when the market is down, I would never sign a personal guaranty on something I never signed at the beginning. There was no reason for me to do that.

II. <u>The Closing of Omni and Mismanagement by the FDIC-R.</u>

Less than four months after the execution of the Consolidated Loan Agreement on December 1, 2008, Omni was closed by the Office of the Comptroller of the Currency on March 29, 2012, and appointed the FDIC-R as receiver thereof. One of Omni's co-founders, Jeffrey L. Levine, is currently serving a five-year sentence in federal prison related to his activities in Omni, and its former CEO Stephen M. Klein, <u>the signatory to the Consolidated Loan Agreement at issue in this case</u>, was recently sued by the FDIC seeking $37.2 million dollars in damages.

At this time, the Rame entities were all current on the seven loans at issue in this litigation. But since the outstanding notes all had interest rates tied to the "Omni Prime Rate," which no longer existed as of March 29, 2009, the applicable interest rate became the *Wall Street Journal* Prime Rate of interest. However, over the next year, the FDIC-R delivered erroneous loan statements that failed to contain the proper calculations as to principal and interest due and owing on a monthly basis, and the RAME entities brought the discrepancies to the attention of the FDIC-R.[1] According to the RAME entities, it overpaid the true amounts due by over **$312,000.00**. However, it was not until December 2009 that the FDIC-R recognized and acknowledged the problem. Incredibly, rather than refund the $312,000.00 to the Rame entities, which would be critical to cash flow in an aggressively failing real estate market, the FDIC-R simply wrote down the overpayment against the principal balances in February 2010. The changes to the principal balances from February 2010 to March 2010 per the FDIC-R statements to the RAME entities can be summarized as follows:

---

1 Indeed, a few months after the FDIC-R came into play, it agreed with the contentions of the RAME entities regarding wrongfully holding funds in escrow, and then allowed the escrow payments be applied to certain

Property/Borrower	Principal due 2/1/10	Principal Due 3/1/10	Difference
Hwy I-85	$ 288,108.81	$ 262,362.90	$ 25,745.91
Scales	$ 2,035,000.00	$ 2,035,000.00	$ NIL
East Atlanta	$ 405,691.94	$ 369,479.60	$ 36,212.34
Chattahoochee	$ 1,218,051.62	$ 1,154,451.18	$ 63,600.44
McGinnis Ferry	$ 5,495,000.00	$ 5,495,000.00	NIL
Ridgeview	$ 1,107,500.00	$ 1,107,500.00	NIL
Ashford Dunwoody	$ 3,076,292.81	$ 2,888,886.05	$ 187,406.76
TOTAL:	**$13,625,645.18**	**$13,312,679.73**	**$ 312,965.45**

III. The Assignment from the FDIC-R to Plaintiff

On February 9, 2010, Lennar Corporation (NYSE: LEN) through its subsidiary Rialto, closed two transactions for the assignment of $3.05 BILLION of distressed real estate loans through creation of a multi-layered public-private partnership with the FDIC. The loans at issue herein were among the group of loans assigned on February 9, 2010. In effect, Rialto/Lennar formed a variety of limited liability companies with the FDIC as its partner on a 60-40 basis on the following terms:

- $3.05BB in RE-related debt for a purchase price of $1.22BB (40% of par)
  - Rialto holds a 40% equity interest for $243MM in equity
  - FDIC holds a 60% equity interest for $365MM in equity
  - LLC borrows $627MM, no interest, no recourse, seven year loan
- 5500 loans are purchased, involving 22 failed banks
- 90% of the loans are non-performing, with 33% coming from Georgia
- FDIC funds $32MM in working capital
- Rialto earns a management fee
- For every $0.10 of resolution value over the $0.40 purchase price creates $122MM in profit

Given the foregoing, Rialto controls $3.05BB in RE for an 8% investment ($243MM) that carries no future risk (because the FDIC loan is non-recourse), allows them to earn a management fee regardless of recovery, and has a substantial working capital fund to "recover" non-performing loans (typically through litigation). Indeed, as a

---

monthly loan payments.

general matter and specific to this litigation, Rialto and the FDIC have engaged in the following strategy:

- Ignore debtor requests to "work-out" existing loans, regardless on whether they are performing
- Sue on the Notes and guaranties, rather than foreclose on the property
- Seek the immediate appointment of a receiver (thereby controlling the asset, though not securing legal title)
  - Only if a receiver is not appointed will they foreclose
  - After foreclosure, then confirm the sale and pursue deficiency judgments against the guarantors
- Pursue a judgment against the Maker of the note and the guarantors
- If judgment in entered, foreclose on the property at some price well below "fair market value," as the foreclosure is NOT subject to a confirmation proceeding to pursue a deficiency – instead, the actual foreclosure price is simply deducted from the outstanding judgment

The structure of the FDIC-Lennar/Rialto deal results in a disincentive to "work-out" loans with willing debtors, regardless of whether they are non-performing, and regardless of whether they are deemed non-performing by regulatory rules regarding a severe decline in collateral value. That is, because the acquisition cost of these loans (8% of face value) is miniscule, and the time-cost of money for the first seven years is $NIL (no interest payments on the "loan" from the FDIC), and the potential returns are enormous ($122MM in profit for every 10 cents of resolution value over the 40 cent purchase price), there is no incentive to "flip" the property for a quick profit into the hands of the next generation of home building entrepreneurs (i.e., John Wieland Homes in the early 1990s). Rather, the incentive is to ruin the existing builders through pursuit of guaranties on the notes regardless of the current market value of the real estate used as collateral, and regardless of the borrowers' willingness to stay with the deal (and ride out temporary declines in value).

IV. **Plaintiff's Declaration of Default and the Appointment of a Receiver.**

True to the aforementioned form, Plaintiff showed no interest in a working lender-borrower relationship with the RAME entities and declared a default by letter from its counsel dated May 21, 2010 to each of the seven properties. The fatal problem with these "default" letters is that they contain some unverifiable amount claimed to be due that is entirely unsupported by the record. When asked for the basis for the amount claimed due, Plaintiff could not explain the basis for the calculation of the various demand figures. A summary of the principal amounts claimed due as of May 21, 2010 compared to that stated by the FDIC-R as of March 1, 2010 follows:

Property/Borrower	Claimed on 5/21/10	Principal Due 3/1/10	Difference
Hwy I-85	$ 295,843.00	$ 262,362.90	$ 33,480.10
Scales	$ 2,035,000.00	$ 2,035,000.00	$ NIL
East Atlanta	$ 416,589.00	$ 369,479.60	$ 47,109.40
Chattahoochee	$ 1,227,299.00	$ 1,154,451.18	$ 72,847.82
McGinnis Ferry	$ 5,495,000.00	$ 5,495,000.00	NIL
Ridgeview	$ 1,107,500.00	$ 1,107,500.00	NIL
Ashford Dunwoody	$ 3,113,549.00	$ 2,888,886.05	$ 224,662.95
TOTAL:	**$13,690,780.00**	**$13,312,679.73**	**$ 378,100.27**

That is, when Plaintiff rushed to declare a default regarding the seven properties at issue in this litigation, it was in error by over **$378,000.00**. Further, asserted monthly amounts due on a go-forward basis were grossly overstated by the FDIC-R for each and every one of the seven properties at issue, which apparently cannot even calculate a simple interest-only loan at 3.50%. This amount represents nearly six months of monthly principal and interest payments supposedly due per the last FDIC-R statement dated March 1, 2010, summarized as follows:

Property/Borrower	Monthly P&I Due per FDIC-R on 3/1/10	Terms of Loan	True Monthly P&I Due
Hwy I-85	$ 6,234.83	P&I amort. over 84 mths	$ 4,280.59
Scales	$ 6,133.26	Interest Only	$ 5,935.42
East Atlanta	$ 8,780.36	P&I amort. over 84 mths	$ 6,027.77
Chattahoochee	$ 27,434.53	P&I amort. over 300 mths	$ 6,220.96
McGinnis Ferry	$ 16,561.32	Interest Only	$ 16,041.67
Ridgeview	$ 3,337.88	Interest Only	$ 3,230.21
Ashford Dunwoody	$ 66,651.86	P&I amort. over 180 mths	$ 22,876.24
TOTAL MONTHLY P&I:	**$ 135,134.04**		**$ 64,612.86**

That is, the FDIC-R over stated the monthly obligation by **<u>$70,521.18</u>**. Couple these figures with the fact that the seven properties at issue generate over nearly $900,000.00 in yearly income (Defendants' Deposition Exhibit O), not only were the RAME entities not in default on May 21, 2010, but there were not in default on August 16, 2010 when control over the properties was wrongfully and maliciously converted from them through an improper appointment of a receiver that violated all notions of due process.

During discovery Plaintiff admitted that the amounts claimed due in the various demand letters dated May 21, 2010 were not only incorrect, but were also based upon inadmissible hearsay. In particular, Jonathan Horowitz, Plaintiff's Vice President of Asset Management, testified as follows:

> Q: You based getting a receiver without noticing a hearing on an alleged default on the principal amount due, the loan payments that were due, correct?
> A: That's our position.
>
> ....
>
> Q: And I'd ask for you to take a look at Exhibit 15. Can you identify Exhibit 15?
> A: Appears to be a demand letter from my counsel to the obligors and the borrower, RAME at Highway I-85 dated May 21, 2010.
> Q: Now, on page 2 it identifies that the full amount of monies due and owing in the principal amount of $295,843. Do you see that?
> A: I see that.
> Q: And – and this is the demand letter on which you based the receivership motion, correct?
> A: If that's what it says.
> Q: You're asserting that that amount was due and owing and that RAME at Highway I-85 failed to pay that amount?

> A: At that time, yes.
> Q: Okay. **How did you calculate that number?**
> **A: It was based on pay histories provided in the file.**
> **Q: And can you identify those documents?**
> **A: If you have something to show me.**
> **Q: No, I don't know. I didn't see anything in your document production to indicate that $295,843 was due.**
> **A: Well, if you don't have a document to show me, I don't know. I can't really opine. I'm just saying it would on what the letter says.**

The fact is, Plaintiff did not provide the "pay histories provided in the file" during discovery. Further, in support of its motion for partial summary judgment, Plaintiff failed to properly authenticate the "payment history records" it received from the FDIC and/or ONB to show the demand letters were proper – which they were not.

Indeed, during deposition, Mr. Horowitz confirmed he has absolutely no idea what the proper amount on each loan was due. To wit:

> Q: Okay. This is a document [Exhibit P] that you produced in this case, which is a payoff statement from Quantum regarding Highway I-85, and it's got a little RAME 1361 in the bottom left-hand corner. Do you see that?
> A: Yes.
> Q: Okay. What's the – what's the total unpaid principal balance as of November 12, 2010?
> A: 288,108.81.
> Q: Okay. Were any payments made to draw down the principal between May 21st, 2010 and November 12, 2010?
> A: Without looking – well, looking beyond this, I don't know – what is this RAME at Highway I-85? I don't know if there was any payments applied. Obviously, the mount is less, **so we took a more conservative amount to the benefit of the borrower.**
> **Q: What do you mean a conservative amount?**
> **A: Well, we went with the lowest principal amount that's displayed ultimately on the – on the pay amounts after the default letters were sent. It says 288,108. That's the latest amount we showed from them.** And I don't know if since May through November here, because it doesn't say it was provided here, whether any payments were applied to reduce it from , say rent monies from somewhere else or anything like that. We had no payments from the borrower.
> Q: So you think that you may have gotten rent payments directly in between May 21st, 2010 and –
> A: Well, this is a vacant property, so there's no rent to come from it, but –
> **Q: Right. So I'm trying to understand why is there a difference between your demand letter and the payoff amount for the principal of this payoff**

> **statement from Quantum on November 12th, 2010. <u>Do you have any explanation for that?</u>**
> A: **Probably just because like I said before, the number here, the 292,582 – well, <u>that's close to this</u>, but it's not exact. The 295,843 number you see on Bates stamp 1364.**

While "close" typically suffices for horseshoes and grenades, it should not when a publically controlled company that enjoys a sweetheart deal with the FDIC tries to steal $20,000,000.00 of real estate from developers that always acted in the utmost good faith with its lenders. In fact, Plaintiff admitted its demand letter contained a false amount alleged to be due:

> Q: Okay. So again, why would you use a balance as of July 2009 in your May 21st, 2010 demand letter?
> A: **I don't know why there's a difference on here between the demand and what the pay amount owes, <u>but I would say that the amount owed now is $288,108 principal</u>.**
> Q: So the demand letter was incorrect in the dollar amount demanded?
> A: It's not consistent with what is here – what is on here.
> Q: And as you sit here today, do you believe that your demand letter was – is an accurate amount that was demanded, the 295,843?
> A: I think the demand letter is consistent with other documentation in Exhibit P that shows that the amount – amount outstanding was 295,843, which is in the letter, for example Bats stamp 1368, which is the last page of the summary. You – call it again asset summary, is probably the best description for it, which says the current principal is 295. So I don't want to speculate on when this pay history was reviewed, but in any event the amount on some of these documents show 295 <u>and to err on the side of caution</u> the pay history – or rather the payoff statement shows 288 as the lowest amount possible due. And that seems to be the appropriate amount to ask.
> **Q: Well, actually, it's higher than the amount due. You didn't use the conservative number. You used the higher amount, 295,843 rather than the 288, 109?**
> A: **<u>Yeah, I can't say to why the letter is not consistent with the pay history. I don't recall why it's different there.</u>**

The fact is, Plaintiff has absolutely no idea what the true amounts due are as to the seven properties at issue.

Bransen Patch, MD Group, LLC Testimony

The Honorable Robert R. "Randy" Neugebauer, Chairman
Michael Everett "Mike" Capuano, Ranking Member

Testimony For The Record On "Oversight OF FDIC's Structured Sale Program"
For the Hearing held May 16, 2012
House Financial Services Committee
Oversight and Investigations Subcommittee
US House of Representatives, Washington, DC 20515

MD Group, LLC
3122-100 Fincher Farm Rd, Box 520
Matthews, NC 28105
Phone: 704-651-5939
Email: bpatch@blpatch.com

Bransen L. Patch, Managing Member – May 15, 2012 Bransen L Patch

FDIC, Lennar, Rialto Wall Street Deals Killing Jobs and Undermining Recovery

I am a small business owner and developer in the Charlotte Metro Area. I have worked in this market for over 25 years and have successfully completed many commercial, medical and mixed-use projects. I am writing to share my story of the unfair treatment I have received from Multibank 2009-1 CML-ADC Venture, LLC, the joint venture between the FDIC and Lennar Homes/Rialto Capital Management, LLC.

In February 2009, I was constructing a 26,000 square foot medical building in Waxhaw, North Carolina for the purpose of bringing much needed medical services to this small community. The building's shell was complete, leases and letters of intent were in place and tenant upfits were ready to begin, when I received notice that MagnetBank, the bank financing my project had failed and was taken into receivership by the FDIC.

On February 9, 2010, my loan was bundled with 5,500 other loans and sold for pennies on the dollar to Multibank 2009-1 CML-ADC Venture, LLC, of which the FDIC is a 60% stakeholder. After numerous attempts at a workout and a year long legal battle with Multibank (FDIC-Lennar Homes/Rialto), my property was fraudulently foreclosed upon and sold in May 2011. At the foreclosure sale, Multibank (FDIC-Lennar Homes/Rialto) bid on my property for much less than the amount of the original note. Now they are legally pursuing me for the deficiency. It's not enough for them to take my building; they want to steal my family's livelihood, too. I have spent well over $200,000.00 in legal bills to defend myself and my family against these predators, wiping out my entire savings and taking a second mortgage on my home. I don't understand how this can happen when I'VE WORKED SO HARD, HONORED MY CONTRACT OBLIGATIONS and NEVER MISSED A PAYMENT.

I am not alone. I have met many others across the United States whose properties are also being unfairly foreclosed upon by the joint venture between the FDIC and Lennar Homes/Rialto Capital. Like me, these builders and developers had performing loans in good standing when their banks failed them. Like me, they suddenly found themselves forced into foreclosure, stripped of their property, and fighting deficiencies.

The FDIC's joint venture with Lennar Homes/Rialto Capital Management, LLC is purposely and systematically damaging many small businesses and the families that depend on them. Please stop the predatory practices of the FDIC and their partners.

End of Testimony

Testimony - Robindale Industrial Park, LLC

In 2008, I bought a piece of property on Sahara and Boulder Hwy for $750,000. Shortly after I purchased this property, Silver State Bank offered me a $4,000,000 loan so that I could start construction on a commercial shopping center. Silver State Bank had also given me a $285,000 start-up construction loan. Three months into construction Silver State Bank went bankrupt. Because of the bankruptcy, I was forced to pay the construction company approximately $400,000 out of pocket for the last payments application and to clear all the mechanic liens. When the FDIC took over the loans, they demanded that I make the interest payments current and repay the start-up construction loan. I was not able to repay any of these debts at the time and I tried to negotiate with the FDIC, but they said I must pay immediately otherwise they would not considering extending the term of my note. Then I was forced to take out another loan at $1,120,000. From this $1.2 million dollar loan, I paid the FDIC approximately $550,000 to clear the start-up construction loan and accrued interest. Even though I repaid the start-up construction loan, the FDIC did not release the collateral property from which the loan was given. Instead of releasing the collateral property, the FDIC added this property to the $4,000,000 loan. The FDIC told me that after I made the interest payments current they would work with me. Approximately a year later the FDIC did not work with me and they ended up selling the note to Rialto. The first demand that Rialto made was that I needed to fly to New York immediately to discuss the note. First, I contacted my attorney get a better understanding of the situation. My attorney contacted Rialto and requested that we should have a phone conference to discuss these matters. Rialto said that they will not discuss matters over the phone and that is was mandatory to discuss matters face to face. My attorney and I flew to New York for a meeting with Rialto which lasted 20 minutes and nothing was accomplished. At this meeting Rialto said that they want the note paid in full. They also said that they do not care if I file for bankruptcy or take any legal action because they would still foreclose the property and attacked every single one of my unencumbered assets to pursue any deficiencies. I was under the impression that the meeting was intended to discuss a plan to pay the note in which both the lender and borrower are comfortable. Instead, the meeting was intended to threaten me into paying off the note immediately. My attorney and consultants have been sending Rialto many proposals in the attempts to resolve this issue. Rialto keeps rejecting my proposals and they are not being responsive. About 1 month ago I received a notice of foreclosure. At the time I received the foreclosure notices, I assumed Rialto and I were still in good faith negotiations. It seems that they have no problem rejecting my proposals, but they will not give me an idea as to what they are willing to accept. Please keep in mind that this property is only 53% complete. This building has been sitting for approximately 3 years in terrible weather conditions. The building has been subject to vandalism, copper thief, and etc. As the building continues to deteriorate, I pay about $500 per month to have the graffiti cleaned subject to the county requirements. I also have many other expenses such as property taxes, equipment storage, insurance, and fence rental. I am not asking Rialto or the FDIC to sell me back the property at pennies on the dollar. It is my wish to work out some kind of deal that is both beneficial to the lender and affordable for the borrower. Due to the damage that the building has received, the cost to complete the structure keeps rising. I would like to complete the construction as soon as possible and generate revenue in order to make payments to Rialto.

15950 N. Dallas Parkway, Suite 400, Dallas, TX 75248
Phone 972-361-8086 | Facsimile 972-361-8005
www.IntuitivePAC.com

Intuitive IPAC
Processes and Controls
www.IntuitivePAC.com

June 14, 2012

Office of Congressman Lynn Westmoreland R-GA 3rd Dist.
Attn: Ellen Johnson
2433 Rayburn House Office Bldg.

cc: House Committee on Financial Services
Attn: Gisele G. Roget
2129 Rayburn House Office Bldg.

cc: Office of Congressman Randy Neugebauer R-TX 19th Dist.
Attn: Erik Johnson
1424 Longworth Bldg., 202-225-4005

Congressman Westmoreland,

IntuitivePAC, LP ("IPAC") is please to present this letter along with the following pages for inclusion in the record of the **May 16, 2012 2:00 p.m. hearing on the FDIC's Structured Transaction Program held by the House Financial Services Committee, and specifically its Investigations and Oversight Subcommittee.** The professionals of IPAC have extensive prior experience helping the FDIC achieve better than "pool sale" returns on over $4 Billion in loans by achieving compromises between borrowers and the FDIC. IPAC believes this approach to maximize FDIC's returns while preserving the small businesses which are the foundation of our economy. The following pages embody a current, real time effort by IPAC to achieve in its representation of borrowers what IPAC's key professionals, prior to the formation of IPAC, achieved while serving the FDIC as resolution assistance contractors. IPAC submitted a question to various committee and subcommittee members just prior to the May 16 hearing. That question has been revised and is included below, to be followed by additional remarks concerning the remainder of this 50 page submission (inclusive of this letter and spreadsheet exhibit).

I. QUESTION :

If it could be demonstrated that...

either...	(1) a submitted Offer in Compromise, if approved, would likely produce a better return than sale of the debt in a pool sale;
or...	(2) with reasonable negotiation, and no additional cost, an agreed compromise amount could be reached that would likely produce a better return than sale of the debt in a pool sale;
and	that the pursuit of options 1 and/or 2 above, on a regular basis, could potentially have a positive impact on FDIC's efforts to restore the coverage ratio to more acceptable levels, and perhaps reduce the time to reach a 1.35% coverage ratio to significantly less than 8 years;
then	shouldn't FDIC manifest an inclination toward compromise, even if the reduction sought exceeds 15%?

II. EXPLANATION:

Assets of a closed bank that are not purchased by an acquiring institution will eventually be sold per DRR guidelines, most to be auctioned off to approved bidders in pools sales. An exception to this end result is for the FDIC to compromise a given debt with the borrower. Compromise is better for the borrower because, in addition to reducing the borrower's debt, it allows the borrower an opportunity to select a lien holder whose business practices are more consistent with, and complementary to, its own. Compromise can also create advantages for the FDIC, consistent with its mandated objective of maximizing the return to the receivership. More specifically, compromise leads to a higher sales price for a given asset than the same asset would bring in a pool sale. Of course, inclusion of a seriously distressed asset in a pool of better loans can lift the value of the more toxic loan; however, the converse is true as well. A comparison of compromise to sale, observing distinctions on a loan by loan basis as well as distinctions between the two approaches over time and with a cumulative analysis, will very likely demonstrate that compromise can significantly increase returns to the FDIC, and consequently the American taxpayers, when viewed over time and aid it in reaching a 1.35% coverage ratio significantly sooner than what is currently estimated. Compromises approved during the receivership of Franklin Bank, S.S.B., Houston, Texas evidence the positive returns generated for the FDIC through compromise. *(Records are available and can be provided almost immediately.)* Parties that do not benefit from compromise may include the sales agent entity that prepares asset pools for bid, the private contractor assisting the FDIC with the resolution of the receivership estate, and the fund that wins the bid and acquires the sold assets.

In contrast, the sale of a borrower's debt in a pool sale places it in the hands of a lien holder who typically wants only to foreclose on the underlying asset and is unwilling to provide any discount of the debt to the borrower. Furthermore, FDIC's returns tend to be less from the sale of assets in a pool sale, and this tendency, which is significant, can be demonstrated through a proper analysis of pool sale historical data as compared to that accomplished at Franklin Bank, S.S.B, Houston, Texas and those compromises proposed by borrowers of Tennessee Commerce Bank.

Tennessee Commerce Bank went into receivership January 27, 2012. The acquiring institution under a loss share agreement – Republic Bank – has purchased at least 20% of the bank's loans. The remaining loans are now held by FDIC as Receiver and are destined to be auctioned at pool sale. Certain borrowers of TCB whose loans were not acquired by Republic Bank have submitted offers in compromise, requests for restructure, or other requests that FDIC take certain authorized actions.

Testimony at subcommittee hearing has evidenced FDIC's reluctance to prioritize compromise as an effective solution.

III. Possible Answers

Yes, FDIC should manifest such an inclination. FDIC should memorialize this inclination in the form of a directive or memorandum. By way of an example, FDIC manifests an express disinclination to use its power of Repudiation, only implementing it as an act of last resort. This disinclination toward the use of Repudiation is memorialized by directive and/or memorandum delivered to the various receivership personnel and resolution assistance contractors. In like manner, an inclination toward compromises that, while they may be greater than 15%, could reasonably be believed to achieve a better economic result to FDIC than sale of the compromised assets at pool sale, should be memorialized by directive and/or memorandum delivered to the various receivership personnel and resolution assistance contractors. FDIC should provide sufficient information about their budget, specifically as it relates to achievement of the 1.35% coverage ratio anticipated in about 8 years, to allow a valid comparison and revision of FDIC's estimate upon proper analysis of the potential impact of adopting a policy that favors compromise and allows reasonable offers the opportunity to be considered, deliberated, and approved where appropriate.

The pages that follow contain cases, in the format used by FDIC to support each decision made with respect to a borrower's debt, which have been prepared by IPAC on behalf of the borrowers who have engaged IPAC to aid them in submitting offers in compromise to FDIC. Immediately following this cover letter is a chart showing the 12 borrowers of the former Tennessee Commerce Bank which IPAC is assisting. The chart also indicates the individual cases IPAC has prepared on behalf of those borrowers to accompany each offer. Not all cases have been included in the following pages since this submission has been limited to 50 pages. One case, prepared for Capital Leasing and Finance, Inc., has been provided in its entirety to show exactly what a submitted case looks like. The remainder of the cases included have been reduced via spacing adjustment and deletion of text related to offers to purchase and other matters not material to the committee's efforts, and we have attempted to clearly indicate where such deletions have been made. For two borrowers, we have not included a case though one has been prepared for each of them; they are represented on the chart. For one borrower, two cases are included, one of which is actually a hybrid of two cases that were actually submitted separately; explanation is provided in the case.

It is our sincere belief, and actual experience, that our efforts benefit both the borrower and the FDIC and we are prepared to assist interested members of Congress in demonstrating this. Key individuals within IPAC are introduced below. Thank you for this opportunity to contributing our understanding to the committee's efforts.

At your service,

William K. Peebles

William K. Peebles is managing partner of IPAC and a champion of the benefits of compromise, having been pursuing such solutions since the closure of Netbank in Alpharetta, GA. He is primarily responsible for negotiations. This is his vision.

Matthew E. Haddock is manager of client relations for IPAC, and is primarily responsible for the pages that follow, including their construction and credit analysis. These are his words.

Daniel Duplantis has on many occasions served as a subject matter expert to the FDIC and is primarily responsible for valuation analysis. These are his numbers.

Special thanks to Scott Warren, asset manager and IPAC employee.

April 30, 2012

Case No.: ___________
Log No.: ___________

MEMORANDUM TO: Receiver-in-Charge

FROM: (Case Author's Name, Title)
Loan Officer, Title

SUBJECT: DRR, Jacksonville Field Operations Branch
10423, Tennessee Commerce Bank, Franklin, TN
In Receivership: January 27, 2012
Asset Number: (7022, P-3388, et al.) ($1,441,955.07-BV)
Asset Name: Capital Leasing and Finance, Inc.

RECOMMENDATION: That authority is granted to:

1. Compromise Asset by accepting $502,881.83 representing 34.875% of the outstanding balance ($1,441,955.07 as of April 26, 2012), as full settlement of the principal obligations. B1(i)

2. Write off the remaining principal balance, accrued interest, and all other fees after settlement, and release any and all collateral serving as security for the debt. B25(i)

Issue 1099? Yes ___X____ No _______

____
(Case Author's Name, Title)Date
RAC, Loan Officer, Title

____
Robert W. Chamberlain Date
Receiver-in-Charge
FDIC/DRR

APPROVED UNDER DELEGATED AUTHORITY: B1 (i) & B25 (i)

Receiver-in-Charge

Asset Number	Asset Name	Book Value	Accrued Int.	Collateral Value*	Prior Lien **
7022, P-3388 & See Exhibit 3	Capital Leasing & Finance, Inc.	$1,441,955.07	Paid Monthly	$0,000,000 as is $0,000,000 quick	N/A

* *Footnote*
** *Footnote*

EXECUTIVE SUMMARY:

Tennessee Commerce Bank ("TCB") provided financing to Capital Leasing & Finance, Inc. ("Borrower" or "CL&F") through two separate Revolving Lines of Credit totaling $2,750,000.

Loan P-3388

Loan number P-3388, originated November 1, 2008 in the amount of $2,500,000, provided truck and equipment lease financing to CL&F's clients. The UPB on loan number P-3388 may be, and likely is, redundant and duplicative to the aggregate UPB on 102 individual promissory notes as described in more detail in the "Description of Assets" section below. The aggregate UPB of these 102 loans, or synonymously the UPB of P-3388, is approximately $1,254,457.41, leaving an unfunded commitment of approximately $1,245,542.59. Borrower has not executed the "No Fund" letter with respect to either these 102 individual promissory notes or Loan P-3388.

Loan 7022

Loan number 7022, originated April 30, 2011 for $250,000, made up for any payment deficiencies from delinquent customer payments to CL&F and covered any other miscellaneous operating expenses. With a UPB of $187,497.66, this loan carried an unfunded commitment through January 27, 2012, the bank closure date, of $62,502.34. Borrower signed the "No Fund" letter sent from the FDIC March 9, 2012 although the circumstances of its execution, as further described in Holly Paetz's affidavit, may bring into question its enforceability. *See Exhibit 1, Affidavit of Holly Ann Paetz, April 27, 2012.*

The combined book value of the assets described above is $1,441,955.07 plus accrued interest. Loan 7022 (BV $187,497.66) matures April 30, 2012 – today. The remainder of the combined book value, being actually comprised of 102 individual small loans, has multiple maturity dates ranging from the earliest of May 17, 2012 to the latest of October 29, 2016. All loans are current. Borrower is arranging financing for the takeout through XMI Financial Services, LLC, in an amount sufficient to finance Borrower's offer herein of $502,881.8 representing 34.875% of BV as full satisfaction of Borrower's entire indebtedness. The takeout letter from XMI Financial Services, LLC will be forwarded as soon as it has been received by Borrower. The Borrower's offer represents the highest value as detailed later in the case and provides the FDIC with the quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of Asset Numbers 7022, 3388, and the multiple assets listed on the exhibit attached to this case as Exhibit 3, and release the collateral in exchange for $502,881.83; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:

Borrower: Capital Leasing & Finance, Inc. **Line of Credit $250,000** • **Loan Number:** 7022 • **Origination Date:** 04/30/11	**Borrower: Capital Leasing & Finance, Inc.** **Line of Credit $2,500,000** **See also Spreadsheet of 102 individual loans attached hereto as Exhibit 3, which are believed to be duplicative and**

• **Maturity Date:** 04/30/12 • **Loan Amount:** $250,000 • **Current Balance:** $187,497.66 • **Unfunded Commitment:** $62,502.34 • **Interest Rate:** 6.25% • **Accrued Interest:** Paid Monthly • **Status of Loan:** Current • **Collateral:** 102 Transactions/leases and related equipment • **Date of and most recent valuation of the collateral:** FDIC Appraisal Review ##/##/## $###,### • **Guarantor:** Holly Ann Paetz	**redundant to the UPB on this Line of Credit** • **Loan Number:** P-3388, et al. • **Origination Date:** 11/01/08 • **Maturity Date:** Multiple – see Exhibit 3 • **Loan Amount:** $2,500,000 • **Current Balance:** $1,254,457.41 • **Unfunded Commitment:** $1,245,542.59 • **Interest Rate:** Prime + .50% Floor = 6.25% • **Accrued Interest:** Paid Monthly • **Status of Loan:** Current • **Collateral:** 102 Transactions/leases and related equipment (See Exhibit 3) • **Date of and most recent valuation of the collateral:** FDIC Appraisal Review ##/##/## $###,### • **Guarantor:** None

CL&F is an equipment leasing company that focuses on the over-the-road trucking industry, specifically geared towards the small, independent trucker. Many of CL&F's customers can be categorized as "B grade" or "alternative grade" credits. CL&F has successfully carved out a niche in the truck leasing business due to many lenders applying increasingly stringent underwriting guidelines dictated by the depressed economy. Although very labor intensive, this niche market has proven a successful formula for CL&F. Each customer relationship has been based on a comprehensive knowledge of the credit and customer history. CL&F does not lend solely based on a credit score; they take the time to understand the full scenario and custom tailor each decision. An Affidavit of Holly Ann Paetz, owner of CL&F, is attached hereto as Exhibit 1 to aid in understanding the history and function of this credit facility, as well as the circumstances that have occurred since bank closure.

At the time of bank closure, TCB held 102 individual promissory notes in the name of CL&F secured by 102 individual leases between CL&F as lessor and multiple individual lessees. *See*

Exhibit 3a, CL&F Receivables, April 27, 2012. Each time CL&F entered into a lease transaction, CL&F submitted a lease package to TCB along with a note and security instrument package. TCB advanced funds to CL&F based on the total amount of payments to be collected during the lease term. Each lease and loan package for all 102 loans was executed using uniform documents. The entire loan and lease package for David F. Sellers as the lessee, CL&F as the lessor/borrower, and TCB as the lender is attached hereto as an example. *See Exhibit 4, Promissory Note, January 17, 2012, together with Assignment of Equipment Lease, Lease Agreement, and ancillary documents.* The lessees remit monthly payments to CL&F pursuant to the 102 leases. CL&F remits individual payments to TCB pursuant to the 102 loans. As structured, CL&F earns a payment spread on each of the 102 monthly payment remittances. The number of leases CL&F could use as security for individual notes was subject to a cap in the aggregate of $2,500,000. To evidence this cap, CL&F and TCB executed Loan P-3388 discussed below. The parties eventually determined there was no need to renew this note and continued to observe the $2,500,000 cap. Attached is recent evidence—in this case $1,501,302.67—of the additional commitment available with respect to these individual loans. *See Exhibit 3b, Balance Sheet, December 14, 2011.*

Loan P-3388 has been described previously herein as being redundant and duplicative to the 102 individual loans in Exhibit 3. This conclusion is based on the Borrower's understanding of the evolution of this credit as well as the documents in Borrower's possession and attached hereto. This loan began as a $300,000 line of credit in September 2003. Over the years, this loan was renewed, extended and increased, eventually to the amount of $2,500,000. The last renewal in Borrower's possession was executed in November of 2008 and shows a maturity date of

November 1, 2009. *See Exhibit 5, Change in Terms Agreement & Commercial Security Agreement, November 1, 2008.* It is the belief of Holly Paetz, owner of CF&L, that no payment was directly applied to TCB to Loan P-3388. Being unfamiliar with the bank's accounting and reconciliation procedures, she is uncertain whether this loan was actually renewed at its maturity. Her understanding is that her company's debt on the 102 individual loans is now synonymous with the debt on Loan P-3388 or, in the alternative, that Loan P-3388 is no longer an enforceable debt instrument.

Loan number 7022, a revolving line of credit in the amount of $250,000 executed April 30, 2011, provided "gap fill" for the times borrowers went delinquent on their monthly payments. *See Exhibit 6, Promissory Note, together with Commercial Guaranty, and ancillary documents, April 30, 2011.* This was the mechanism that insured CL&F was never late on its monthly obligation to TCB, regardless of the performance of Borrower's clients. It matures April 30, 2012, is personally guaranteed by Holly A. Paetz, and carries an unfunded commitment of $62,502.34. Borrower executed a "No Fund" letter submitted to her by the FDIC which may purport to eliminate the possibility of drawing furthér funds from this line of credit. However, the circumstances of its presentation, including a phone conversation between Ms. Paetz and an asset manager believed to be employed by the private RAC contractor on behalf of the FDIC, may raise questions of its enforceability. These facts are set forth in the Affidavit of Holly A. Paetz previously referenced.

The 102 individual loans shown on Exhibit 3, Loan 7022, and Loan P-3388, if it is even a "live" document, are all current. All loans are in the name of a single borrower: Capital Leasing & Finance, Inc. The smaller of the two loans, Number 7022 is personally guaranteed by Holly Ann

Paetz. As for the 102 individual loans, they carry no personal guaranty on the part of Holly Ann Paetz; however, each individual lease transaction provides for the personal guaranty of the executing lessee which may, by assignment, extend to TCB, and therefore FDIC, as the holder of the debt secured by the leases.

BACKGROUND:

Due to the nature of the business of CL&F, borrowing monies to re-loan to their customers, it has become increasingly difficult to find a lender to step into the shoes left by the closure of TCB. As stated in Holly Paetz's affidavit, most banks have now enacted a new policy of not lending to firms that resell those funds. In some instances banks have decided to exit lending on the transportation industry as a whole. This has left CL&F in a difficult spot.

With the closure of TCB, and other banks exiting the sector, revenue for CL&F has been drastically reduced, approaching half of what it was prior to bank failure. CL&F is forced to turn away new and repeat customers seeking financing, not to mention that when combined with the standard lease runoffs, the outlook is bleak for the continued survivability of this company without a significant reduction in UPB which will allow CL&F to move this facility to a new lender, providing additional financing capacity which in turn will allow them to capture and retain business. Without this CL&F will be forced to close their doors.

One of two loans with TCB, Loan 7022, was drawn on whenever CL&F had a no-pay or a slow-pay customer. This facility "filled the gap" until CL&F could collect payment and resolve the situation. With this credit facility no longer advancing when needed, due to the bank's closure and execution, albeit circumspect, of the FDIC's No Fund letter, CL&F is now forced into making up that difference from monthly cash flow or capital reserves, placing a tremendous burden on the company, which cannot be sustained.

DISCUSSION:

Several factors come into play in the valuation of this asset. The analysis is the same for the 102 individual loans as it is for Loan P-3388 so no distinction is made in this discussion section between the two. The fact that there are 102 individual loans to CL&F instead of a single loan to CL&F secured by 102 leases essentially makes CL&F a "servicer" with respect to TCB/FDIC. Applying this analogy, potential purchasers of FDIC pool sale assets will generally pay substantially less for assets where they are unable to act as servicer of the debt they just purchased.

The value of the underlying collateral (over-the-road tractors, trailers, and/or equipment) for these 102 leases does not support the current UPB which also reduces the potential payment by a pool purchaser. CL&F did not lease new tractors, trailers, and equipment, it lease used. Further, when repossession of the collateral is required, a substantial amount of recovery resources will be expended in locating, acquiring and transporting the equipment. This type of collateral potentially can be spread across the country. Again, potential pool purchasers give little value when the above circumstances are presented as part of a pool.

Original Financials Capital Leasing & Finance, Inc.	Current Financials (12/31/2011) Capital Leasing & Finance, Inc.
• **Cash:** $_______________ • **Cash Equivalent:** $____________ • **Total Assets:** $________________ • **Total Liabilities:** $	• **Cash:** $__16,630_____________ • **Cash Equivalent:** $__86,750____ • **Total Assets:** $_1,789,607_____

• **Net Worth: $**__________________	• **Total Liabilities:** $_1,682,709___ • **Net Worth:** $ 106,898
Original Financials **Holly Paetz** • **Cash: $** • **Cash Equivalent: $** • **Total Assets: $** • **Total Liabilities: $** • **Net Worth: $**	**Current Financials (12/31/2011)** **Holly Paetz** • **Cash:** $ 18,000 • **Cash Equivalent:** $ 0 • **Total Assets:** $ 1,531,600 • **Total Liabilities:** $ 707,268 • **Net Worth:** $ 824,332

Borrower's and Guarantor's Financial Statements do not warrant alternatives to the Receivership for resolving this asset. *See Exhibit 7, Borrower's Tax Returns, 2008-2010; see also Exhibit 8, Borrower's Year-end Balance Sheets, 2009-2011; see also Exhibit 9, Personal Financial Statement of Holly A. Paetz, April 9, 2012.*

Borrower maintains little hope in staying in business without a reduction in UPB allowing for a refinance with another lender. Even with the benefits of a minority-owned business, Borrower has found banks unwilling to refinance this portfolio at its current UPB. Considering the above, the benefit of a substantially and warranted reduction in UPB will give a female-owned small business the desperate help needed to stay in business. Furthermore, by the FDIC granting this request for compromise, the FDIC is directly fueling the over-the-road truckers that without CL&F, would find themselves facing little access to credit which they also need to stay in business. These small business owners call CL&F every week asking "Has anything changed? Can you help us out again yet?" Borrower submits this Offer in Compromise of $502,881.83 which produces a much higher economic recovery for the Receivership and thus should be accepted.

The unfunded commitment of $1,245,542.59, supported both by written agreement and course of business dealing, is almost equal to the current UPB and if not repudiated, will reduce the effective balance almost to zero when being bid on in a pool sale. Purchasers must consider the high costs of recovery, when needed, the continual depreciation of used and steadily devaluing assets, the presence of an unfunded commitment virtually equal to the UPB, the absence of a guarantor on the note; all of which has a direct and negative effect on price. **Historically, credits that present with these issues command a near zero price.**

CONCLUSION:

The settlement offer of $502,881.83 produces a higher economic recovery for the Receivership and thus should be accepted. Additionally, a modification of the loan will not be required of the Receivership.

EXHIBIT – i

Concurrence Signature Page

Concur:	Concur:
______________________________	______________________________
First Last Date Asset Manager RAC	First Last Date Project Manager RAC

EXHIBITS:

1. Affidavit of Holly Ann Paetz - April 27, 2012
2. Takeout Letter from XMI Financial Services, LLC
3. Capital Leasing & Financing Receivables- April 27, 2012
4. Promissory Note & Lease Agreement, January 17, 2012
5. Change in Terms Agreement, Nov. 1, 2008

6. Promissory Note, Commercial Guaranty, ancillary documents, April 2012
7. Borrower's Tax Returns – 2010, 2009, 2008
8. Borrower's Year-end Balance Sheets – 2011, 2010, 2009
9. Personal Financial Statement of Holly A. Paetz - 2012

CONTACTS:

April 24, 2012 Asset Number: ##### - $7,859,278.42-BV
Asset Name: A+ Storage Downtown @ the Gulch, LP

RECOMMENDATION: Compromise Asset by accepting $4,300,000.00 representing 54.71% of the outstanding balance ($7,859,278.42), as full settlement of the principal obligations. B1 (i)

EXECUTIVE SUMMARY: Tennessee Commerce Bank ("TCB") provided financing of $7,898,814.00 to A+ Storage Downtown @ the Gulch, LP ("Borrower" or "Downtown") on October 18, 2011 to refinance two prior TCB acquisition and construction loans, loan # 11040 in the amount of $7,448,814.62 and loan # 15821 in the amount of $450,000.00 respectfully. The original loans financed the acquisition and development and conversion of an old warehouse into a 556 unit storage facility near Nashville (Downtown), Tennessee. The loans were fully drawn and construction completed in May of 2008. The Downtown storage facility opened in June 2008.

The facility consists of a single loan with a book value of $7,898,814 and the loan is current. The note is subject to an interest rate of 6.0%. Despite absorption rates that are more than 57% below budget projections, Borrower has continued to make timely payments. The loan matures October 18, 2015 with a final balloon payment of $7,371,858.93. Borrower has obtained alternate financing as evidenced by the exhibited commitment letter from Pinnacle National Bank. *See Ex.1, Commitment Letter, April 27, 2012.* The take out bank's commitment is $4,300,000 representing 54.71% of BV as full satisfaction of TCB's entire indebtedness. The Borrower's offer represents the highest value to the Receivership and provides the FDIC with both the best and quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of this Asset and release the collateral in exchange for $4,300,000; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS: Borrower purchased an existing warehouse in an urban area close to downtown Nashville, Tennessee and converted it into a storage facility. The 556 unit storage facility opened in June of 2008 after 7 months of construction. For the acquisition, TCB provided financing with Loan Number 15821. TCB provided the funds to complete the facility with Loan Number 11040. Both of these loans were later refinanced with the loan that is the subject of this case. *See Ex. 2, Disbursement Request and Authorization, dated October 18, 2011.*

To accomplish this refinance, Borrower executed a promissory note on October 18, 2011 in the amount of $7,898,814.00 payable to TCB. *See Ex. 3a, Downtown @ the Gulch Promissory Note, October 18, 2011; see also Ex. 3b, Business Loan Agreement, October 18, 2011.* The note is subject to an interest rate of 6.00%. Monthly payments of principal and interest began on November 18, 2011, in the amount of $45,000.00 that have since increased to $51,500.00 on April 18, 2012 and there is a final balloon payment in the amount of $7,371,858.93 on the maturity date of October 18, 2015. The completed 556 unit storage facility serves as collateral for this loan. The loan is personally guaranteed by Thomas H. Pierce.

BACKGROUND:

Borrower has remained current since bank closure on January 27, 2012, despite absorption rates of 57.2% less than budgeted projections. Evidence of Insurance is in effect and attached. *See Ex. 4, Certificate of Liability Insurance, dated April 17, 2012.*

DISCUSSION: Subject property is income producing and therefore, capitalization of the net operating income is the best indicator of value. Using net income for 2011 of $443,463 capitalized at 9% indicates a Fair Market Value of $4,900,000. Applying for a new loan to take-out the Receivership will require Debt Service Coverage Ratio of 1.2% and requires a loan amount of $4,298,535. Consequently, borrower has proposed a Compromise Offer of $4,300,000. Borrower's and Guarantor's financial statement does not warrant the pursuit of any losses incurred by the Receivership as current market conditions have deteriorated their financial statements.

The Downtown location was built close to the central business district of Nashville, Tennessee. The land and warehouse were purchased at the top of the market and prices for like properties in the immediate area have been cut in half due to the recession. Several nearby high-rise condos and apartment complexes were completed in 2008 and were initially 90% sold out or leased. The recession caused 80% of those commitments to back out and many of those condos were sold at auction. Two (2) of the four (4) high-rise complexes were bankrupt and several other planned projects were cancelled. In 2010, one (1) mixed-use apartment complex in The Gulch, a 10 Story undeveloped 123 acre property sold for half the original acquisition cost. The property sold for $1.75 million (all cash) and was 50.72% of the original cost $3.45 million in 2008. The property is .30 miles from the Downtown storage property.

Conversion of an older facility tends to increase costs over new construction. Other factors, such as access to the greater demand that comes with being located in a central business district, often justify these increased construction costs. With respect to this specific project, structural issues in this old warehouse dictated that all phases of this warehouse conversion be built out at once, increasing the initial debt substantially. Increasing costs of taxes, insurance, and utilities burdened this facility with an additional $25,000 in monthly expenses. Borrower anticipated absorption in the 99% range. Requests for home building permits, the strongest indicator of future absorption for storage facilities, dropped dramatically, existing demand for supplemental storage disappeared, and anticipated demand never materialized. The operating budget forecasted leasing 19 units per month (228 annually). Actual leases were drastically lower than budgeted. In the last 24 months only 191 units have been leased, 265 less than predicted. This represents a 57.2% shortfall from budgeted estimates. Delinquencies have increased by 78% since 2010, and actual absorption rate is 41.8% on anticipated performance.

Typically in the self storage industry stabilization can be reached within two years, but this facility has been open almost four years and has not reached stabilization. At the time of TCB's failure, the Downtown storage facility was not generating enough income to successfully find alternative financing for the outstanding balance. With occupancy rates and net operating income at minimal levels, Borrower is unable to obtain new financing unless granted a significant principal reduction on the outstanding balance.
No alternatives are available other than placing the loan in a proposed pool sale. Based on this information, accepting the current offer of $4,300,000 yields a higher return to the Receiver.

June 15, 2012

Asset Number: 7764 ($2,940,000-BV)
Asset Name: BORROWER

RECOMMENDATION:
Compromise Asset by accepting $450,000.00 representing 15.31% of the outstanding balance ($2,940,000), as full settlement of the principal obligations. B1(i)

EXECUTIVE SUMMARY:
Tennessee Commerce Bank ("TCB") provided financing of $2,950,717.73 to BORROWER ("Borrower") on April 30, 2010 to finance Borrower's acquisition, rehabilitation, and expansion of the shopping center located at [ADDRESS], [CITY], Tennessee. Community First Bank & Trust ("Community First"), of Columbia, Tennessee, actually originated the loan in the total amount of $11,802,870.92 and sold a 25% participation interest to TCB. Community First, currently under a consent order, remains the lead bank. The loan was fully drawn and all planned rehabilitation and expansion was completed in March 2012.

The book value of 100% of the asset is $11,760,000.00 (as of April 1, 2012) including all accrued interest. The book value of TCB's 25% participation interest is $2,940,000.00. The loan matures April 30, 2015 and is current. Borrower has obtained alternate financing as evidenced by the exhibited commitment letter from USB. The take out bank's commitment is $450,000.00 representing 15.31% of BV as full satisfaction of Borrower's entire indebtedness to TCB. The Borrower's offer represents the highest value as detailed later in the case and provides the FDIC with both the best return and the quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of Asset Number #### and release all collateral, including all additional collateral pledged subsequent to the loan's inception, in exchange for $450,000.00; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:
Borrower buys underperforming properties and turns them into performing properties. With financing from Community First, a bank with which Borrower has maintained a long and mutually beneficial relationship, Borrower purchased a shopping center in Columbia, Tennessee. The shopping center was virtually vacant when Borrower bought it. Borrower rehabbed the existing structure, added two large suites to it, and added two detached structures, one with four suites and one with six suites. Today, only one suite in the entire center is vacant.

To finance the project, Borrower turned to its trusted lender, Community First, and executed a promissory note payable to Community First in the amount of $11,802,870.92. *See Ex. 2, Promissory Note, April 30, 2010.* At some point, Community First sold a 25% participation interest in the loan to TCB. Payments originally included principal and interest but a modification converted the loan to interest only until this past April 1, 2012, when the loan converted back to P&I with an interest rate of 5.9%.

The loan is personally guaranteed by [Mr.] Borrower and his wife, [Mrs.] Borrower.

There are several properties that serve as security for this loan and each is identified below.

Subject Shopping Center

The shopping center at 1412 Trotwood Avenue in Columbia, Tennessee is the primary collateral for this loan as well as its purpose. *See Ex. ___, TITLE, April 30, 2010 (security document not presently available to Borrower).* There are 53 units (including a billboard) serving 46 tenants; only one space is currently vacant. Tennessee Career Institute, Good Will, Family Dollar, two restaurants, and a sporting goods store, each operated by local and regional business owners, serve as anchor tenants.

9 Vacant Alabama Lots

As additional security for the subject note, and on the same date as the subject note, Mr. Borrower and his wife, Mrs. Borrower, granted to Community First a subordinate mortgage on 9 lots in [deleted] County, Alabama. *See Ex. ____, Mortgage, April 30, 2010.* These are all vacant lots in [deleted], Alabama that the Borrowers acquired previously. Community First's lien instrument states that it is subordinate to a "Future Advance Mortgage" of April 20, 2007 in the amount of $70,000. For tax purposes, Community First acknowledged that these Alabama properties secured $165,240.20 of the subject loan. It arrived at this amount as follows: the value of the Alabama collateral was $216,800.00; the value of all collateral securing the subject debt was $15,415,800.00; the Alabama properties comprised 1.4% of the total collateral value and so secured 1.4% of the total debt, which was $165,240.20. *See Ex. __same # as Mortgage above__, Sworn Statement attached thereto.*

1 Small Vacant [deleted] Lot

As additional security for the subject note, and on the same date as the subject note, [Mr.] Borrower granted to Community First a mortgage on a single vacant lot located at [Address] in [deleted] County, Tennessee. *See Ex. ____, Deed of Trust, April 30, 2010.*

BACKGROUND:

FDIC representatives, or an employee of a private contractor on the FDIC's behalf, stated that it would be selling its participated interest promptly, leading to the reasonable inference on the part of Borrower that it had the power to do so. In reliance on this misrepresentation of the Receiver's ability to sell Borrower's loan to an opportunistic investment fund salivating at the thought of foreclosing on this asset after Borrower has done all the rehab, Borrower hired an advisor firm, IntuitivePAC LP, a Texas LP ("IPAC"), to assist it in dealing with the effects of TCB's closure. However, after Borrower engaged IPAC, IPAC discussed with Community First its participation interest and discovered that FDIC could not sell its participation interest without the written consent of Community First. If Borrower had known this fact, it would not have engaged IPAC and incurred this additional expense.

Community First, as stated above, is the lead bank on the subject note in which it retains a 75% participation interest. It is also the holder of the following three additional notes payable by Borrower:

1. Original amount: $1,250,000.00; payoff as of June 8, 2012: $1,017,651.00
2. Original amount: $1,750,000.00; payoff as of June 8, 2012: $1,535,724.00

3. Original amount: $2,622,900.00; payoff as of June 8, 2012: $1,774,627.00

Notes 1 and 2 above were originally secured by commercial property but each is now separately secured by a group of residential lots. The change in collateral for these two notes is the result of a swap between Borrower and another developer. Borrower was seeking to diversify its property mix, which was previously all commercial, so it traded the commercial collateral for the other developer's significantly distressed residential lots. Borrower rehabbed the residential lots and they are now generating income. The third note remains secured by commercial property. There is no cross-collateralization as between the security for these three other notes held by Community First and the subject participated loan.

DISCUSSION:

The additional collateral has minimal impact when determining the value of the collateral for this loan: the degree of security provided by the Athens lots was limited by express acknowledgment (see above) while the [deleted] County lot simply holds little present value, and in fact the costs to foreclose on and hold the 10 vacant lots could exceed their value. Consequently, only the shopping center is relevant to this discussion.

The economic performance of the shopping center must be taken within a historical context. A snapshot taken today might lead one to conclude this is a money making asset. However, the property has been struggling for two years and has only recently begun performing, and even "performing" should be defined. This is a "B" center with "B" tenants. B tenants tend toward underperformance, and this center is no exception, with many paying about 50% below market rates. True, the center may not be experiencing the significant number of vacancies that have plagued it in recent years. However, that single struggle is now replaced with two: (1) making up for past losses and expenses with today's revenue; (2) which means that the center continues to be practically nonperforming until these losses are made up, despite its profitable appearance. As a specific example, Borrower is $500,000.00 behind in property taxes. If not paid by December 2012, the center will go to tax sale.

June 8, 2012

Asset Numbers: 13648, 14046, 13821 (Non-Recourse) and Multiple Additional Recourse Notes ($1,289,147.68-BV)
Asset Name: Central Fleet Leasing, L.L.C.

RECOMMENDATION:
Compromise above referenced Assets by accepting $400,000.00 representing 31.03% of the outstanding balance ($1,289,147.68), as full settlement of the principal obligations. B1(i)

EXECUTIVE SUMMARY:
Tennessee Commerce Bank ("TCB") provided financing through eighteen (18) promissory notes in the aggregate amount of $2,453,286.23 to Central Fleet Leasing, L.L.C. ("Borrower" or "CFL LLC") from March 2008 through December 2011. The 18 loans funded CFL LLC's business of acquiring over-the-road trucks and equipment and leasing them to end users. All of the loans were fully funded. Two of the notes are non-recourse and the other sixteen notes are recourse.

The combined book value of the 18 loan assets is $1,289,147.68, including all accrued interest. Three of the loans have already matured. The next of the loans to mature will mature on September 11, 2012, one more will mature in September, two mature in October, and the reminder of the 18 loans mature in 2013 and 2014. Six of the loans are current and 12 of the loans are not current by at least 30 days. CFL LLC has obtained alternate financing for the 18 loans as evidenced by the exhibited takeout letter from XXXXXX. *See Ex. 1, Takeout Letter, June 2012*. The take out bank's commitment is $400,000.00 representing 31.03% of BV as full satisfaction of CFL LLC's entire indebtedness. The Borrower's offer on the 18 loans represents the highest value as detailed later in the case and provides the FDIC with both the best return and the quickest resolution of these assets.

It is recommended the FDIC approve this case authorizing the compromise of the multiple assets as listed on Exhibit 2 attached hereto and release all collateral in exchange for $400,000.00; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:
CFL LLC is an equipment leasing company that focuses on the over-the-road trucking industry, specifically geared towards the small, independent trucker. Many of CFL LLC's customers can be categorized as "B grade" or "alternative grade" credits. Borrower has successfully carved out a niche in the truck leasing business due to many lenders applying increasingly stringent underwriting guidelines dictated by the depressed economy. Although very labor intensive, this niche market has proven a successful formula for CFL LLC. Each customer relationship has been based on a comprehensive knowledge of the credit and customer history. CFL LLC does not lend solely based on a credit score; they take the time to understand the full scenario and custom tailor each decision.

Between 2008 and 2011, CFL LLC originated leases as Lessor with various end users/customers of CFL LLC as lessees. CFL LLC assigned each of these leases as security for promissory notes it executed in favor of TCB. Each of the Master Lease Agreements relevant to this case is identical and this fact has been confirmed by a review of each Master Lease Agreement. One of these Master Lease Agreements is attached hereto as an example. *See Exhibit 3, Central Fleet Leasing, LLC Master Lease Agreement (CFL309 re Pilot Freight Service, Inc.), April 17, 2008.*

Lease terms were typically for 3-5 years with a single automatic 1-year renewal provision unless the lessee exercises the purchase option, which requires 180 days written notice. *See Ex. 3, Section 1, par. 2 & section 12.* If not purchased, the lessee bears the cost of return but receives a refund of the security deposit if it has fully performed. Worth mentioning, though minimal in its potential economic benefit, is lessor's discretionary right to charge lessee a $100 monthly administrative fee; CFL LLC never charged this fee. *See Ex. 3, Section 1, par. 3.*

A review of several actual lease packages reveals that the underlying leases are personally guaranteed by the lessee and it is assumed this is the case with each lease. *See Ex. 4, Personal Guaranty (CFL309 as in Ex. 3 above), April 17, 2008.* However, CFL LLC's notes payable to TCB do not carry any personal guaranty.

Promissory notes executed by CFL LLC are of two types: non-recourse and recourse.

2 Non-Recourse Notes: 1364 &, 14046:

There are two non-recourse notes—13648 and 14046—and they utilize an identical form along with an identical assignment. One of these non-recourse notes, and its corresponding assignment of the lease as security, is attached hereto as an example. *See Ex. 5a, Non-Recourse Promissory Note (CFL311-Sch. 2, Commercial Floor Care, LLC—Lessee), May 29, 2008, see also Ex. 5b, Security Agreement and Assignment of Lease, May 29, 2008.* The aggregate UPB of these two non-recourse notes is $17,500.00.

The only exceptions to the express non-recourse provision applicable to these two loans (in paragraph 5 of the note) are as follows: (1) Section 12 of the Security Agreement defines the lease as a "Finance Lease" under Alabama law (no real economic impact); (2) falsity of any representation or warranty set forth in Section 5 of the Security Agreement; (3) violation of any covenant in Section 7 of the Security Agreement; or (4) misapplication of proceeds.

The two non-recourse loans are not personally guaranteed; however, as stated above, each underlying lease is personally guaranteed by the executing lessee which may, by assignment, extend to TCB, and therefore FDIC, as the holder of the debt secured by the leases.

16 Recourse Notes:

There are 16 recourse notes. One of the notes, along with its related documents—Loan 14377 (M&H Pinestraw as Lessee)—is missing from Borrower's files and is assumed to utilize documents identical to the other recourse notes. As for the rest of the notes, with one exception, and with an assumption because six of the notes are missing their assignments, the notes and security agreements are identical. An example of the uniform notes and assignments is attached. *See Exhibit 6a, Promissory Note, September 25, 2005; see also Exhibit 6b, Collateral Assignment of Equipment Lease and Security Agreement, September 25, 2005.* The aggregate UPB of these 16 recourse notes is $1,271,647.68. Three of these recourse loans—14846, 8214, & 15730—are already matured.

The single note that uses a unique assignment (assuming the six missing security agreements are identical to the ones available) is Loan 17005 (Everett Miller as Lessee). *See Ex. 7a, Promissory Note, September 8, 2009; see also Ex. 7b, Assignment of Lease, November 14, 2011; see also Ex. 7c, Master Lease Agreement, January 18, 2011.* The dates of the documents just cited for Loan 17005 raise an obvious issue as to their correlation. The reason the dates do not coincide is because the original lessee (not Everett Miller) defaulted on the lease and CFL LLC executed a new lease of the same equipment to Everett Miller which it then assigned to TCB, via the unique one page assignment, as security for the same September 2009 note cited above.

The uniform promissory note for these 18 loans contains a highly unusual event of default. Among the customary default triggers—nonpayment, breach of rep & warranty, BK—is the following event of default that this author has never before seen in a promissory note appearing at the top of page two in most instances, sub (h) in the "events of default" paragraph:

> "(h) the occurrence of any event or the presence or condition that causes holder in good faith to <u>feel insecure</u> regarding the likelihood of its receiving orderly and complete payment according to the terms of this note without proceeding against any collateral or seeking payment from any guarantor, surety, or endorser . . ." *See Ex. 7a, page 2, subprovision (h).*

While it's not unusual for promissory notes to contain events of default that are tied to a note holder's assessment of present conditions and their impact on the likelihood of nonpayment, the language just quoted is extremely broad and arguably without limit. Consequently, a purchaser of these notes could draw the conclusion that all of these notes are in default, significantly reducing their estimated value.

<u>Serviced by CFL LLC</u>

The answer to the question of who serviced the underlying leases is significant: if CFL LLC is deemed the servicer, the value at pool sale is diminished; if TCB/FDIC is deemed the servicer, that negative impact of the servicing question is neutralized. The answer to this question can be found by contract and course of business dealing. A careful examination of the contractual assignments and the parties' almost daily interaction reveals that CFL LLC is, and shall remain until amended in writing, the servicer of the underlying leases. Contractual obligations of CFL LLC include the following: (1) payment of taxes, etc.; (2) insurance procurement; (3) perform as set forth in lease, i.e., receive lease payments; (4) secure lessee's performance. Furthermore, CFL LLC has consistently performed functions relinquished by TCB, namely the pursuit of the underlying collateral. In every instance where the underlying lessee has defaulted, CFL LLC has responded by dealing with the lessee, foreclosing, auctioning, or finding a new lessee. Not only was TCB completely passive in this arrangement, without exception, the parties discussed each and every lease default when it occurred, acknowledged that CFL LLC would effect a solution, TCB would forebear in the meantime (with extensions to the promissory note, or interest only periods, when necessary), and they both agreed that at the very end, they would even everything out with an accounting, dealing at that time with the financial gap both experienced in the process.

<u>Security</u>

The value of the security for these 16 loans—the underlying leases and the leased equipment—is severely diminished by slow pays, re-lets, along with resulting payments gaps, repo's and no pays without repossession. The 16 recourse loans are personally guaranteed by Doug Mills.

BACKGROUND:

CFL LLC provides financing to small business owners in the transportation industry who have found it difficult to borrow from more traditional lenders. Of course, with the closure of TCB, CFL LLC now finds it difficult to furnish this credit access to these small business owners. In some instances banks have decided to exit lending on the transportation industry as a whole. This has left CFL LLC and its customers in a difficult spot.

With the closure of TCB, the closure of other banks that previously furnished credit lines to CFL LLC, and the general exiting of other open banks from this sector, revenue for CFL LLC has been drastically reduced, approaching half of what it was prior to bank failure. CFL LLC is forced to turn away new and repeat customers seeking financing, not to mention that when combined with the standard lease runoffs, the outlook is bleak for the continued survivability of this company without a significant reduction in UPB which will allow CFL LLC to move this facility to a new lender, providing additional financing capacity which in turn will allow them to capture and retain business. Without this CFL LLC will be forced to close its doors.

DISCUSSION:

Several factors come into play in the valuation of this asset. First, there are 18 individual loans to CFL LLC secured by 18 leases instead of a single loan to CFL LLC, with CFL LLC servicing the underlying leases. Potential purchasers of FDIC pool sale assets will generally pay substantially less for assets where they are unable to act as servicer of the debt they just purchased.

Second, the value of the underlying collateral (over-the-road tractors, trailers, and/or equipment and the leases thereof), which is actually two steps removed from TCB/FDIC, does not support the current UPB which also reduces the potential payment by a pool purchaser. With one exception (17006) CFL LLC did not lease new tractors, trailers, and equipment; it leased used. Further, when repossession of the collateral is required, a substantial amount of recovery resources will be expended in locating, acquiring and transporting the equipment. This type of collateral potentially can be spread across the country. Again, potential pool purchasers give little value when the above circumstances are presented as part of a pool. As for the status of the underlying leases, the discussion above demonstrates the low value of this security.

Third, despite the presence of Doug Mills's personal guaranty on certain loans, specific events that have occurred over the last several years, set forth below, along with Borrower's and Guarantor's Financial Statements, do not warrant alternatives to the Receivership for resolving this asset. Three critical events have occurred that negatively impact the borrowing entity, as well as owner Doug Mills individually, that will make it extremely difficult for FDIC to recover anything beyond the collateral: (1) an embezzlement of $1,250,000 during 2009-2010; (2) a $3,500,000 accounting error discovered in 2011; and (3) fraud by a customer in 2009 which caused almost $400,000 in damages. Detailed descriptions of these events and their impact—not the least of which was that CFL LLC had to borrow funds from other sources to make up for these losses—along with other information regarding CFL LLC's business operations, are set forth in Doug Mills's affidavit attached hereto. *See Ex. 8, Affidavit of Doug Mills, June, 2012.* Information related to Borrower's and Guarantor's financial condition is attached as well. *See, Borrower's Tax Returns, 2009-2011; Borrower's Corporate Financials— 2009-2011; Borrower's 2012 Year to Date Financials; Doug Mills—Personal Financial Statement—June 2012; Doug Mills—Tax Returns 2009-2011.*

Finally, because of the highly unusual default provision described above, and being uncertain whether TCB felt insecure, or whether FDIC presently feels insecure, an investor performing thorough due diligence on these loans will likely downgrade these notes.

Borrower maintains little hope in staying in business without a reduction in UPB allowing for a refinance with another lender. Borrower has found banks unwilling to refinance this portfolio at its current UPB. Considering the above, the benefit of a substantially and warranted reduction in UPB will give Borrower the desperate help needed to stay in business. Furthermore, by the FDIC granting this request for compromise, the FDIC is directly fueling the over-the-road truckers that without CFL LLC, would find themselves facing little access to credit which they also need to stay in business. These small business owners call CFL LLC every week asking "Has anything changed? Can you help us out again yet?" Borrower submits this Offer in Compromise of $400,000.00 which produces a much higher economic recovery for the Receivership and thus should be accepted.

May 21, 2012

Asset Number: 19651-Amerimex ($7,959,232.17-BV)
Asset Name: MCP Funding I, LLC
Asset Number: 19931-Turnkey ($12,576,716.03-BV)
Asset Name: MCP Drilling II, LLC

RECOMMENDATION:
Compromise Asset 19651-Amerimex by accepting $2,400,000.00 representing 30.15% of the outstanding balance ($7,959,232.17 as of May 8, 2012), as full settlement of the principal obligations. B1(i)
Compromise Asset 19931-Turnkey by accepting $3,700,000.00 representing 29.42% of the outstanding balance ($12,576,716.03 as of May 8, 2012), as full settlement of the principal obligations. B1(i)

EXECUTIVE SUMMARY:
Tennessee Commerce Bank ("TCB") provided financing in the amount of $8,013,100.91 to MCP Funding I, LLC ("Funding I") on September 1, 2011 in connection with two oil drilling rigs. Borrower and TCB referred to this note as "Amerimex." TCB also provided financing of $12,896,716.03 to MCP Drilling II, LLC ("Drilling II") on January 25, 2012 in connection with four oil drilling rigs. Borrower and TCB referred to this note as "Turnkey." Both loans were fully drawn. TCB funded other loans to Funding I, five of which (in addition to and not including 19931-Turnkey and 19651-Amerimex) were still outstanding at the time of takeover. The Acquiring Institution of TCB purchased three of these five additional loans that were performing at time of takeover. The remaining two loans from these five additional loans are identified as "Related Debt" below.

Because Funding I owns 100% of Drilling II, and because the financial statements of both of these entities, and others related thereto, are all consolidated into one statement, throughout this case, unless otherwise indicated, "MCP" and/or "Borrower" will be used herein to refer collectively to both Funding I-Amerimex and Drilling II-Turnkey.

The combined book value of these two assets is $20,704,279.71 including all accrued interest. The loans mature April 1, 2015 (Turnkey) and September 1, 2016 (Amerimex) and until April/May of 2012, both loans were current. Borrower has obtained alternate financing as evidenced by the exhibited commitment letter from First Business Equipment Finance. *See Ex. 1, Takeout Letter, 5/11/2012.* The take out bank's commitment is $6,100,000.00 for both the Amerimex and Turnkey notes representing 29.70% of the combined BV as full satisfaction of MCP's entire indebtedness. The Borrower's offer represents the highest value as detailed later in the case and provides the FDIC with both the best return and the quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of Asset Numbers 19651-Amerimex & 19931-Turnkey and release the collateral in exchange for $6,100,000.00; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:
Borrower executed two promissory notes payable to TCB: (1) one on September 1, 2011 in the amount of $8,013,100.91 (Amerimex); and (2) one on January 25, 2012 in the amount of

$12,896,716.03 (Turnkey). *See, respectively, Ex. 2a, Without Recourse Promissory Note, September 1, 2011 (Amerimex); and Ex. 3a, Without Recourse Promissory Note, January 25, 2012 (Turnkey).* The Loan and Security Agreement for the Turnkey facility is attached as Exhibit 3b. *See Ex. 3b, Loan and Security Agreement, January 25, 2012.* Security for the Amerimex facility is more complex and is described in detail below.

Loan 19651 Amerimex

With respect to the Amerimex credit facility, monthly payments were interest only for the first six months. The interest rate is 7.66%. The first principal payment of $53,868.74 was due April 8, 2012 and has been made together with interest; Borrower made the May 8, 2012 payment of interest, but not principal. The "last pay date" (language contained in the promissory note a/k/a the maturity date) is September 1, 2016.

Security for this note is comprised of two drilling rigs (Rig #1 and Rig #2) which are owned by MCP Drilling III, LLC ("Drilling III"), a wholly owned subsidiary of Funding I. How these two drilling rigs came to serve as the security for the note is somewhat complicated, but understanding this will place several otherwise confusing documents into context. *See Ex. 2b, Four Visuals on Amerimex Security; see also Ex. 2c, Collateral Assignment of Notes and Collateral, September 1, 2011.*

Background on Security for 19651:

(1) Amerimex Drilling I, Ltd. ("Amerimex") borrowed $3,923,000 from Funding I (this is the borrower in this case) on May 9, 2007, secured by Rig #1. On the same day, Amerimex borrowed another $5,077,000 from Funding I, secured by Rig #2. Funding I financed these loans in part with loans from TCB. Cross Collateral Agreements, also executed on the same date, made both Rigs security for both notes to Amerimex. ***See Ex. 2b, "May 9, 2007".***
(2) Drilling III was formed in April of 2011. It was formed by Funding I to repossess Rig #1 and Rig #2 as Amerimex was in default. As part of this formation, Funding I assigned all of its rights in the loans to Amerimex, including its security interests in Rig #1 and Rig #2 to Drilling III. ***See Ex. 2b, "As of Aug. 31, 2011".***
(3) On September 1, 2011, Funding I refinanced the earlier loans from TCB. In connection with this refinancing, Drilling III collaterally assigned all of its rights in its loans to Amerimex, including its security interests in Rig #1 and Rig #2, to TCB as security for Funding I's promissory note dated September 1, 2011 which is the subject of this case. ***See Ex. 2b, "Sep. 1, 2011".***
(4) Because of the continuing defaults of Amerimex, Drilling III foreclosed on Rig #1 and Rig #2 in October, 2011. Thus, Drilling III owns Rig #1 and Rig #2 and, by operation of the assignment in item (3) above, they now serve as direct collateral for Funding I's note. ***See Ex. 2b, "After Amerimex Foreclosure".***

One of the two rigs is located near Sweetwater, Texas and the other near Stanton, Texas. Rig #1 is in storage and consequently not producing income. Rig #2 is in production with Stack Enterprises - Midland ("Stack"). Stack leases Rig #2 under a Lease with a purchase option. This purchase option will remain a cloud on the collateral should the note be sold in a pool sale. There is a significant batch of casing drives, also part of the collateral, stored in Waukomis, Oklahoma and consequently not generating income. *See Ex. 2d, CPG Inventory Casing Drives.*

Loan 19651 is expressly without recourse—there is expressly no recourse, whether to the borrowing entity or any principal thereof—and there are no guarantors.

Loan 19931 Turnkey

This note refinanced previous TCB loan 19172. Monthly installment payments of $160,000.00 in principal, together with accrued interest, began February 8, 2012. Payments continue each month thereafter through March 8, 2015 and a final balloon payment, together with accrued interest and all other charges hereunder, is due on April 1, 2015. The interest rate for this note is 5.66% and the "last pay date" (language contained in the promissory note a/k/a the maturity date) is April 1, 2015. Borrower made the April 8, 2012 payment of interest, but not principal; Borrower did not make the May 8, 2012 payment of interest or principal.

Background on Security for 19931: [The case as actually submitted included an exposition of security as provided on Amerimex, but because the security is more direct and apparent, this section was omitted in this condensed version.]

Three of the rigs—Beta, Gamma, & Omega—are located in Waukomis, Oklahoma and are in storage and therefore not generating income. Alpha is in the possession of Lamunyon Drilling pursuant to an operating agreement and is deployed in the field north of Enid Oklahoma. Specific descriptions of the Alpha, Beta, Gamma, and Omega Drilling Rigs are attached hereto. *See Exhibits 4a (Alpha Rig), 4b (Beta Rig), 4c (Gamma Rig), and 4d (Omega Rig).*

Loan 19931 is expressly without recourse—there is expressly no recourse, whether to the borrowing entity or any principal thereof—and there are no guarantors.

BACKGROUND:

Oil and Gas is a highly volatile industry. As a lessor and reseller of drilling rigs, MCP must be able to respond quickly to the realities of owning physical assets that break down, need frequent maintenance and repair, and alternate between periods of high income production, periods of zero income production, and in fact, with the costs of storage, sometimes negative income production. Flexible financing relationships that allow MCP to shift between periods of amortization when income is good and interest only when times are tough are critical to the success of any drilling rig owner/operator, including MCP. Loan modifications, often with additional advances, are typical and frequent, allowing rig owners to capitalize on opportunities of production and scale back to interest only when rigs are not in the field.

FDIC's administrative procedures do not allow for the flexible financing described above and are therefore prohibitive to conducting business in the oil and gas industry. This lack of flexible financing makes it impossible for MCP to deal with the constant ebb and flow of income production from the rigs. Even if these loans go to pool sale and are no longer administered by FDIC, Borrower is concerned that the loans may not be purchased by an investor that understands and can adapt to the oil and gas industry.

DISCUSSION:

Funding I owns 100% of three LLC's used for acquiring the assets of defaulted parties as described above. The financial statements are therefore consolidated but reflect no other resources to satisfy the current debts held by the Receivership. *See Ex. 5, MCP Funding I Consolidated Chart*. As stated above, there is no recourse to either the borrowing entity or any of the individual principals and no guarantees.

As clearly evidenced by the Acquiring Institution purchasing the other loans of Funding I and not these loans, the value a potential purchaser will pay is minimal. The basis of value for the assets securing these loans (drilling rigs, drill pipe and related equipment) is best reflected when they are working at a drill site. When they are stored, as is the case for most of this asset, very little value is given. Any purchaser would have to transport the equipment to a working location and upgrade prior to production. To help evaluate the potential, a review of capitalizing the NOI provides the following: assuming that a drilling rig is active 10 months per year and operates at 80% capacity per month, with a day rate of $15,000, the NOI generated would be $644,225 (not including property taxes and moving expenses that generally occur every other year). Capitalized at 8% would show a value of $6,166,796. Borrower offers to compromise the debt at $6,100,000 which would maximize the return to the Receivership.

With no recourse, no guarantors, most of the collateral not generating income, low collateral value compared to the debt, the necessity of a flexible financing partner to respond to volatile market conditions inherent in the oil and gas industry, and the fact that these loans are now considered delinquent, the best course of action for the FDIC to pursue is to approve Borrower's offer.

April 16, 2012

Asset Number: 11303 $4,394,000-BV
Asset Name: KNA Hospitality, A Tennessee GP

RECOMMENDATION:
Compromise Asset by accepting $2,770,000 representing 63% of the outstanding balance ($4,394,000), as full settlement of the principal obligations. B1 (i)

EXECUTIVE SUMMARY:
Tennessee Commerce Bank ("TCB") provided purchase financing of $4,685,000 to KNA Hospitality, a Tennessee General Partnership ("KNA") on September 17, 2007 to acquire an existing hotel in Nashville, Tennessee. The loan was fully funded.

There is a single asset associated with this borrower and its book value is $4,394,000. KNA has obtained alternate financing as evidenced by the commitment letter from Citizen's First. *See Ex. 1, Commitment Letter, April 10, 2012.* The take out bank's commitment is $2,770,000 representing 63% of BV as full satisfaction of KNA's entire indebtedness. The Borrower's offer represents the highest value as detailed later in this case and provides the FDIC with both the best return and the quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of Asset Number 11303 and release all collateral, including CDs 8572, 13377, and 1347, in exchange for $2,770,000; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:
KNA is an independent, minority owned small business that owns and operates a hotel in the vicinity of Nashville International Airport. Within a 1.5-mile radius, with an inventory of 4,800 rooms dominated by corporate hotel chains, there are only two independent hotels. One is the hotel securing this asset: Club-Hotel Nashville Inn & Suites, located at 4325 Atrium Way, Nashville, TN 37214 ("Club-Hotel"). The other is an affiliate hotel of the guarantors.

To finance the purchase of Club-Hotel, KNA executed a promissory note on September 17, 2007 payable to Tennessee Commerce Bank ("TCB") in the amount of $4,685,000.00. *See Ex. 2, Promissory Note, September 17, 2007.* The loan provided an interest rate of 7%, with monthly payments of $16,794.52 and a final estimated balloon payment of $4,318,528.55 due on the maturity date of October 16, 2012. The UPB as of 11/1/11 was approximately $4,394,000 and the loan is current.

Security for the note consists of an independent single limited service hotel, Club-Hotel Nashville Inn & Suites, located at 4325 Atrium Way, Nashville, TN 37214, along with three CDs. *See Ex. 3, Certificates of Deposit.* The three CDs are as follows:

1. CD 8572 issued to Natva Patel & Pushpa Patel: $121,447.53
2. CD 13377 issued to Kirrit Bhikha & Lata K. Bhikha: $242,895.10
3. CD 1347 issued to Atul Kapadia & Dharini A. Kapadia: $242,895.10

The loan is guaranteed by Natva Patel, Kirrit Bhikha, and Atul Kapadia. *See Ex. 4, Commercial Guaranty(ies).*

BACKGROUND:

After overcoming serious setbacks due to the Nashville Flood in May, 2010, KNA prepared to expand and approached TCB to fund additional acquisitions. *See Ex. 5, 2010 Tennessee Floods, Wikipedia article updated February 7, 2012.* However, as a result of TCB's closure, KNA must seek new financial relationships. This is a uniquely difficult task for KNA. As a minority owned business, KNA considers its relationship with the former TCB difficult to replace. Cultural and language differences are not easily overcome and KNA is extremely concerned that its loan will be sold to an opportunistic lender that does not value KNA as a customer the way TCB did.

Loss of this banking relationship with TCB is not only impairing KNA's ability to capitalize on its recent efforts by expanding its business, it is causing significant strain on day to day business operations. Half of KNA's 23 non-seasonal employees are minorities. In its entire history, KNA has never had to lay any of these employees off. However, having lost a significant and hard-to-replace banking relationship, KNA is preparing to adapt to its restricted operating cash flows with layoffs. The closing of TCB has impacted the individual owners of KNA on a personal level as well. For example, the original balance of the note having been sufficiently reduced, Kirrit Bhikha anticipated the release of his CD and intended to use those funds for a home purchase. He was actively engaged in contract negotiations which have had to be suspended as a result of TCB's closure.

Release of the security interest in Club-Hotel, as well as the guarantees and the three CDs serving as additional collateral, will help KNA in its search for a new banking relationship.

DISCUSSION:

Using recent sales from subject hotel's competing neighborhood (13-mile radius), value for a Comparable Sales approach indicated at $3,100,000. *See Ex. 6, Nashville Hotel Sales.* TCB used a 1.25 Debt Service Coverage Ratio and if that was applied to NOI for 2011 of $463,856, and then capitalized at a rate of 11%, an Income Approach to Value would indicate $3,373,000. This Income Approach supports the Comparable Sales approach and is reconciled to a Fair Market Value of $3,100,000. To refinance the loan currently held in Receivership, a 70% LTV would be required of the $3,100,000 current value. Using the $600,000 CD's currently held as security, an additional $330,000 is needed. Therefore, the request is for a settlement of $2,770,000.

Financial Analysis:

Borrower is a Tennessee General Partnership and the only asset of the Borrower securing the loan apart from the CDs, is the hotel. The three guarantors have provided current Personal Financial Statements and an Affidavit of Financial Condition.

The majority of the assets of the three guarantors is comprised primarily of real estate and as noted in Attachment A, the value of the properties is less than acquisition cost including subject property. A majority of the liquid assets for the guarantors is currently held as collateral for subject property.

Market Conditions:

Within the last four years the US hotel supply has increased 17.5%; over 750,000 new rooms. *See Ex. 7, Letter from Magnuson Hotels, undated.* This has been recorded as the largest supply expansion in history for the US hotel industry. While the U.S. lodging sector continues to demonstrate recovery momentum, a resetting of the national economic outlook lowers expectations for the lodging sector's performance in the next year or two ahead. Earlier, it was believed that slower economic growth was explained by temporary factors, and that the U.S. economy would soon regain momentum. This view has been altered by recent events, including incoming data reflecting a faltering economy, the evolving European sovereign debt crisis, U.S. debt negotiations, and deteriorating financial conditions. Slower economic growth in recent quarters, reduced business and consumer confidence, and greater uncertainty surrounding the economic outlook have reduced most forecasts of lodging recovery, but not reversed it. Aspects of travel closely linked to the economic cycle are expected to pull back while some trips will be shortened or cancelled. These factors impact the value of collateral backing this asset and further support approving the request for settlement of $2,770,000.

Alternatives to Compromise

The alternative to compromise is for the Receivership to place this asset in a pool sale. The loan matures October 16, 2012. Without modification, the loan will go into default, yielding a substantially lower price at pool sale. Even with modification, the ultimate yield at pool sale will still be far less than can be achieved with the proposed compromise.

June 3, 2012 Asset Number: ##### ($2,179,221.21-BV)
Asset Name: Equipment Leasing Services, LLC

RECOMMENDATION:
Compromise Asset by accepting $459,308.00 representing 21.08% of the outstanding balance ($2,179,221.21), as full settlement of the principal obligations. B1(i)

EXECUTIVE SUMMARY:
Tennessee Commerce Bank ("TCB") provided a financing commitment of $6,000,000 to Equipment Leasing Services, LLC ("ELS" or "Borrower") on June 15, 2007 to fund ELS's business of acquiring equipment and leasing it to end users. TCB fulfilled this commitment using various notes as more specifically described throughout the remainder of this case. The commitment was not fully drawn and there remains an unfunded amount of $5,190,895.00.

The current combined book value of the loan assets provided to TCB pursuant to the above described commitment, based on their UPB, is $2,179,221.21 including all accrued interest. The primary loan (see discussion below) matures on April 15, 2014 and is current. Borrower has obtained alternate financing as evidenced by the exhibited commitment letter from USB Investment. *See Ex. 1, Takeout Letter, June 2012.* The take out bank's commitment is $459,308.00 representing 21.08% of BV as full satisfaction of ELS's entire indebtedness. The Borrower's offer represents the highest value as detailed later in the case and provides the FDIC with both the best return and the quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of Asset Numbers #### and release all collateral in exchange for $459,308.00, and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:
ELS is an equipment leasing company. In the summer of 2007, ELS and TCB agreed to a $6,000,000 line of credit. *See Ex. 2, TCB Commitment Letter, June 15, 2007.* Pursuant to this $6,000,000 line of credit, ELS, as lessor, would lease equipment to its various customers/lessees and, as each lease was executed, ELS would assign it as security for a corresponding promissory note that ELS executed payable to TCB. The maximum aggregate UPB that could be outstanding at any time was $6,000,000 and there were multiple individual notes at any given time. About four years later, ELS and TCB decided to roll all of the multiple individual notes—with one exception, the Silver State Deficiency Note—into one single note for easier administration. *See Ex. 3, Omnibus Amendment, October 12, 2011; see also Ex. 4, Amended and Restated Note (Business Entity), October 12, 2011.*

The new note, the one that refinanced the multiple individual notes which were executed as ELS assigned each lease to TCB, bears an original amount of $2,143,508.10 and matures April 15, 2014. *See Ex. 4.* The note *(in sec. III)* provides for mandatory prepayment of pass-through items as described in the Omnibus Amendment. *See Ex. 3, sec. 3.* Scott Powell and Kathleen Powell personally guaranteed this refinance loan which rolled all the others up into a single asset. *See Ex. 3, sec. 5.* The underlying leases and equipment collectively secure this note as set forth in the Omnibus Amendment and two examples are provided below.

There are two other loan assets addressed by this case. One is a $1 Million revolver. *See Ex. 5a, Warehouse Note, November 1, 2007; see also Ex. 5b, Revolving Warehouse Credit Agreement, November 1, 2007.* ELS used this 1-year, $1 Million commitment from TCB as bridge financing for its various leases and the note provided for annual renewals. *See Ex. 5b, sec. 2.01(a).* The current Maturity Date, on which the parties would typically anticipate the next renewal, is November 1, 2012. It is uncertain whether the parties continued to expressly renew this loan but they conducted business as if it was still a valid loan and commitment as of TCB's closure. In June of 2011, only one lease was connected with a balance on this line—the Wildwood lease. This balance was moved to its own note in June 2011, and then in October 2011, it was refinanced in the $2.14 Million note discussed above along with all of the other individual notes. Consequently, since June 2011 and continuing through today, this line has a zero balance and the entire $1,000,000 line was available for draw as of TCB's closure January 27, 2012. The Credit Agreement secures the note with whatever the money is used for. *See Ex. 5b, sec. 4.01.* Because ELS used the proceeds to purchase equipment it leased to end users, all of the security for this note is assumed to also secure the $6 Million commitment.

The remaining note addressed by this case originated in the amount of $410,116.21. *See Ex. 6a, First Amended and Restated Promissory Note, May 28, 2009.* This loan was for a very specific purpose—the deficiency on the Silver State lease. When Silver State defaulted on its helicopter lease and declared bankruptcy, TCB (alone or in conjunction with an investor) repossessed and sold the collateral. ELS executed this promissory note for the deficiency; however, there is no recourse to ELS nor are there any guaranties and the note is completely unsecured. In September 2011 the parties established the then current principal balance at $370,116.21 and set the new Maturity Date at March 30, 2014. *See Ex. 6b, Amendment to First Amended and Restated Promissory Note Dated May 28, 2009, September 30, 2011.* The reduction in the principle balance reflects TCB's receipt of insurance proceeds that were applied to the balance. Arguably, there are no payments due until the note's maturity when a single balloon payment, including all accrued interest, is due. Under the May 2009 note, there was no principal due until maturity but Borrower agreed to make "two" annual interest payments, in arrears, on May 31 of both 2010 and 2011. *See Ex. 6a, sec. 4a(i).* The amended version expressly reduced the principal balance and extended the maturity date, but left all other terms intact. Consequently, there is no express duty to continue making annual interest payments in arrears and so ELS remains current until the loan's maturity with no payments due. The $6M commitment and the $1M commitment shared the same security: underlying leases and equipment. ELS leased a variety of equipment. Two examples are discussed here with attached exhibits, one an equipment lease and one a TRAC vehicle lease.

Equipment Lease Example

ELS leased signage and showcase equipment to a jewelry business for 36 months with a purchase option. *See Ex. 7a, Master Lease Agreement, October 21, 2009; see also Ex. 7b, Appendix A to said Master Lease Agreement.* If the lessee exercises the purchase option, then ELS and Marquee will consult and determine the fair market value *(ex. 7b, Appendix A, sec. 1c)*, subject to a maximum of 20% of ELS's cost *(ex. 7b, Appendix A, sec. 1b)*. For purposes of calculating a stipulated loss value—an option the lessee can elect in the event of irreparable damage to the leased equipment—ELS and Marquee (the lessee) agreed to $48,747.97 as the value of the leased items. *See Ex. 7a, sec. 13c; and see Ex. 7c, Schedule No. 1 to Master Lease*

Agreement. This lease expires October 21, 2012 but will continue with rolling 4 month extensions unless terminated with 4 month's notice *(see ex. 7a, sec. 2b)* or expressly renewed for 12 months with 120 day's notice *(see ex. 7b, sec. 1a)*. Alternatively, lessee can purchase the equipment with 120 day's notice *(see ex. 7b, sec. 1b)*. Marquee provided additional collateral of $13,864.00 cash, held by ELS, which is eligible for return to Marquee at the end of the lease or will be applied to the cost of the purchase option. *See Ex. 7d, Appendix B, together with Exhibit A to Appendix B*. Lease payments are made via automatic draft. *See Ex. 7e, Authorization Agreement for Direct Payments (ACH Debits), November 25, 2009*. Two of lessee's shareholders and their spouses provided personal guaranties of the lease. *See Ex. 7f, Two Continuing Personal Guaranties, October 21, 2009*. The lease to Marquee secured ELS's promissory note to TCB in the amount of $53,092.36. *See Ex. 8a, Promissory Note & Ex. 8b, Security Agreement, December 1, 2009*. Of course, this note, along with the other individual lease-secured notes, was refinanced with the $2.14M note described above.

TRAC Lease Example

The second lease example provided is a TRAC lease. ELS leased a 2007 Dodge Mega Cab to Cast Nevada Resource, Inc. *See Ex. 9a, Commercial Lease, June 1, 2009*. TRAC, common in vehicle leases, stands for "terminal rental adjustment clause" and means the lessee gets a guaranteed residual price. Payments are by automatic draft *(see Ex. 9b, Authorization Agreement for Direct Payments (ACH Debits), June 9, 2009)* and lessee retains dealer/manufacturer discounts, rebates, and incentives. *See Ex. 9a, sec. 2a*. By supplement, the parties fixed the term of this '07 Dodge lease at 36 months, identified the capitalized cost at $34,198.00, and assumed the residual would be $6,840.00. *See Ex. 9a, pp. 8-9*. Robert S. Lipic provided a personal guaranty of the lease *(see Ex. 9c, Continuing Personal Guaranty, June 1, 2009)* and the corporation provided its guaranty *(see Ex. 9d, Continuing Guaranty, June 1, 2009)*. The lease to Cast Nevada secured ELS's promissory note to TCB in the amount of $38,521.54. *See Ex. 10a, Promissory Note & Ex. 10b, Security Agreement, July 3, 2009*. Of course, this note, along with the other lease-secured notes, was refinanced with the $2.14M note described above.

A spreadsheet is attached setting forth each of the underlying leases that collateralize ELS's debt. *See Ex. 11, Client Listing Remaining Payment, June 2012*.

BACKGROUND:

LEFT INTENTIONALLY BLANK

DISCUSSION:

The single most important and dispositive factor in this case is the unfunded commitment amount. It is 2.38 times the UPB. FDIC would virtually have to write a check to the sales agent to offer this loan in a pool sale. While it is admittedly difficult to place a precise value, or negative value, on a single, or even three, loan(s) when placed in a large pool, this loan will obviously drive the value of whatever pool it's in down, by a tremendous amount. Consequently, any reasonable offer by the ELS should be accepted by the FDIC. Given the present circumstances, ELS has presented an entirely reasonable offer and the FDIC would be remiss not to accept it. There is no question that the acceptance of ELS's offer maximizes the FDIC's return. The unfunded commitment is so material that any discussion of the underlying collateral is an unnecessary use of the FDIC's resources in its analysis.

May 21, 2012

Asset Number: 14562 - $7,648,037.00-BV
Asset Name: Leo M. Sand 2007 Revocable Trust

RECOMMENDATION:
Compromise Asset by accepting $2,700,000.00 representing 35.30% of the outstanding balance ($7,648,037.00 as of June 13, 2012), as full settlement of the principal obligations. B1(i)

EXECUTIVE SUMMARY:
Tennessee Commerce Bank ("TCB") provided a revolving commitment in the amount of $8,900,000 to the Leo M. Sand 2007 Revocable Trust ("Sand" and/or "Borrower") on June 23, 2008 to finance Sand Lodging, Inc.'s ("Sand Lodging's") purchase and improvement of a hotel. Crown Bank, a Minnesota Corporation ("Crown"), actually originated the commitment of $10,000,000 and remains the lead bank. TCB's commitment reflects its purchase of an 89% participation interest which cannot be sold without the lead bank's written approval. All improvements are complete and while the current UPB reflects funding up to the present ceiling amount (described in detail below), Sand may potentially be entitled to future draws as the UPB is paid down and other requirements are satisfied.

The current book value of TCB's participation interest in the asset is $7,648,037.00. The loan matures July 1, 2013 and is current. The Borrower's offer represents the highest value as detailed later in the case and provides the FDIC with both the best return and the quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of Asset Number 14562 and release the collateral in exchange for $2,700,000; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:
Sand Lodging is active in various aspects of the hotel business, including, but not limited to, ownership, improvement and management. Sand Lodging owns various LLC's, which in turn own approximately 18 hotels. All of these hotels are flagged, most bearing the brand Country Inns & Suites. Crown issued a $10,000,000 revolving commitment to Sand on June 23, 2008 to finance the acquisition and improvement of one or more hotel properties. *See Ex. 1, Revolving Note, June 23, 2008; see also Ex. 2, Loan Agreement, June 23, 2008.* Crown retained an 11% lead interest ($1,100,000) and sold the remaining 89% ($8,900,000) participation interest to TCB. *See Ex. 3, Participation Agreement, June 2008.* The current UPB on TCB's portion is $7,648,037.00, leaving an unfunded commitment on the part of TCB of $1,251,963.00.

The loan contains a mechanism which, over time and in even increments, lowered the total commitment to $9,280,000. However, Section 1.1 of the Third Amendment to Loan Agreement evidences Crown's intent as lead bank to treat the overall credit as a $10,000,000 commitment, despite some of these incremental reductions having already occurred. *See Exhibits 4, 5, 6, and 7—First, Second, Third, and Fourth Amendments to Loan Agreement, respectively, most recent June 10, 2010.* In fact, prior to closure of TCB, Crown was prepared to formally reinstate the original commitment amount of $10,000,000.

Borrower has maintained a perfect payment history and the loan matures July 1, 2013. The note is subject to an interest rate of 5.5%. Borrower remains current but is considering alternatives, including bankruptcy. The following two pieces of collateral secure this credit: 1) a $9,000,000 term life policy on Leo M. Sand; and 2) 100% of the stock of Sand Lodging. *See Ex. 8, Letter from Leo Sand to Crown Bank* and *Assignment of Life Insurance Policy as Collateral, October 24, 2011; see also Ex. 9, Stock Pledge Agreement, June 23, 2008.*

Both Leo M. Sand and Sand are subject to loan covenants requiring they maintain the following:

1. Net Worth of $35 million measured at end of each calendar year; *Ex. 6, Sec. 1.1*
2. Liquid Assets of at least $2 million using GAAP; *Ex. 6, Sec. 1.1*
3. Contingent Liabilities of no more than $75 million; *Ex. 6, Sec. 1.1*
4. Net Cash Flow of at least $2 million on a global basis; *Ex. 6, Sec. 1.1*
5. Cash deposits with Crown of $500,000. *Ex. 3, sec. 5(c).*

With continued cooperation from Crown, including waivers of noncompliance when necessary, Borrower has been able to avoid a covenant default. Because Crown considers Leo M. Sand a highly valued customer, and because of his perfect payment history on this loan and all other loans Crown has ever extended to him, Crown was prepared to reinstate the original commitment amount of $10,000,000 when TCB closed.
Leo M. Sand is the sole guarantor. *See Ex. 10, Guaranty, June 23, 2008.*

BACKGROUND:
The subject loan provided operating capital for Sand Lodging/Sand. TCB automatically withdrew the monthly payment from Borrower's checking account between the 1st and the 5th of each month. Each payment makes additional funds available for future draw requests, subject to the gradually declining ceiling which may or may not stand frozen at $9,280,000, depending on the interpretation one give to Section 1.1 of the Third Amendment as described above. Prior to the closure of TCB, and in fact throughout 2011, Mr. Sand, Crown, and TCB (Dick Myers was the bank officer working on the matter) were working on terms under which the additional $720,000 under the original commitment would be made expressly available due to Sand's perfect pay history, his long term relationship with Crown, and the apparent value of maintaining him as a customer of TCB.

The FDIC notified Sand via certified mail on February 10, 2012 that there would be no additional funding under this loan. If Leo must pay the full book value of this loan, whether to the FDIC or anyone else, without the corresponding access to additional credit he has always depended upon, both Leo and his business will be unable to survive financially. Consequently, he is contemplating bankruptcy as his only alternative.

While the FDIC may ultimately desire to transfer its interest in participations generally, the terms set forth in the participation agreement with Crown require the Crown's written approval of any such transfer of TCB's interest. *See Ex. 3, Participation Agreement, Sec. 8, June 2008.*

DISCUSSION:
Neither Crown nor the FDIC can accomplish anything on Sand's Loan without the cooperation of the other. Crown, the lead bank on this participation loan with the former TCB, has expressed an interest in working with another bank to take out the FDIC's participation interest. Crown is

even willing to negotiate new terms and conditions on Sand's current principal balance since they value Leo Sand as a customer with a perfect pay history. However, they are unable to accomplish this without a corresponding negotiation of the portion of the principal balance held by the FDIC. With a compromise of the FDIC's balance to $2,700,000, they are prepared to move forward.

FDIC's options are few. In fact, without Crown's written approval, the only alternative to compromise is to take no action. The inevitable result of no action is that Sand will declare bankruptcy and any value of this credit to the FDIC in a sale will be eliminated. Even without Sand's bankruptcy declaration, this loan will add little to the overall value of any pool of assets. These hotels have seen substantially reduced cash flows, severely diminishing their value, thus motivating Crown to waive the cash flow covenant for this credit for the past two years in order to keep this credit out of covenant default. Again, all because Leo M. Sand is a highly valued customer. Add to that the unfunded commitment which remains potentially valid, enough to negatively impact the estimated value of this asset in a pool sale, and compromise becomes an even more favorable option.

Additionally, the majority of Sand's assets are owned by other corporations which in turn own the hotels which themselves are illiquid and have dramatically declined in value as real estate and add little to any net worth calculation. The majority of guarantor's assets consist of Sand's stock. A vast amount of resources and time would be required to bring about any form of liquidation the results of which would be grossly insufficient to satisfy the current obligation.

Consequently, the best option, and the only real viable option for the FDIC to pursue on this loan, is the proposed compromise. This reduction will provide the Receivership with the highest return on this asset, it will remove an otherwise difficult-to-deal-with participation interest from its books, Mr. Sand may not have to declare bankruptcy, and Crown may be able to keep a valued customer, one whose survival may bode well for its own.

May 15, 2012

Asset Numbers—Loans: 16221, 14650, 18986, 18188, & 14649 ($7,343,550.00- Aggregate BV)

Asset Name: TAMCO Financial Services, LLC

RECOMMENDATION:

Compromise Asset by accepting $3,524,904.00 representing 48% of the outstanding balance ($7,343,550.00), as full settlement of the principal obligations. B1(i)

EXECUTIVE SUMMARY:

Tennessee Commerce Bank ("TCB") provided aggregate financing of $13,750,000.00 to TAMCO Financial Services, LLC ("TAMCO") from July 2008 through February 2011 to fund various and specific aspects of its business operations. Detail on each individual credit facility, including any reductions from the original amount, is set forth in the Description of Assets section below. One of TAMCO's loans still carries an unfunded commitment of $1,500,000.00 and another carries an unfunded commitment of $152,296.00. The remaining three loans were fully drawn.

The combined book value of the assets is $7,343,550.00 including all accrued interest. Each loan has a different maturity; Loan 14650 (the smallest) matures first—August 2012. All five loans are currently 90+ days delinquent; TCB and Borrower were finalizing the restructure of the loans when TCB closed and Borrower has not made any payments since. TAMCO has obtained alternate financing as evidenced by the exhibited commitment letter from XXXXX. *See Ex. 1, Takeout Letter from XXXX, DATE.* The take out bank's commitment is $4,677,106.28. Of this amount, $3,524,904.00 is allocated to the five loans representing 48% of BV as full satisfaction of TAMCO's entire indebtedness and $1,152,202.28 is allocated **[This case as actually submitted included an offer to repurchase the lease pools but as a repurchase of assets is not germane to the objectives of the House Financial Services Committee's investigation into FDIC policies and procedures and their impact on borrowers, all references to any repurchase, other than this paragraph and the lists below, have been deleted]** TAMCO's offer represents the highest value for the loans and the highest net present value for the lease pool as detailed later in the case and provides the FDIC with both the best return and the quickest resolution of these assets.

It is recommended the FDIC approve this case authorizing the compromise of Asset Numbers 16221, 14650, 18986, 18188, and 14649 and release all collateral in exchange for the combined offer amount of $4,677,106.28; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:

TAMCO is a financial services company and functions in the following capacities: (1) as a lessor that leases telecommunications equipment to lessees; (2) as a lender that lends to end users of telecommunications equipment the money to buy or lease it. TAMCO focuses exclusively on solutions for small and mid-size businesses. TAMCO funds its operations with five different loans from TCB.

The five loans are in the name of a single borrower: TAMCO Financial Services, LLC, a Florida limited liability company. All five loans are guaranteed by both Telecommunications Asset Management Company, Inc. and Jack Thompson. One of the loans carries additional guaranties as described in the relevant discussion below. The following chronology is provided to aid in understanding the overall relationship between TAMCO and TCB.

INSURANCE LINE 14649

In some situations, TAMCO performed a servicing function, which included obtaining forced placed insurance when necessary. TAMCO funded insurance premiums with Loan Number 14649 which bears a variable interest rate of prime + 1%. *See Ex. 2a, Promissory Note, June 10, 2010; see also Ex. 2b, Change in Terms Agreement, February 10, 2011; see also Ex. 3, Business Loan Agreement, June 10, 2010.* These documents supersede others executed on July 21, 2008, attached hereto as Exhibit 4. Originally a revolving line of credit in the amount of $750,000, future advances were terminated by a provision in the Omnibus Agreement (designated so simply because it includes in a single agreement provisions that amend multiple other agreements) of February 2011. *See Ex. 12, Omnibus Agreement, February 2, 2011, Sec. 2(c).* As of April 25, 2012, the UPB is $300,845.74 and the loan matures February 3, 2016.

WH LINE 14650

TAMCO obtained a revolving warehouse line for the following two purposes: (1) as bridge financing of equipment leases which would subsequently be refinanced with a permanent lender – either TCB or a third-party lender; and (2) Progress Payment Advances ("PPAs") – payments due to vendors before the lessee accepted the leased product. *See first Ex. 7, Chronological Summary of Warehouse Line 14650, describing the history of this loan from its July '08 inception; see also Ex. 5, Revolving Warehouse Credit Agreement, June 10, 2010.* TCB's financial commitment to TAMCO on Loan 14650 stood at $750,000.00 when TCB closed January 27, 2012. *See Ex. 6, Warehouse Note, August 3, 2011.* TAMCO's UPB on this line as of April 25, 2012 was $597,705.00, leaving available for draw the amount of $152,295.00. The loan bears a variable interest rate (prime + 1.0%). The loan is secured by the underlying transactions (leases and/or loans) and TAMCO's security interest in leased telecommunications equipment. Individual transactions were generally either refinanced by, or sold to, either TCB or another bank, resulting in a pay-down on the Warehouse Line, and a corresponding increase in available credit under the Warehouse Line. This line was renewable annually and next renews on June 10, 2012.

TERM NOTE 16221

To provide working capital and pay off existing term loans with USAmeriBank, Borrower executed a promissory note on April 23, 2009 in the amount of $5,000,000.00 payable to TCB. *See Ex. 8, Term Note, April 23, 2009; see also Ex. 9, Term Loan Agreement, April 23, 2009.* As of April 25, 2012, the UPB on this loan was $3,650,000.00. The commitment having never been reduced or terminated, there remains an unfunded commitment of approximately $1,350,000.00. The note is subject to an interest rate of 8% and a graduated payment schedule. Payments of principal and interest are currently $90,000.00, will increase to $110,000.00 on June 1, 2012, and will increase again on June 1, 2013 to $140,000.00. The loan matures on May 1, 2014. The loan is secured by the following Northwestern Mutual Life Insurance Policies on the life of Jack A.

Thompson: (a) Policy 15-546-003 in the amount of $3,300,000; (b) Policy 16-352-865 in the amount of $2,000,000.

Though TCB is additionally secured by the underlying lease transactions, this security interest is subordinate to one of the financial entities named below. TCB and TAMCO defined certain transactions as "pledged transactions", meaning TCB acknowledged that they were pledged to "permanent lenders" as collateral and that TCB's security interest was subordinate to that of the permanent lender. In every instance, other lenders—PNC/Nat'l City, US Bank, USAB—provided the permanent financing and TCB's security interest is therefore subordinate. Only where TCB provided the permanent financing to the underlying lessee would its security interest be superior; TCB never did this. *See Ex. 9, Term Loan Agreement, Sec. 4.02(d).* A spreadsheet attached hereto shows the 903 leases assigned to other lenders as superior security, meaning TCB's and therefore FDIC's lien position in those leases is subordinate. *See Ex. 17, Pledged Transactions, TCB's Security Subordinate.* TCB's, and therefore FDIC's only superior security interest is in the insurance policies set forth above.

As discussed, TCB's primary asset used for collateral are the future residual profits to be derived from the portfolio of contacts both sold (Wells Fargo, TCF Bank, RCAP, and DLL) and assigned (US Bank, PNC/Nat'l City, USAB, and TCB). Residual profits are defined as earnings net of residual obligations to the various funding sources. Residual profits are derived from contract renewal, sale of equipment to lessee/customers, and sale of returned equipment to used equipment dealers.

WC LINE 18188

TCB provided additional working capital of $3,000,000.00, memorialized by two loan agreements of $1,500,000.00 each. The first, Loan Number 18188, is simple and straightforward; the second, Loan Number 18986, contains "omnibus" provisions that amend multiple extraneous agreements. Only those omnibus provisions directly impacting this case are specifically referenced herein. With respect to the first working capital line—Loan Number 18188—Borrower executed a promissory note on June 10, 2010 in the amount of $1,500,000.00 payable to TCB. *See Ex. 14, Promissory Note, June 10, 2010; see also Ex. 15, Business Loan Agreement, June 10, 2010.* The note is subject to a variable rate of interest (prime + 1%) which has a floor rate of 6%. This twelve month revolving loan was renewed for six months, then converted to an 18 month amortizing loan with a maturity date of August 3, 2013. This conversion to a closed end amortizing loan was supposed to have occurred this past February but, after bank closure, no action has been taken to accomplish this. At each advance, Borrower granted a security interest in the respective underlying collateral.

WC LINE 18986 OMNIBUS

With respect to the second working capital line—Loan Number 18986—Borrower executed a promissory note on February 2, 2011 in the amount of $1,500,000.00 payable to TCB. *See Ex. 16, Promissory Note, dated February 2, 2011; see also Ex. 12, Omnibus Agreement, February 2, 2011.* The note is subject to a variable rate of interest (prime + 1%) which was 6% at origination. By reference to the Omnibus Agreement, which in turn references the Business Loan Agreement on 18188 above, this twelve month revolving loan was renewed for six months, then converted to an 18 month amortizing loan with a maturity date of February 3, 2014. This conversion to a closed-end credit is supposed to take place this next August, 2012. Like all other loans at TCB, Telecommunications Asset Management Company and Jack Thompson serve as guarantors. This loan, and none of the others, adds Paul T. Metzheiser, Todd C. Frankel, and Joseph M. Privitera, as guarantors. At each advance, Borrower granted a security interest in the respective underlying collateral. Omnibus provisions made the following amendments, each of which is discussed along with the affected facility: (1) terminated future advances on the insurance line; (2) capped the lease sale arrangement at $1,000,000.

BACKGROUND:
TCB and Borrower were finalizing the restructure of the loans when TCB was taken over and Borrower has not made any loan payments since.

DISCUSSION:
Several factors come into play when evaluating the five loan assets for a pool sale, all of which favor the proposed compromise: (1) FDIC's security interest in the collateral (underlying leases) is subordinate to that of other institutions; (2) Two of the loans still carry unfunded commitments, one of which is in the amount of $1,500,000.00;
(3) TAMCO's intended restructure having been stopped by the bank's closure, it has allowed all five loans to fall into delinquency until a resolution can be achieved;
(4) Though the loans carry personal and corporate guarantees, guarantors have insufficient assets to cover the debt; (5) Residual profits comprise the upside; however, these only come into play at the end of each respective lease, meaning FDIC, or a purchaser in a pool sale, would have to hold this matter open until such time, and that is based on the rather critical assumption that in either case, servicing could continue without disruption; and (6) Finally, Residual profits belong to TAMCO and only transfer to FDIC or a subsequent holder upon foreclosure of the security interest therein. To send any of these assets to pool sale would not be in the best interest of FDIC.

Neither the Borrower nor the Guarantors has the assets necessary to provide much if any liquidation of the assets held by the Receivership.
The compromise offer by the Borrower offers the best resolution to the Receivership.

May 7, 2012

Asset Number: ##### $9,707,881.69-BV
Asset Name: BORROWER - AA Aircraft

[On April 11, 2012, Borrower submitted its Request for Restructure and case in support thereof in order to reduce Borrower's monthly payment to match that approved by the Bankruptcy court in the American Airlines Bankruptcy. The "Recommendation" section is excerpted here prior to the case in support of Borrower's Offer in Compromise. As of June 13, 2012, Borrower has received no official written response from FDIC regarding its Request for Restructure.]

RECOMMENDATION:
Restructure the debt, without reduction in BV, and therefore without necessity of legal concurrence or review, in accordance with the following: (a) adjust the contractual interest rate from 7% to 3%; (b) adjust the payment amount from $105,900 to $65,000; (c) make a concomitant and appropriate adjustment to the maturity date by extending it from September 29, 2013 until fully amortized. B(6)(a) Waive any and all late charges on the debt. B(22)

RECOMMENDATION:
Compromise Asset by accepting $4,368,546.76 representing 45% of the outstanding balance ($9,707,881.69), as full settlement of the principal obligations. B1(i) Waive any and all late charges on the debt. B22

EXECUTIVE SUMMARY:
Tennessee Commerce Bank ("TCB") provided financing of $10,473,142.00 to BORROWER ("BORROWER") on September 30, 2010 to finance its purchase of an aircraft leased to American Airlines ("American"). *See Ex. 1, Term Promissory Note, September 30, 2010.* The loan was fully drawn at the time of acquisition. American Airlines is in bankruptcy and an agreed settlement, affirming American's lease of BORROWER's aircraft but at a significantly reduced rate, has been submitted to the court for approval.

The book value of the asset as of March 19, 2012 is $9,707,881.69 including all accrued interest. The loan matures on September 29, 2013 and, until the April 2012 payment, had a perfect pay history. *See Ex. 2, Note Modification Agreement, September 29, 2011.* American has not made a payment on the aircraft since November 2011 due to its bankruptcy. A more detailed description of post-closure events related to American's lease payments and BORROWER's note payments is included in the Background Section below.

BORROWER has obtained alternate financing as evidenced by the exhibited commitment letter *See Ex 9, Blanket Commitment Letter, April 27, 2012.* This commitment letter provides evidence of takeout financing for all of BORROWER's offers presented concurrently herewith pursuant to a Master Submission. *See Ex. 10, Master Submission, May 7, 2012.* Of the total commitment amount set forth in this blanket commitment letter, $4,368,546.76 has been allocated to Asset ##### representing 45% of BV as full satisfaction of BORROWER's entire indebtedness related to Asset #####. BORROWER's offer represents the highest value as detailed later in the case and provides the FDIC with the quickest resolution of this asset.

Borrower's offer represents the highest value as detailed later in the case and provides the FDIC with both the best return and the quickest resolution of this asset. It is recommended the FDIC approve this case authorizing the compromise of Asset Number ##### and release the collateral in exchange for $4,368,546.76; and write off the remaining principal balance and all additional interest and fees.

DESCRIPTION OF ASSETS:

BORROWER purchased from The Air Trustee, on September 30, 2010, a 100% participation interest in an MD-83 aircraft being leased to American Airlines. *See Ex. 3a, Participation Agreement, September 30, 2010; see also Ex. 3b, Subservicing Agreement with Respect to [The Air Trustee] Investment Trust, September 30, 2010; for applicable lease documents relating to the subject asset, see Exhibits 7a-7h.* To finance the acquisition, BORROWER executed a promissory note on the same date payable to TCB. *See Ex. 1, Term Promissory Note, September 30, 2010.* The note is subject to an interest rate of 7.0%. The aircraft and the lease thereof, together with certain beneficial interests, stock, and a deposit account, serve as collateral for this loan. *See Ex.4a-4h, "Security Agreements", September 30, 2010.*

As the plane has been leased to American Airlines since BORROWER acquired it, BORROWER's monthly payment of $105,900.00 has historically been covered by the rental stream. However, with its recent bankruptcy, American Airlines made its last regular lease payment on November 1, 2011 and has made no payments since. American's agreement to make reduced payments of $65,000 has been approved by the appropriate parties and the trustee, but has yet to receive the bankruptcy court's approval. American will make no payments until that occurs. The loan matures September 29, 2013. The UPB was $9,707,881.69 as of April 16, 2012.

BORROWER, with the assistance of [an Advisor Firm] ("[ADVISOR]"), submitted to TCB a proposed loan modification, which would have made the following changes to the loan terms: reduce the interest rate to 3%; reduce monthly payments from $105,900 to $65,000; and extend the maturity date until fully amortized. *See Ex. 5a & 5b, Principal Terms of Restructuring Proposal* and *Senior Secured Loan Subject to a Restructure Operating Lease to American Airlines.* These changes would have enabled BORROWER to at least make its April 1, 2012 payment and avoid default. The Borrower's relationship manager approved the proposed modification and placed it on the agenda of the January 27, 2012 board meeting. The bank closed that day and the board meeting, at which the modification would most likely have been approved, never took place.

The loan is not personally guaranteed and Borrower entered into the transaction with the understanding that all financing would be without recourse. *See Ex. 6, [Trustee Name] Equipment Finance, LLC, American Airlines, Inc. Lessee, Commercial Aircraft Lease Transaction Term Sheet, prepared to summarize closing to occur on or before September 30, 2010.* No circumstance has occurred, or will occur, to trigger any indemnification provision applicable to the facility. *See Ex. 4e, Purchase and Transfer Guaranty Indemnity, September 30, 2010.* Consequently, any potential recovery beyond the aircraft and its lease is uncertain.

BACKGROUND:
American's monthly lease payment due BORROWER is $139,000.00. BORROWER's monthly loan payment to TCB is $105,900.00. Prior to November 2011, American made full and timely payments under its lease agreement with BORROWER. BORROWER did the same under its note with TCB. American made its last regular payment to BORROWER on November 1, 2011. American filed for bankruptcy protection on November 29, 2011. Since that time, American has made two reduced payments: $65,000.00 on February 21, 2012 and $65,000.00 on March 21, 2012. American did not make these two payments directly to BORROWER but transferred the funds into a DDA account at the Federal Home Loan Bank ("FHLB"). BORROWER is attempting to have these funds at FHLB transferred into BORROWER's account.

BORROWER has continued to make full and timely payments to TCB (now FDIC), despite receiving absolutely no income from this asset following receipt of American's November 1, 2011 payment. However, BORROWER has not made its April 1, 2012 payment, which is now considered late, and refuses to do so until it obtains the $130,000.00 being held at the FHLB. FDIC has indicated it will waive any and all late fees for this April 1, 2012 payment while the matter is resolved. This loan is now in default.

When American declared bankruptcy, BORROWER was very concerned that its aircraft would be rejected from the terms of settlement and that the lease would be terminated. BORROWER paid ADVISOR $65,000 to help it prevent this from happening. ADVISOR and BORROWER were successful and BORROWER's aircraft was included among those aircraft approved for retention by the bankruptcy court. TCB did not hire ADVISOR to assist it with the Tail 974 aircraft it owned. However, [Borrower's President], President of BORROWER, made a personal phone call to a board member of American Airlines to request assistance in making sure TCB's aircraft was also included in those planes approved for retention. The bankruptcy court approved TCB's plane for retention. BORROWER has not only mitigated the potential loss on its own plane, but on a plane now owned by the Receiver as well.

Pursuant to an agreed draft term sheet submitted to the bankruptcy court, American will make a reduced payment of $65,000 dating back to December 1, 2011. However, the monthly shortfall of $40,900 from December 1, 2011 on will never be recovered from American. Moreover, American will not pay BORROWER anything until the final term sheet has been approved by the bankruptcy judge, which won't happen until at least June 2012. There is potential for further delay as certain provisions in all leases of retained aircraft, which are many and various, must be made uniform to facilitate the orderly administration of the bankruptcy estate. Furthermore, American will likely seize every opportunity to delay the commencement of lease payments. BORROWER fully anticipated the term sheet to be approved in early April 2012. At that time, it would have received $195,000.00. This amount represents the reduced payment of $65,000 for December through February and would have helped BORROWER keep its loan current.

BORROWER cannot afford to make payments on an asset that exceed the asset's income stream. Current income generated by the aircraft is zero. Under no circumstances will BORROWER be able to afford a payment greater than the agreed and approved amount of American's future lease payments on this aircraft. The proposal before the bankruptcy court fixes American's monthly lease payment on this aircraft at $65,000. If the agreed and proposed settlement is not approved by the bankruptcy court, BORROWER will default.

DISCUSSION:

American's bankruptcy has a direct and immediate impact on the aircraft leasing market. American was leasing approximately 253 aircraft, including BORROWER's, when it filed for bankruptcy protection. The order that has already been entered by the court allows American to keep 160 of those aircraft, flooding the market with the remaining 93 aircraft. With a Hungarian Airline and a Spanish Airline dumping another 51 (aggregate) aircraft into the market, resale value of the collateral has dropped dramatically. *See Ex. 8a, Spanair Collapses, Stranding 20,000 People, BBC News Online, January 30, 2012; see also Ex. 8b, Hungarian Airline Malev Collapses, February 3, 2012.*

Alternatives to Compromise:

Administer and attempt to sell a defaulted note.

May 7, 2012

Asset Number: ##### $2,068,677.62-BV
Asset Name: BORROWER

RECOMMENDATION:
Compromise Asset by accepting $1,034,338.81 representing 50% of the outstanding balance ($2,068,677.62), as full settlement of the principal obligations. B1(i)

EXECUTIVE SUMMARY:
BORROWER, ("BORROWER" or "Borrower"), executed a $5,000,000 revolving promissory note on April 15, 2009 payable to Tennessee Commerce Bank ("TCB") to fund its business operations as a seller of data products and data supplies. Borrower and TCB amended the note on September 15, 2011, reducing the total amount to $3,000,000.00. Currently, the UPB on this note is $2,068,677.62, with an available unfunded commitment of $931,322.38. FDIC previously sent a "No Funding" Letter to BORROWER which BORROWER has not countersigned.

BORROWER had maintained a perfect payment history on this and all related debt currently with Receiver. However, this loan matured on April 15, 2012, and now must be refinanced with a new lender or a defaulted loan will find its way to pool sale and fetch a substantially reduced price.

Closure of TCB caused a disruption in the administration of BORROWER's credit facility, resulting in the late payment of vendors and the corresponding loss of rebate revenue, which has in turn caused BORROWER to lose virtually all revenue associated with this credit. There have been three monthly losses to date as follows: January end: $63,256.00; February end: $78,530.00; March end: $66,476.00. Loss for the end of April is estimated to be between $60,000.00 and $80,000.00.

BORROWER has obtained alternate financing as evidenced by the exhibited commitment letter. *See Ex 1, Blanket Commitment Letter, April 27, 2012.* This commitment letter provides evidence of takeout financing for all of BORROWER's offers presented concurrently herewith pursuant to a Master Submission. *See Ex. 2, Master Submission, May 7, 2012.* Of the total commitment amount set forth in this blanket commitment letter, $1,034,338.81 has been allocated to Asset ##### representing 50% of BV as full satisfaction of BORROWER's entire indebtedness related to Asset #####. BORROWER's offer represents the highest value as detailed later in the case and provides the FDIC with the quickest resolution of this asset.

It is recommended the FDIC approve this case authorizing the compromise of Asset Number ##### and release the collateral, including all LOCs, in exchange for $1,034,338.81, notify BORROWER and/or its representative via email regarding the FDIC's approval or other decision in response to BORROWER's Offer, and refrain from reporting information regarding this asset to any credit reporting bureau or agency.

DESCRIPTION OF ASSETS:

BORROWER, through its wholly owned subsidiary, [SUB], sells data products and data supplies. Throughout this case, the use of "BORROWER" is intended to refer to BORROWER's actions as carried out through [SUB]. BORROWER functions as a contract fulfillment partner helping small volume purchasers receive large volume discounts. As an example, when a vendor, such as Lexmark Business Printers, receives a 6,000 unit order from a large volume customer such as Walgreens and a 200 unit order from a small volume customer such as Duane Reed, it will often fulfill the large order itself and pay BORROWER a rebate to fulfill the small order. The price to the customer in each instance remains the same. By doing this, the vendor can achieve efficiencies of scale while still providing discounts to smaller businesses. This enables [SUB] to remain very cost competitive.

BORROWER must pay its vendors net 30 days from product shipment. Volume rebates are awarded monthly based on order volume and timely payments (net 30). These rebates are processed at the end of each month and comprise virtually all the revenue stream associated with Asset #####. *See Ex 7, Fulfillment Partner Transaction, prepared for this submission.* Consequently, there is a significant delay between BORROWER's expense and its corresponding revenue. BORROWER obtained the subject revolving warehouse credit line from TCB, described in detail below, to fill this financial gap. BORROWER and TCB expressed the loan's purpose as follows: (1) purchase of equipment by borrower for leasing to lessees; (2) to allow borrower to provide bridge financing to "buyers" (also called lessees in the documents for convenience) who purchase equipment from Borrower; (3) purchase equipment for resale. *See Ex 6, Revolving Warehouse Credit Agreement, April 15, 2009.* Other general conditions are typical to most revolving credit facilities.

Loan Number ##### is the mechanism that insures regular timely monthly payments in compliance with the net 30-day requirement allowing BORROWER the ability to collect the rebates from the vendor. These rebates cover BORROWER's overhead costs and are the sole source of profit associated with this loan. Without the rebate, the company cannot survive. BORROWER cannot obtain temporary financing because the Receivership holds a security interest in all of the BORROWER's future purchases from Vendors and new lenders will not provide funding without some security interest in the new purchases.

BORROWER executed a revolving promissory note on April 15, 2009 in the maximum amount of $5,000,000.00 payable to TCB and bearing an interest rate of 6.25%. *See Ex 4, Warehouse Note, April 15, 2009.* An amendment to the note established a maturity date of April 15, 2012 and reduced the debt ceiling to $3,000,000.00. *See Ex 5, Amended and Restated Warehouse Note, September 15, 2011.*

Security for this facility can be generally described as Accounts Receivable. More specifically the security is defined as follows: (1) transactions, chattel paper, accounts receivable, subject properties; (2) records and data relating to item 1; (3) insurance proceeds; (4) Borrower's promise to do and execute whatever is necessary to evidence and perfect the lien such as UCC financing statements.

Any personal guaranty for this note was subject to and arose only upon the satisfaction of the following event: the note was past due for 60 days. As this loan matured without this trigger having been satisfied, the loan matured without the personal guaranty of [Name Omitted] and so is not personally guaranteed.

BACKGROUND:

As usual, BORROWER submitted its regular draw request on January 30, 2012 in order to fund payments due its vendors. Its request was denied by FDIC as Receiver for TCB on or about February 1, 2012. Consequently, ***for the first time ever***, BORROWER ([SUB]) has been unable to make its vendor payments on time. On Tuesday morning, March 27, 2012, BORROWER observed a significant reduction in gross margin even though revenue remained at predictable levels. BORROWER, through its subsidiary [SUB], consistently has experienced, per vendor, gross profit on gross sales of 16-18%. It has dropped below 10%. Upon further investigation, it was discovered that it was the lateness of BORROWER's payments to its vendors that resulted in the loss of the rebate payments, something that had never occurred.

Why have BORROWER's vendor payments been late? BORROWER's payments have been late as a direct result of FDIC's failure to fund. Because rebates are capitalized at the end of each month, BORROWER has only recently discovered the losses caused by this disruption in what has otherwise consistently been a smoothly operating and regularly recurring administrative function. Monthly losses, directly attributable to the bank's closing and failure to properly administer this credit in accordance with the agreement and course of business dealing, to date are as follows: January end: $63,256.00; February end: $78,530.00; March end: $66,476.00. Loss for the end of April is estimated to be between $60,000.00 and $80,000.00. BORROWER will continue to incur this amount of loss on a monthly basis until the current situation is resolved.

Critical to BORROWER's business success is availability of capital, which allows it to perform fulfillment of contracts, which in turn earns BORROWER rebates. The profit/revenue received from the security of the note is in the rebate. FDIC's refusal to honor the closed bank's commitment to advance has virtually eliminated BORROWER's profit stream associated with this credit facility, the very purpose for which the credit was originally extended. With the Receivership not funding on the Commitment, BORROWER is receiving no rebates. Furthermore, this interference by FDIC in BORROWER's ongoing vendor relationships has placed BORROWER in jeopardy of losing both its vendor base and its customer base. Loss of this revenue, coupled with the overhead of fulfilling its contractual obligations, actually places BORROWER, which employs 20, in a negative profit situation with respect to this credit facility.

DISCUSSION:

Loan ##### is now matured, and having not been extended prior to maturity, investors cannot be expected to offer much for this asset. The maturity of this loan without payment is an indicator of future delinquency, something investors consider in their valuation and bid. BORROWER has indicated to the Receivership that its losses since the Receivership declined further funding of its commitment have exceeded $225,000 from the rebates it receives from the manufactures in their Fulfillment Partner program.

Profit and overhead income only comes from the Rebate negotiated. This is true for BORROWER and it will be true for the pool purchaser. For a pool purchaser to benefit from the purchase of this asset, they will need to be approved by the manufacturer as a Fulfillment Partner and negotiate a rebate program that allows for them to be profitable with the amount of rebate because the structure of the Fulfillment Partner program requires the partner to sell the product at the same price they purchase from the manufactory. Success in this regard is not guaranteed. Most pool purchasers will not want to venture into this water unless they are already in it, ***again reducing potential pricing on pool sale***.

As indicated above, the BORROWER's only source of profit is from rebates because of their requirement to sell the items from the manufacture at the same price as they purchase from the manufacture. This Offer to Compromise takes the asset off the books of the Receivership at 50% of BV.

IPAC'S SUBMITTED CASE CHART FOR CONGRESSIONAL RECORD

BORROWER	UNPAID PRINCIPAL BALANCE $UPB	COLLATERAL COLLATERAL	BORROWER'S OPINION OF VALUE EST VALUE	RECOURSE? Y/N	PERSONALLY GUARANTE Y/N	PERFORMING LOAN? Y/N	FDIC SUSPENDED FUNDING? Y/N	BORROWER PROVIDES CREDIT TO OTHERS Y/N	DATE SUBMITTED	OFFER $
A+ Storage Downtown	$ 7,859,278.42	Storage units	$ 4,750,000	Y	Y	Y	N	N	5/2/12	$ 4,300,000.00
A+ Storage LaVergne	$ 248,761.00	Storage units	$ 20,000	Y	Y	Y	N	N	5/2/12	$ 10,000.00
A+ Storage Murfreesboro	$ 2,622,208.18	Storage units	$ 1,250,000	Y	Y	Y	N	N	5/2/12	$ 1,000,000.00
A+ Storage Providence	$ 4,234,100.00	Storage units	$ 1,500,000	Y	Y	Y	N	N	5/2/12	$ 1,150,000.00
A+ Storage Spring Hill	$ 3,296,669.00	Storage units	$ 550,000	Y	Y	Y	N	N	5/2/12	$ 375,000.00
Bristol Development Grp	$ 3,000,000.00	FF&E	$ 1,750,000	Y	Y	Y	N	N	5/23/12	$ 1,250,000.00
[Borrower] Properties, LLC	$ 2,940,000.00	Shopping Center	$ 750,000	Y	Y	Y	N	N	6/15/12	$ 450,000.00
Capital Leasing & Finance	$ 1,441,955.07	Vehicles/leases	$ 800,000	Y	Y	Y	Y	Y	4/30/12	$ 502,881.83
Central Fleet Leasing, LLC	$ 1,289,147.68	Vehicles/leases	$ 700,000	Y	Y	Y	N	Y	6/15/12	$ 400,000.00
Central Leasing Corp	$ 68,750.00	Vehicles/leases	$ 20,000	N	N	Y	N	Y	6/15/12	$ 10,000.00
Cornerstone Capital, Inc	$ 150,981.90	Vehicles/leases	$ 75,000	Y	Y	Y	N	Y	6/15/12	tbd
Cornerstone Capital Corp.	$ 392,940.72	Vehicles/leases	$ 170,000	Y	Y	Y	N	Y	6/15/12	tbd
CPG	$ 20,535,948.20	Drilling Rigs	$ 8,000,000	N	N	N	N	N	5/23/12	$ 6,100,000.00
Equipment Leasing Srvs.	$ 2,179,221.21	Vehicles/leases	$ 1,000,000	Y	Y	Y	Y	Y	6/15/12	tbd
UNIN'D	$ 2,068,677.62	Account Receiv	$ 1,200,000	Y	Y	Y	N	Y	5/7/12	$ 1,034,338.81
UNIN'D	$ 1,314,115.39	Lease equipment	$ 650,000	Y	Y	Y	N	Y	5/7/12	$ 525,646.16
UNIN'D	$ 9,707,881.69	Airplane	$ 5,000,000	Y	Y	Y	N	N	5/7/12	$ 4,368,546.76
UNIN'D	$ 1,541,855.46	Airplane	$ 800,000	Y	Y	Y	N	N	5/7/12	$ 616,742.18
J. B. & B. Investments	$ 77,297.24	Vehicles/leases	$ 42,500	Y	Y	Y	N	Y	6/15/12	$ 37,000.00
KNA	$ 4,394,000.00	Hotel	$ 3,300,000	Y	Y	Y	N	N	4/16/12	$ 2,770,000.00
Leo Sands	$ 7,754,837.00	Hotel	$ 3,700,000	Y	Y	Y	N	N	6/14/12	$ 2,700,000.00
TAMCO	$ 7,343,550.00	Vehicles/leases	$ 4,000,000	Y	Y	N	Y	Y	6/15/12	$ 3,524,904.00
TOTALS	$ 84,462,175.78		$ 40,027,500							$ 31,125,059.74

7/19/2012 12:19 PM prelim 10

FIM4PD **FY10 PRELIMINARY SINGLE AUDIT EXPENDITURE SCHEDULE**

	09/24/10 Grant	FY	Grant Name	Grantor Number	CFDA	Revenue Source	Total Costs
18	F11008	09	Prosecution Support	VAWA-2008-1712	16.588	I800	20,428.82
18	F11008	10	Domestic Violence Prosecutor	VAWA-2009-1812	16.588	I800	58,002.05
18	F15013	09	UASI - 5 D Volunteer Program	2006-EM-E6-0059/05AUA	97.008	I800	140,149.81
18	F15014	09	Base Realignment and Closure	RA0625-08-013	12.607	I800	133,226.78
18	F15014	10	Base Realignment and Closure	RA0625-09-03	12.607	I800	
18	F15017	08	Summer of Services	07CGHMD001	94.007		
18	F15018	09	FY09 MLK days of services		94.007		-
18	F15018	10	FY09 MLK days of services		94.007		5,000.00
18	F18006	09	Nortwest Park/Oakview Weed and Seed	2008-WS-QX-0149	16.595	I800	62,355.51
18	F18006	10	Nortwest Park/Oakview Weed and Seed	2009-WS-QX-0167	16.595	i800	83,853.13
18	F45029	TA	G-20 Summit, 9/24-25/09	EMW-2003-CA-0100/M01!	97.025		9,672.55
18	F45029	TB	HURRICANE Gustav	EMW-2003-CA-0100/M02'	97.025		16,024.75
18	F45029	9E	2009 Presidential Inaugurartion	Activation Order # 2007-0(	97.025		(59.39)
18	F45034	TB	USASI NCR Cache Leadership	2004-TU-T4-0010/04.1.13.	97.067		257,854.93
18	F45034	09	USASI NCR Cache Leadership	2004-TU-T4-0010/04.1.13.	97.067		55,000.00
18	F45034	7C	UASI NCR Radio Cache Maintenance	2006-EM-E6-0059/04CUA	97.067		
18	F45034	7E	UASI Trailers Cache Phase 2	2005-GE-T5-0024/4.1.17.!	97.067		
18	F45034	8A	UASI NCR Radio Cache Maintenance	2005-GE-T5-0024/R2UAS	97.067		25,888.09
18	F45034	8C	WMd Training	None shown	97.067		28,373.99
18	F45034	9A	UASI NCR Radio Cache Maintenance	None shown	97.067		49,796.19
18	F45034	9B	UASI NIMS Coordinator	2005-GE-T5-0024/4BUAS!	97.067		10,618.43
18	F45034	9C	UASI Mass Casualty Support Unit - Medical Supplies	2005-GE-T5-0024/4DUAS	97.067		457.84
18	F45034	9D	UASI MCSU Supplies	2005-GE-T5-0024/4DUAS	97.067		
18	F45034	9E	UASI - MCSU Medical Supplies	2004-TU-T4-0010/04.1.17.	97.067		373,787.09
18	F45034	9F	Communication Leader	2005-GE-T5-0024/5C7UA!	97.067		-
18	F45034	9G	Incident Management Training		97.067		17,509.71
18	F45041	EE	USAR WMD Preparedeness GRANT	EMW-2006-CA-0222	97.025		
18	F45041	FF	National Urban Search and Rescue (NUSR)	EMW-2005-CA-0285	97.025	I800	274,599.41
18	F45041	GG	National Urban Search and Rescue (NUSR)	EMW-2008-CA-0484	97.025	I800	470160.71
18	F45041	HH	National Urban Search and Rescue (NUSR)	EMW-2008-CA-0484	97.025	I800	192,529.93
18	F45042	09	Assistant to Fire Fighters Grant		97.044		282,745.63
18	F45043	6C	FY06 IMT-Florida Hurricane Wilma		97.044		(2,270.21)
18	F45043	9A	Mission SR980 - Hurricane Ike		97.067		
18	F45044	09	National Fire Protection Association	-	97.067		3,024.00
18	F45080	07	Safer Grant	EMW-20006-FF-03999	97.044	I800	207,000.05
18	F45080	09	Safer Grant		97.044		537,528.84
18	F47002	05	Washington/Baltimore HIDTA Project	Z988302	07	I800	
18	F47002	06	Washington/Baltimore HIDTA Project	Z903012	07	I800	(4,310.61)
18	F47002	07	Washington/Baltimore HIDTA Project	Z914102	07	I800	42,732.96
18	F47002	08	Washington/Baltimore HIDTA Project	Z926201	07		85,000.00
18	F47021	6A	BJA Bullet Proof Vests	1121-0235	16.607		
18	F47034	06	JOINT TERRORIST TASKFORCE	MOU between FBI and	16.595		
18	F47034	07	JOINT TERRORIST TASKFORCE	MC Police	16.595		
18	F47034	08	JOINT TERRORIST TASKFORCE		16.595		
18	F47034	09	JOINT TERRORIST TASKFORCE		16.595		29.45
18	F47035	07	FY07 PAL-PALYEP	2007-JL-FX-0016	16.541	i800	
18	F47035	08	FY08 PAL-PALYEP	2007-JL-FX-0016	16.541	i800	
18	F47042	09	COPS Hiring		16.710		-
18	F47049	08	METRO ALIEN TASK FORCE	NFSL-2002-1001	21.000		
18	F47049	09	METRO ALIEN TASK FORCE	NFSL-2002-1001	21.000	i800	2,271.00
18	F47049	10	METRO ALIEN TASK FORCE	NFSL-2002-1001	21.000		16,645.65
18	F47056	07	DNA CAPACITY ENHANCEMENT	2006-DN-BX-K203	16.560	i800	
18	F47057	9B	Forensic DNA Backlog Reduction Program	2004-DN-BX-K090	16.560		(4,280.48)
18	F47057	9A	DNA Backlog Reduction Program	2007-DN-BX-K100	16.560		113,945.73
18	F47057	07	DNA Backlog Reduction Program	2006-DN-BX-KO48	16.560		35,544.00
18	F47057	10	DNA Backlog Reduction Program	2009-DN-BX-K085	16.560		200.00
18	F47059	07	SAFE SCHOOLS-HEALTHY KIDS -FY07		84.184		
18	F47060	09	SOLVING COLD CASES with DNA	2008-LT-BX-K005	16.741		98,772.90
18	F47060	10	Solving Cases with DNA	2005-DN-BX-K021	16.560		
18	F47064	06	FY06 FSS BYRNE POLYGRAPH IMPROVEMENT	2005-DJ-BX-0304	16.560		
18	F47064	07	Ed Byrne Memorial Justice Assistance Grant Program	2006-DJ-BX-0303	16.560		3,444.46
18	F47064	09	FY06 FSS BJAG GOCCP	2006-DJ-BX-0303	16.560		
18	F47066	06	COPS RAFIS Upgrade	2005-CK-WX-0422	16.710	i800	
18	F47070	07	PSN Anti-Gang Initiative	PSNI-2006-1007	16.744	I800	
18	F47072	09	Regional Fugitive Task Force	FATF-08-0144	16.595		7,000.00
18	F47072	10	Regional Fugitive Task Force	FATF-08-0144	16.595		18,824.72
18	F47082	09	Comprehensive Anti-Grant Activity Strategy Grant	I 37-1241	16.580		43,511.78
18	F47084	10	Wheaton CSAFE				
18	F47090	10	Gang Suppression/Prevention - Montgomery County	2009-d1-BXx-0314	16.580		6,935.48

G:\112th Congress\112th Capital Markets Subc\112th CM Hearings\112th CM Hearings -- 2nd Session\07-20-12 CM Muni Advisor\07-20-12 CM Disclosure Forms\montgomerycountygrants]

FIM4PD 09/24/10 **FY10 PRELIMINARY SINGLE AUDIT EXPENDITURE SCHEDULE**

	Grant	FY	Grant Name	Grantor Number	CFDA	Revenue Source	Total Costs
18	F48001	10	FY 2007 Cooperative Reimbursement Agreement	CSEA/CRA/10-043	93.563	I800	434,787.32
18	F48001	09	FY 2008 Cooperative Reimbursement Agreement	CSEA/CRA/09-043	93.563	I800	127,925.70
18	F48004	04	FY04 DOMESTIC VIOLENCE ASSISTANT	2001-WE-BX-0012	16.590	i800	
18	F48007	07	OVW FY06 Grants to encourage Arrest Policies and Enforcement Protection Orders	2005-WE-AX-0096	16.590	I800	
18	F48008	08	Criminal Investigation & New Detective Training - LETS	BJAG - 2005 - 1081	16.738	I800	
18	F48009	09	Regional Fugitive Gang Task Force	FATF-09-0128	16.595		8,752.98
18	F48009	10	Regional Fugitive Gang Task Force	FATF-10-0128	16.595		40,532.61
18	F48015	10	FDIC Bank Closures-Federal Security		16.595		16,602.55
18	F48016	10	FY10 ATF Gang Task Force Overtime Grant		16.595		2,866.08
18	F48020	09	Grants to Encourage Arrest Policies	2005-WE-AX-0096	16.590		372,701.02
18	F49001	09	FFY08 STATE HOMELAND SECURITY GRANT		97.073		108,367.06
18	F49001	08	SGSGP-LETPP	2007-GE-T7-0040	97.067		359,796.92
18	F49001	10	FFY10 STATE HOMELAND SECURITY GRANT	2007-GE-T7-0040	97.067		187.89
18	F49001	8B	Mini Citizens Corp	2007-GE-T7-0040	97.067		4,935.00
18	F49001	8C	SGSGP-LETPP	2007-GE-T7-0040	97.067		425,374.70
18	F49004	09	UASI DATA SHARING	2005-GE-T5-0024/13DUA:	97.067		858,209.59
18	F49004	1A	FFY09 UASI Exercise & Training Grant	2005-GE-T5-0024/5CUAS	97.067		62,500.00
18	F49004	7A	CATI	2005-GE-T5-0024/8DUAS	97.067		
18	F49004	9A	NCR Training and Exercise Support	2006-GE-T6-0037/ETPUA	97.008		270.00
18	F49004	9B	UASI Hampton Roads	2007 UASI HRPDC	97.067		341,245.26
18	F49005	07	FY06 UASI FORCE PROTECTION	2005-GE-T5-0024/MD2UA	97.067		
18	F49005	6B	NCR NIMS Coordinator Position	2005-GE-T5-0024/5C2UA:	97.067		
18	F49005	08	NIMS Coordinator Maintenance	2006-GE-T6-0037/ETCUA	97.008		
18	F49006	08	UASI Information Data Sharing	13AUAS6	97.008		1,840,376.06
18	F49006	09	UASI NCR Law Enforcement (LINX)	UASI NCR Law Enforceme	97.008		199,803.61
18	F49006	1A	UASI Information Data Sharing	UASI Information Data Sh:	97.008		103,211.00
18	F49006	10	UASI-LINX Capabilities Upgrades		97.008		75,693.03
18	F49006	8A	UASI Information Data Sharing	2006-EM-E6-0059/13AUA:	97.008		615,226.36
18	F49006	8B	UASI NCR LINX Maintenance Grant - Defiba	2006-EM-E6-0059/13AUA:	97.008		906,260.58
18	F49008	10	Mass Care Supplies	2005-GE-T5-0024/X4UAS:	97.067		87,536.95
18	F49009	07	UASI Grant		97.067		
18	F49010	10	EMPG Grant Program	2007-EM-E7-0104	97.042		288,532.00
18	F49011	07	NCR NIMS ICS 300/400 Training	ETTUAS6	97.008		
18	F49012	09	Active Shooter "Immediate Action Teams" Tactics & OI	ETYUAS6	97.008		
18	F49013	09	UASI Emergency Planning		97.008		229,670.80
18	F49016	10	Influe Pendemic Training of Pharmacists		97.073		10,246.69
18	F49017	10	H1N1		97.073		28,515.31
18	F49018	09	UASI 5% Share		97.073		304,825.98
18	F49019	10	Regional Animal Shelter Preparedness		97.073		23,783.18
18	F49023	10	FY09 UASI Explosive Breaching Training		97.073		4,964.88
18	F50809	9A	Depot Security - Transit Grant	Subgrant # 6TGO3	97.075		380,969.08
18	F50809	09	Bus Security Cameras	Subgrant # 6TGO3	97.075		40,957.59
	F50809	10	Bus Security Cameras	Subgrant # 6TGO3	97.075		6,406.42
18	F50810	08	Travel Assistance for Income-Qualified Residents	Subgrant # 08-032	20.505		5,822.67
18	F61204	10	HEAD START Program	03CH2109/44	93.600	i800	1,126,815.84
18	F61204	10	HEAD START Program; **Transfers to MCPS**	03CH2109/44	93.600	i800	3,374,427.10
18	F61206	09	Community Services Block Grant	DCA/OCA-10-03-013	93.569	i800	168,783.44
18	F61206	10	Community Services Block Grant	DCA/OCA-10-03-013	93.569	i800	340,020.84
18	F61507	C6	**CLIG CARRYOVER - PART C**	SG802078-01	84.181		
18	F61507	C7	**CLIG CARRYOVER - PART C**	SG802078-01	84.181		
18	F61908	09	Retired and Senior Volunteer Program	06 SRAMD 003	94.002	i800	11,425.12
18	F61908	10	Retired and Senior Volunteer Program	09 SRAMD 003	94.002	i800	35,896.31
18	F64013	09	Rockville District Court Abused Persons Support	VAWA-2008-1410	16.588	i800	13,372.09
18	F64013	10	Victim Access	VAWA-2009-1411	16.588	i800	23,203.91
18	F64040	07	CHILD CARE RESOURCE & REFERRAL	NONE	93.575		
18	F64040	09	CHILD CARE RESOURCE & REFERRAL	NONE	93.575		93,585.93
18	F64040	09	CHILD CARE RESOURCE & REFERRAL	NONE	93.713		91,085.00
18	F64053	05	SAMSHA SERVICE TO CHILDREN	5 HS5 SM52929-06	93.104	i800	
18	F64132	06	Gang Prevention Initiative	2005-JV-FX-0071	16.541	I800	
18	F64140	07	Crossroads Youth Opportunity Center	2006-JL-FX-0077	16.580	I800	
18	F64142	07	Joint County Gang Prevention and Supression Initiative	2006-DD-BX-0323	16.580	I800	527,963.79
18	F64144	07	Civic Justice Corps Grant	YF15595-06-60	17.261	I800	

7/19/2012 12:19 PM prelim 10

FIM4PD
09/24/10

FY10 PRELIMINARY SINGLE AUDIT EXPENDITURE SCHEDULE

Grant	FY	Grant Name	Grantor Number	CFDA	Revenue Source	Total Costs
18 F64154	08	Community-Based Collaborations (CBC) for Gang Prevetion and Positive Youth Development Program	2007-JV-FX-0325	16.544	I800	74,215.28
18 F64155	10	Pre-Trial Domestic Violence Abuser Intervention Projec	2007-DD-BX-0715	16.580	I800	
18 F64164	09	Maryland Regional Gang Initiative Expansion	**2008-DD-BX-0648**	16.753		113,857.03
18 F64167	09	Adult Drug Court Cap Expand Initiative	1H79TI020002-01	93.243		60,317.00
18 F64167	10	Adult Drug Court Cap Expand Initiative	1H79TI020002-01	93.243		294,450.50
18 F72019	10	NRPA Grant		07.000	I800	566.46
18 F77009	09	Neighborhood Stabilization Program (NSP)	B-08-UN-24-0001	14.251		1,789,058.30
18 F77011		EMERG SHELTER	S-05-UC-24-0003	14.231		
18 F77011	09	EMERG SHELTER	S-08-UC-24-0003	14.231		52,968.27
18 F77011	10	EMERG SHELTER	S-09-UC-24-0003	14.231		129,530.12
18 F77013	09	Maryland Neighborhood Conservation Initiative	MD - NCI -1	14.228		3,434,876.54
18 F77021	10	WEATHERIZATION	2005-DOE FUNDS	81.042		31,831.86
18 F77023	07	WEATHERIZATION DOE SUPPLEMENT	2006-DOE FUNDS	93.568		
18 F77023	08	WEATHERIZATION DOE SUPPLEMENT	2006-DOE FUNDS	93.568		
18 F77026	07	WEATHERIZATION DOE SUPPLEMENT		93.568		
18 F77027	10	WEATHERIZATION DOE SUPPLEMENT		93.568		-
18 F77033	04	FENTON STREET EDI	B-03-SP-MD-0331	14.246		
18 F77034	04	LONG BRANCH COMM CTR	B-03-SP-MD-0326	14.246		
18 F77035	04	WHEATON FACADE EDI	B-03-SP-MD-0323	14.246		
18 F78010	09	WIA Dislocated Worker	POOB7200010-D	17.260		236,771.06
18 F78010	10	WIA Dislocated Worker	POOB8200010-D	17.260		693,675.14
18 F78020	09	WIA ADULT PROGRAM	POOB7200010-B	17.258		52,118.94
18 F78020	10	WIA ADULT PROGRAM	POOB8200010-B	17.258		300,158.58
18 F78040	06	WIA YOUTH PROGRAM	POOB6200033	17.259		
18 F78040	09	WIA YOUTH PROGRAM	POOB7200010-C	17.259		121,908.91
18 F78040	10	WIA YOUTH PROGRAM	POOB8200010-C	17.259	i800	243,377.18
18 F78041	07	SUMMER YOUTH CONNECTION	POOB7200025	17.259		
18 F78041	08	SUMMER YOUTH CONNECTION	POOB8200022	17.259		
18 F78041	09	SUMMER YOUTH CONNECTION	PO0B6200152	17.258/9/60		
18 F78050	07	FY06 RAPID RESPONSE	POOB6200052	17.260	i800	
18 F78050	08	FY06 RAPID RESPONSE	POOB7200052	17.260		
18 F78051	07	RAPID RESPONSE - EARLY INTERVENTION	POOB7200026	17.260	i800	
18 F78051	10	RAPID RESPONSE - EARLY INTERVENTION	POOB8200043	17.260	i800	
18 F78070	08	STATE WIDE INCENTIVE GRANT	POOB7200042	17.258/9/60	i800	
18 F78070	09	STATE WIDE INCENTIVE GRANT	POOB7200154	17.258/9/60	i800	
18 F78090	06	WIA ADMINISTRATION	POOB6200033	17.258/9/60	i800	
18 F78090	08	WIA ADMINISTRATION	POOB7200010-A	17.258/9/60	i800	
18 F78090	09	WIA ADMINISTRATION	POOB8200010-A	17.258/9/60	i800	
18 F78120	07	MD HEALTHCARE WORKER	POOB7200050	17.260		
18 F78130	06	MD NEG BRAC	POOB6200131	17.260		
18 F78130	08	MD NEG BRAC	POOB8200098	17.260		21,471.23
18 F78140	09	T.N.F.		93.558	i800	95,484.37
18 F78310	08	FY'07 Maryland Workers ReEntry Program	BJAG-2007-0061	16.738	pls see S/F012	
18 F78310	09	Offenders Employment Reetry	BJAG-2007-0061	16.738	pls see S/F012	
18 F78500	06	DISABILITY NAVIGATOR GRANT		17.266		
18 F78500	09	DISABILITY NAVIGATOR GRANT	P00B6200054	17.266		28,003.03
18 F78500	10	DISABILITY NAVIGATOR GRANT	POOB8200017	17.266	i800	161,116.79
18 F78600	08	MD BUSINESS WORKS	POOB6200097	17.258/9/60	i800	28,099.99
18 F78600	09	MD BUSINESS WORKS	POOB7200081	17.258/9/60	i800	(30,414.19)
18 F78600	10	MD BUSINESS WORKS	POOB8200061	17.258/9/60	i800	-
18 F78800	10	FY10 Wagner-Peyser Grant	PO091400110	17.207		349,708.48
18 F78803	10	WIA Statewide Funds	PO0B9200073	17.258/59/60		4,500.00
18 F80015	09	Diesel Emission Reduction	92045-MEMA00	66.034		28,973.22

G:\112th Congress\112th Capital Markets Subc\112th CM Hearings\112th CM Hearings -- 2nd Session\07-20-12 CM Muni Advisor\07-20-12 CM Disclosure Forms\montgomerycountygrants]

7/19/2012 12:19 PM prelim 10

	FIM4PD 09/24/10 Grant	FY	FY10 PRELIMINARY SINGLE AUDIT EXPENDITURE SCHEDULE Grant Name	Grantor Number	CFDA	Revenue Source	Total Costs
18	F85003	09	Cops in Shops - Liquor Board	Project # 09-166	20.605	i800	5,775.79
18	F85007	10	Cops in Shops	EUDL-2009-1026	16.727		18,819.01
18	F85008	10	ID Checking Calendar for Retailers and Takoma Park Cops ir	10-166-23	20.600		9,504.93
18	F85010	10	Town Hall Meetings Underage Drinking	Activity # 73	93.243		500.00

Response to questions from the Honorable Randy Neugebauer by Bret D. Edwards, Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation

Q1: How can the FDIC verify that pursuing structured transaction sales will maximize the return to the Deposit Insurance Fund?

A1: The verification is comprised of several components: analysis of performance, evaluation of structured sale results compared to the estimated cash sale value, and monitoring for compliance.

During the structuring process for each LLC, the FDIC's financial advisor prepares an estimated cash flow projection for the pool of loans being conveyed to the LLC, including how the cash flows will flow through the deal structure for distribution to the equity holders. These projections become the FDIC's baseline for subsequent monitoring of transaction performance. In the aggregate, for the 29 LLC transactions closed through September 2011, total projected equity distributions to the FDIC, as of March 31, 2012, are substantially in line with the FDIC's initial projections, with an approximate 0.1 percent difference.

Another measure is the comparison of selling the loans in a structured sale versus a cash sale. The present value of the cash flows to the FDIC on the LLC transactions as of the respective closing dates is compared to the cash sale value to determine the dollar amount of the benefit to the FDIC from having entered into the LLC transaction. As of December 31, 2011, the aggregate present value of actual and projected LLC cash flows to the FDIC, as of the closing dates for each LLC transaction, was approximately $11.7 billion (or 47.2 percent of the initial unpaid principal balance (UPB)), compared to the cash sale values of approximately $7.4 billion (or 29.8 percent of the initial UPB). By this measure, the benefit to the FDIC of having entered into the LLC transactions instead of selling assets for cash is approximately $4.3 billion (or 17.4 percent of initial UPB).

The managing members are required by the LLC agreements to maximize return to the LLC. The FDIC monitors management of the portfolio and compliance with the agreements by reviewing monthly reports, reviewing actual performance against consolidated business plans, and conducting site visitations on at least an annual basis. In addition, the FDIC utilizes an accounting contractor to perform closing and interim management reports and review and process monthly cash flow and account statements.

Q2: What discounts and financing does the FDIC provide to its private sector partners to facilitate structured transaction sales?

A2: When the FDIC as receiver conveys assets to an LLC it receives as payment all of the equity interest in the LLC, as well as, in some cases, purchase money notes. The FDIC then sells a portion of the equity (typically 40 percent) to private sector partners. The LLC repays the purchase money notes over time from cash flow generated by the LLC, and the repayment of the purchase money notes is made prior to the members of the LLC receiving any equity distributions. The FDIC does not offer any discounts, but rather conveys the assets to the LLC based on the market value of the assets.

It is important to note that the managing member pays cash to the FDIC for its winning bid amount. The FDIC does not finance the managing member's equity interest.

Q3: Can FDIC managing partners use TARP funds to purchase their equity interest in LLCs?

A3: No buyers to date had received TARP funds.

Q4: How many complaints has the FDIC received from borrowers whose loans have been transferred into structured transaction sales?

A4: Of the more than 42,300 assets that the FDIC transferred into structured transactions, the FDIC has received a total of 181 inquiries from borrowers from June 2010 to the present.

Q5: How does the FDIC manage complaints received from borrowers whose loans have been transferred into structured transaction sales?

A5: When the FDIC receives a borrower's inquiry, the following steps are performed:

- We determine if the inquiry is associated with a structured transaction;
- We contact the borrower, usually via email;
- The inquiry is assigned to an FDIC specialist, who contacts the acquirer of the loan to obtain and review the information that will address the borrower's specific concerns;
- Following review and approval, a response is mailed to the inquiring party.

Q6: How many complaints has the FDIC received from Members of Congress advocating on the borrowers' behalf?

A6: From June 2010 to the present, the FDIC has received 80 inquiries from Members of Congress relating to borrowers whose loans were sold in structured transactions.

Q7: How does the FDIC manage complaints received from Members of Congress advocating on the borrowers' behalf?

A7: A Congressional inquiry is handled similarly to a direct inquiry from a borrower described above. Inquiries are carefully tracked to assure a prompt response. The inquiry is assigned to an FDIC specialist, who contacts the acquirer of the loan to obtain and review the information that will address the borrower's specific concerns. Following confirmation that we have a signed

Privacy Act release from the constituent, a response is then prepared for the Member of Congress so they can provide a response to their constituent.

Q8: How many more structured transaction sales are in the pipeline?

A8: There are currently several structured transaction sales in the pipeline. The first to be offered will be a Small Investor Program (SIP) sale from a single receivership. A multi-receivership offering is in the initial planning and development stages. The portfolio has not been finalized, but the sale is expected to include commercial real estate, acquisition development and construction and single family residential loans from 70 receiverships. It is expected that additional loans will be included from new receiverships. The sales are projected to bid in the fourth quarter and close before year-end.

Q9: Is there an end date for the structured transaction sales program?

A9: No, there is no anticipated end date at this time, but frequency and volume is likely to diminish going forward. Nationally, through August 6, 2012 there have been 454 bank failures since the beginning of 2008. While still high, the current pace of failures is slowing. As of August 6, 2012, there have been 40 financial institution failures in 2012 compared to 63 failures at this same point last year. Additionally, a contributing factor that affects the structured transaction sales program is the type of resolution and the number of loans the FDIC retains.

Q10: On what criteria will the FDIC judge the ultimate success of the structured transaction sales program?

A10: The transaction agreement term is generally seven years for commercial real estate and acquisition, development and construction loan sales, and ten years for single family residential loan sales. As such, the success of the structured transaction sales program cannot be completely measured until termination of the agreements. An analysis of the overall recovery considering the costs of marketing and monitoring as compared to selling the loans in a cash sale will be the most meaningful way to judge the success of the program. The FDIC gathers substantial data throughout the course of these transactions so we will have the ability to evaluate costs, recovery, and many other factors.

Q11: Does the FDIC direct its private sector partners' approach to collecting outstanding debt on loans transferred into structured transactions LLCs?

A11: The transaction documents provide that the managing member service and liquidate the assets in the way in which a prudent servicer would do. While the FDIC does not direct the collection efforts of the managing member, the FDIC has a monitoring process in place to ensure that the managing member and its servicer comply with the terms of the Servicing Agreement and other transaction documents. If a servicer fails to comply with the servicing standard, the

FDIC has the right to put the managing member in default and, among other remedies, remove the servicer.

An example of servicing standards for loans secured by single-family properties is the requirement that the managing member implement a loan modification program consisting of either: (i) HAMP, (ii) the FDIC's mortgage loan modification program, or (iii) a managing member proprietary program that is approved by the FDIC.

Q12: Why does Rialto seem to have a much higher number of Congressional inquiries regarding its practices than other managing members in the structured transaction sales program?

A12: Of all structured transactions sold to date, Rialto is the managing member with the highest number of loans. In addition, at the time of the sale, 89 percent were non-performing acquisition, development, and construction (ADC) loans, with many of the remaining loans expected to default prior to their maturity date due to collateral characteristics and type. Over 80 percent of the loans were more than 150 days delinquent. Many of the ADC loans have undeveloped land or vacant land as collateral, and it is difficult to restructure a loan with collateral that does not have a payment stream. The large number of ADC loans combined with the high percentage of delinquencies is a significant contributor to the number of congressional inquiries received by the FDIC. Since the structured transaction sale, the number of inquiries and the percent of these inquiries to total assets transferred to the LLCs is less than 1 percent.

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

June 25, 2012

Honorable Michael E. Capuano
Ranking Minority Member
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Congressman Capuano:

This letter is in response to your request for information during the testimony of Bret Edwards, Director, Division of Resolutions and Receiverships, on May 16, 2012, at the hearing entitled "Oversight of the Structured Transaction Program" before the Subcommittee on Oversight and Investigations of the House Financial Services Committee.

At the hearing you asked for an explanation of the price paid by Rialto for its 40 percent equity interest in the two structured transactions with the Federal Deposit Insurance Corporation. Enclosed is a report prepared by the Federal Deposit Insurance Corporation's Division of Resolutions and Receiverships of the economic structure of those transactions and the price paid by Rialto.

We hope that this information is helpful. If you have further questions, please do not hesitate to contact me at 202-898-8730, or Ike Jones, Legislative Attorney and Advisor, at 202-898-3657.

Sincerely,

Alice C. Goodman
Acting Director
Office of Legislative Affairs

Enclosure

cc: Honorable Randy Neugebauer
Chairman, Subcommittee on Oversight and Investigations

Response to questions from the Honorable Michael E. Capuano
by Bret Edwards, Director, Division of Resolutions and Receiverships
Federal Deposit Insurance Corporation

During the hearing, there were a number of questions regarding the financial aspects of the structured transactions entered into by the FDIC with Rialto Capital Management (Rialto) and per the Committee's request, below we attempt to provide a simple and clear explanation of the economics of structured transactions generally and that deal in particular.

For those unfamiliar with the FDIC's structured transaction program, it may prove useful to walk through a simple example to explain the economics of these transactions. Assume the following facts:

Example 1: Unleveraged transaction

- FDIC as receiver inherits one severely delinquent loan with an unpaid principal balance (UPB) of $100.
- FDIC's financial advisor estimates an immediate cash sale of the loan would bring $40. (In other words, the loan would only be worth 40 cents on the dollar if sold immediately for cash)
- FDIC as receiver forms an LLC and contributes the loan to an LLC in exchange for a 100 percent ownership interest in the LLC.
- FDIC offers to sell a 40 percent equity interest in the LLC (while FDIC retains 60 percent).
- The winning bidder in a highly competitive sale offers to pay $25 for the 40 percent equity interest and FDIC closes the sale.
- The "Implied Value" of the loan in the structured sale is based on the highest bid and is calculated to be $62.50. That is, if someone pays you $25 for 40 percent of something, then the value they are placing on the entire thing—in this case, a defaulted loan—is simply $25/.40, or $62.50. Note the FDIC as receiver is retaining 60 percent of the equity of the LLC, so by definition, its share is valued at $37.50 (or $62.50 - $25).
- Given the FDIC's financial advisor's estimate of the loan's value in an immediate cash sale of $40, the FDIC achieves a much better return by putting this loan in a structured sale. Specifically, the FDIC will receive $25 immediately and is expected to receive $37.50 over time as the asset is worked within the LLTC structure. This total of $62.50 compares very favorably to the $40 it was expected to have received had it sold the loan immediately. Indeed, it may be argued that the FDIC is statutorily required to engage in these transactions because they achieve the least loss resolution of failed bank assets (in this case, $22.50 additional return) that the structured sale vehicle provides.
- A comparison of what the winning bidder paid to the UPB of this severely delinquent loan is misleading. First, suggesting that the winning bidder paid "25 cents on the dollar" for this loan ignores the fact that the winning bidder is only purchasing 40 percent of the equity in the LLC. So by that measure, it is more accurate to state it paid 25 cents on 62.5 cents for its 40 percent share of the LLC. Second, the inference that any discount amount or percentage off the UPB constitutes a "sweetheart" deal ignores the fact that this loan is severely delinquent and thus by definition, is worth substantially

less than the UPB. Indeed, we would argue the winning bidder paid market value for its equity share of the LLC in a competitive sale and therefore there was no "sweetheart" deal.

- It is important to note that the likely value of the loan is greater than $62.50. Remember that each dollar of recovery in the LLC is split 60 percent/40 percent with the FDIC. Hence, the winning bidder does not achieve a return of its initial investment until collections on the loan reach the $62.50 level. The winning bidder is betting that it can collect more than that and thus achieve a return on its initial investment of $25.

Example 2: Leveraged transaction

- FDIC as receiver inherits one severely delinquent loan with an UPB of $100.
- FDIC's financial advisor estimates an immediate cash sale of the loan would bring $40. (In other words, the loan would only be worth 40 cents on the dollar if sold immediately for cash)
- FDIC as receiver forms an LLC and contributes the loan to an LLC in exchange for a 100 percent ownership interest in the LLC.
- The FDIC as receiver then offers to sell a 40 percent interest in the equity portion of the LLC (while FDIC retains a 60 percent interest).
- In order to induce greater competition for the structured sale, the FDIC offers leverage in the transaction. It does this by inducing the LLC to pay for 50 percent of the assets the FDIC as receiver contributed to the LLC by issuing a note payable to the receiver. This allows the winning bidder to put in half as much initial cash as it would in the unleveraged example. Importantly, this debt must be paid back in full from the cash flow generated by the LLC before any equity distributions are made to the LLC members.
- The winning bidder in a highly competitive sale offers to pay $12.50 for the 40 percent equity interest and FDIC closes the sale. Although the bidder paid only half the cash it would have an unleveraged deal, the implied value of the assets remain $62.50.
- As above, a comparison of what the winning bidder paid to the UPB of this severely delinquent loan is misleading. First, suggesting that the winning bidder paid "12.5 cents on the dollar" for this loan ignores the fact that the winning bidder is only purchasing 40 percent of the equity portion of the LLC, and that the equity portion is only 50 percent of the total capital of the LLC given the issuance of the purchase money note. So by that measure, it is more accurate to state it paid the equivalent of 12.5 cents on 31.25 cents for its 40 percent share of the equity portion of the LLC. And as above, the inference that any discount amount or percentage constitutes a "sweetheart" deal ignores the fact that this loan is severely delinquent and thus by definition, is worth substantially less than the UPB. Indeed, we would argue as we did in Example #1, that the winning bidder paid market value for its equity share of the LLC in a competitive sale and therefore there was no "sweetheart" deal.

The Specifics of the Rialto Deal

In February 2010, the FDIC closed two Structured Transactions (LLCs) with Rialto. The two transactions were composed of 5,511 distressed acquisition and development (ADC) loans representing approximately $3.1 billion in UPB. These loans were severely distressed—over 80 percent of the asset portfolio was greater than 150 days delinquent at the time of the sale. Hence, the market value of these loans was significantly lower than the UPB at the time of sale just as we noted in the examples above. Rialto paid the FDIC as receiver approximately $243 million in cash for a 40 percent equity interest in the two leveraged LLCs. The FDIC retained the remaining 60 percent equity interest, which had an implied value of approximately $365 million. Additionally, the LLCs issued approximately $627 million in purchase money notes to the FDIC as receiver. The FDIC competitively bid the equity interests in the LLCs with the sale notification being sent to more than 960 prequalified bidders, and bid packages sent to more than 57 potential bidders.

Using logic similar to that outlined in the examples above, Rialto did not pay "8 cents on the dollar" for $3.1 billion in assets. In fact, Rialto paid approximately $243 million for a 40 percent interest of the equity portion of the LLCs. While Rialto manages the day-to-day administration of the portfolio, it does not realize a recovery on its equity interest until the LLC fully repays the purchase money notes. Rialto's purchase price for its equity interest is the basis for establishing the implied value of the loan portfolio as a whole.

Similar to the definition of implied value outlined above, it is the sum of Rialto's equity interest, the FDIC's equity interest and the UPB of the purchase money notes at issuance. The implied value is calculated by adding the combined equity interests to the debt issued (which includes a guaranty fee of approximately $18 million payable to the FDIC) and then dividing the total by the UPB of the portfolio. The implied value of the loan portfolio owned by the LLCs as illustrated and calculated below is approximately 40.5 percent.

When applying the purchase price definition and calculation to the Rialto structured sale the following purchase price is achieved based on the structure offered for this sale which was 1:1 debt to equity, 60 percent and 40 percent equity split to the FDIC and Rialto, respectively:

Unpaid Principal Balance of ADC Loan Portfolio	$3,052,645,902
Rialto Bid to Purchase 40 percent Equity Interest	$243,458,812
Divided by Rialto Equity percent	40 percent
Total Implied Value of Equity ($243MM/0.40=$608.6MM)	$608,647,030
Purchase Money Notes before guaranty fee (1:1 debt/equity)	$608,647,030
FDIC Corporate Guaranty Fee (3 percent)	$18,259,411
Total Purchase Money Note	$626,906,441
Total Loan Portfolio Value based on Sales Price	$1,235,553,471
Portfolio Unpaid Principal Balance Sold	$3,052,645,902
Calculated Implied Value ($1.235B divided by $3.052B)	40.5 percent

While the implied value is 40.5 percent, the FDIC received approximately (i) $243 million in cash upfront from Rialto for Rialto's equity interest in the LLCs, and (ii) $627 million in purchase money notes. Recoveries after the LLCs fully repay the purchase money notes are split 60 percent for FDIC and 40 percent for Rialto.

In order for Rialto to receive a return on its equity investment, the LLCs must recover in excess of $1.2 billion. The $1.2 billion consists of the LLCs repayment of the $627 million in purchase money notes plus $608 million in equity disbursements. The $608 million is derived by adding the approximately $243 million for Rialto's 40 percent equity interest and approximately $365 million for the FDIC's 60 percent equity investment. Rather than 8 cents on the dollar, it is more accurate to say that Rialto paid approximately 24.3 cents on 60.8 cents for its 40 percent share of the two LLCs.

In summary, Rialto paid market value for its interest in these loans in a highly competitive sale that is expected to achieve returns well in excess of those the FDIC would have achieved from an immediate cash sale of the loans. While the transaction initially realized an implied value for the portfolio of 40.5 percent of the UPB, the ultimate recovery will be determined over time based on the LLCs recovery on the loans.

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

June 26, 2012

Honorable Maxine Waters
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Waters:

This letter is in response to your request for information during the testimony of Bret Edwards, Director, Division of Resolutions and Receiverships, on May 16, 2012, at the hearing entitled "Oversight of the Structured Transaction Program" before the Subcommittee on Oversight and Investigations of the House Financial Services Committee.

At the hearing you asked for information on the participation of minority- and women-owned businesses in the structured transaction and related programs. Enclosed is a report prepared by the Federal Deposit Insurance Corporation's Division of Resolutions and Receiverships that provides the information you requested.

We hope that this information is helpful. If you have further questions, please do not hesitate to contact me at 202-898-8730, or Ike Jones, Legislative Attorney and Advisor, at 202-898-3657.

Sincerely,

Alice C. Goodman
Acting Director
Office of Legislative Affairs

Enclosure

cc: Honorable Randy Neugebauer
Chairman, Subcommittee on Oversight and Investigations

Honorable Michael E. Capuano
Ranking Member, Subcommittee on Oversight and Investigations

Response to questions from the Honorable Maxine Waters
by Bret Edwards, Director, Division of Resolutions and Receiverships
Federal Deposit Insurance Corporation

<u>Participation of Minority- and Women-Owned Businesses in the FDIC's Structured Transaction Program</u>

<u>Investor Pre-Qualification:</u>

General Prospective Bidder Pre-Qualification

The FDIC initiated the structured transaction sales program in May 2008 and has entered into 32 LLC transactions to date. Structured sales transactions are marketed only to individuals and companies that can attest to a minimum net worth and institutional investors that meet the definition of bank, savings and loan association, or other institution as defined by the Securities Act of 1933, broker dealers under the Securities Exchange Act of 1934, and investment companies, business development companies or private business development companies as defined by the Investment Company Act of 1940 or the Investment Advisors Act of 1940, as applicable. In addition, prospective investors must attest, represent, and warrant to additional criteria including their ability to evaluate and bear the risk associated with such transactions and also sign the Purchaser Eligibility Certification. If an entity attests to these requirements, contact information for the entity is sent to the financial advisor retained by the FDIC to conduct the sale.

As of May 31, 2012, 713 prospective bidders have been pre-qualified to receive information on security sales, including structured sales transactions. One hundred twenty-two minority- and women-owned (MWO) firms have been pre-qualified comprising 17 percent of the pre-qualified investors.

May 31, 2012	Minority and Women Owned Prospective Investor Summary	
Race/Ethnicity	**Gender**	**No. of**
American Indian or Alaskan Native	M	1
	F	2
	Subtotal	**3**
Asian	M	25
	F	6
	Subtotal	**31**
Black or African American	M	27
	F	7
	Subtotal	**34**
Native Hawaiian or	M	0
Other Pacific Islander:	F	0
	Subtotal	**0**
Hispanic/Latino	M	16
	F	4
	Subtotal	**20**

Woman or Entity Woman Owned	Y	33
	N	0
	Subtotal	**33**
Claimed Minority		**1**
No Designation Provided		**0**
Total MWOB Firms		**122**

Transaction Specific Qualification

All prospective bidders wishing to bid on a specific transaction, after performing due diligence, must be approved by the FDIC to bid on the transaction. In order to be approved, the prospective bidder must demonstrate adequate capital to close the transaction and have the ability to manage and service the assets in the structure. In many cases, bidders form consortia or ventures comprised of several capital investors together with firms that have the necessary skill sets to manage and dispose of the assets in the transaction. The complexity of the transactions and need for multiple sources of capital and expertise create opportunities for firms to create ventures to bid on the transactions.

Tracking MWO Participation in Structured Transactions – 2010:

Early transactions did not ask prospective investors to provide information on their status as a minority- or woman-owned business (MWOB). Beginning in May 2010, the FDIC's Division of Resolutions and Receiverships (DRR) began reporting on the status of MWOB participation for individual transactions at key decision points: bidder qualification, bid submissions, and successful bids. In September 2010, DRR also began to collect MWOB information from investors, asset managers, and servicers pre-qualifying with DRR to receive announcements about upcoming structured transactions.

In response to investor feedback on the prior transactions, in late 2010 the FDIC announced that it would offer structured sales transactions with loan pools that were more geographically focused and had smaller aggregate values than prior transactions. In fulfillment of this announcement, the FDIC created the Small Investor Program (SIP) Pilot Sale with loans of equal or better quality than the loans previously included in the multibank structured loan sales to increase the opportunity for participation by diverse bidders or consortia of bidders.

Structured Sales Program Awareness:

During 2010 and early 2011, FDIC conducted outreach workshops for minority- and women-owned businesses and investors to educate firms on how to do business with FDIC and explore available opportunities. FDIC held eight workshops throughout the country. The FDIC sent out 5,300 invitations that resulted in 887 RSVPs and 615 attendees at the workshops. The programs were designed to accurately reflect opportunities for contracting and participation in asset sales at the FDIC, including the SIP Pilot Program. Prior to the SIP sale, DRR and the FDIC's Office of Minority and Women Inclusion (OMWI) included information about the SIP pilot program in the workshops to give prospective investors, asset managers, and servicers more time and information to form investor groups capable of bidding on the sales.

In addition to the workshops, DRR and OMWI follow-up regularly with MWOBs on an individual basis and attend conferences to help MWOBs, many of whom are smaller investors, understand the FDIC's programs.

Investor Match Program – September 2011:

As a result of feedback from the workshops, the FDIC launched the Investor Match Program (IMP) in September 2011 to encourage all firms interested in bidding on FDIC asset sales programs, especially minority and women-owned businesses, the ability to share information on their companies with other like-minded firms. The IMP is based on an automated platform that allows companies to network with each other so firms may form ventures to bid on FDIC asset sales programs. The FDIC benefits from use of the program by allowing investors, asset managers, and servicers the ability to communicate with each other in an effort to more effectively compete in structured sales transactions. As of May 31, 2011, 176 pre-qualified investors have registered to use IMP and 60 of the investors (34 percent of the users) are MWOBs.

Minority and Women-Owned Participation in Structured Sales Transactions Transactional Overview - 2010 – 2011:

The following information reviews the participation of MWO entities in Structured Transactions in 2010 and 2011. Winning bidder teams that include a MWO component regardless of size are identified, along with the MWO category and the role in the investment team. It is important to note that the following information tracks marketing efforts for all structured sale transactions since April 2010. In certain cases, FDIC chose to award the sale on a cash basis when both cash and structured sales options were offered. In other cases, pools were allowed to be consolidated into one LLC when the same investor was the successful bidder on multiple pools.

2010

- Of 13 structured sale auctions from April 2010 through December 2010, minority and women-owned businesses participated in 38 of 146 (26 percent) applications, 21 of 71 (30 percent) bids, and 7 of 13[1] (54 percent) winning bids.
- Of the 7 winning bids, 4 include minority investors, 2 include minority asset managers, and 1 includes a combination of minority- and woman-owned businesses as both lead bidder and asset manager.

Group	Applications*	Bids Submitted	Winning Bids
Minority	26	15	6
Women	12	6	1**
Total Minority & Women	38	21	7
Non-MWOB	108	50	6
Total	146	71	13

* Only counts an application once even though a bidder may qualify and bid multiple times.
** Represents a combination minority and woman–owned business participation.

[1] Structured Transaction Sales may have no winning bids or multiple winning bids.

Winning MWO Bidders:

Transaction	Winning Bidder	MWO Category	Role
2010-CRE-1	Colony Capital	Black or African American Male	Investor
2010-CADC-1	Mariner RE Partners	American Indian or Alaskan Native Male	Asset Manager
2010-RADC-1	Mariner RE Partners	American Indian or Alaskan Native Male	Asset Manager
2010-CRE-2 (SE Pool)	Hudson	Asian Female	Lead Bidder, Asset Manager
2010-CRE-2 (W Pool)	Colony Capital	Black or African American Male	Investor
2010-CRE-2 (N Pool)	Colony Capital	Black or African American Male	Investor
2010-C/RADC-2	Colony Capital	Black or African American Male	Investor

2011

DRR completed nine competitive marketing efforts for structured transactions which had bid dates in 2011 (2011-SIP-2 closed in January 2012). Statistics from these auctions follow:

- Of 9 structured sale auctions during 2011, minority and women-owned businesses participated in 33 of 102 (32 percent) applications, 25 of 66 (38 percent) bids, and 5 of 10 (50 percent) winning bids.
- Of the 5 winning bids, 3 include minority investors, 1 includes a minority as both lead bidder and asset manager, and 1 includes a combination of minority- and woman-owned business as both lead bidder and asset manager.

Group	Applications*	Bids Submitted	Winning Bids
Minority	17	13	4
Women	16	12	1**
Total Minority & Women	33	25	5
Non-MWOB	69	41	5
Total	102	66	10

* Only counts an application once even though a bidder may qualify and bid multiple times.
** Represents a combination minority and woman-owned business participation.

Winning MWO Bidders:

Transaction	Winning Bidder	MWO Category	Role
2011-SIP-1 (CRE, CADC)	Acorn (Oaktree)	American Indian or Alaskan Native Male	Investor
2011-SIP-1 (RADC)	Hudson	Asian Female	Lead Bidder, Asset Manager
2011-ADC-1	Acorn (Oaktree)	American Indian or Alaskan Native Male	Investor
2011-ADC-2	Oaktree Capital	American Indian or Alaskan Native Male	Investor
2011-SIP-2	Mariner	American Indian or Alaskan Native Male	Lead Bidder, Asset Manager

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

June 26, 2012

Honorable Lynn A. Westmoreland
House of Representatives
Washington, D.C. 20515

Dear Congressman Westmoreland:

This letter is in response to your request for information during the testimony of Bret Edwards, Director, Division of Resolutions and Receiverships, on May 16, 2012, at the hearing entitled "Oversight of the Structured Transaction Program" before the Subcommittee on Oversight and Investigations of the House Financial Services Committee.

You asked for examples of the Federal Deposit Insurance Corporation funding loan commitments on acquisition, development, and constructions loans since 2008. Since 2008, the FDIC as receiver has funded over 1,100 commitments for approximately $396 million. Enclosed is a detailed report prepared by the Federal Deposit Insurance Corporation's Division of Resolutions and Receiverships for the hearing record.

We hope that this information is helpful. If you have further questions, please do not hesitate to contact me at 202-898-8730, or Ike Jones, Legislative Attorney and Advisor, at 202-898-3657.

Sincerely,

Alice C. Goodman
Acting Director
Office of Legislative Affairs

Enclosure

cc: Honorable Randy Neugebauer
Chairman, Subcommittee on Oversight and Investigations

Honorable Michael E. Capuano
Ranking Member, Subcommittee on Oversight and Investigations

Response to questions from the Honorable Lynn A. Westmoreland
by Bret Edwards, Director, Division of Resolutions and Receiverships
Federal Deposit Insurance Corporation

FDIC Receivership Funding and Repudiation of Unfunded Loan Commitments

As receiver for a failed institution, the Federal Deposit Insurance Corporation has a legal responsibility to maximize recovery for the benefit of depositors and creditors who may have lost money when the institution failed. In accordance with this responsibility, the FDIC must carefully analyze any requests for funding construction projects as well as evaluate the risks associated with the proposed transaction, to determine whether the funding will provide the best opportunity to achieve the highest possible recovery for the failed institution's estate. The FDIC's Division of Resolutions and Receiverships staff review each funding request on a "case-by-case" basis. If the advancement of funds for construction purposes will result in a net increase in the underlying collateral value or such funds will protect, preserve, or allow for build-out so that marketing of the real estate project can immediately begin, the FDIC as receiver may advance such funds. Since 2008, the FDIC as receiver has funded over 1,100 commitments for approximately $396 million. Attached is a summary of the loan fundings by state.

At times, the statutory responsibilities of the FDIC have a necessary yet unintended consequence of delaying funding of construction draws for builders and developers as our receivership staff determine the value and viability of the construction project as well as the companies who have pledged to repay those loans. In some instances, following a detailed review of the project plans, appraisals, and current financial information from the company and/or guarantors, the receiver will make the decision that continued funding of a project will not minimize losses nor maximize recovery for the receivership estate and thus, the receivership will terminate funding on construction projects.

The overarching goal of the receiver is to wind up the affairs of the failed financial institution. In order to achieve that goal, the receiver is given the right under 12 U.S.C. Section 1821(e) to repudiate undertakings entered into by the failed financial institution where it finds such undertakings to be burdensome and where such repudiation will promote the orderly administration of the failed financial institutions affairs.

Accordingly, our receivership management personnel work to achieve a balance between making financial decisions that are in the best interests of the receivership estate while being cognizant of business decisions that may have an adverse financial impact upon construction companies, real estate developers, and small business enterprises–and to those they employ. Immediately following the failure, the FDIC contacts the loan customers of the failed bank to stress the importance of establishing a banking relationship with a local financial institution that will be able to provide on-going traditional lending and financing. We are aware that at many locations around the nation, the depreciating real estate environment has made it exceptionally difficult for many failed bank customers and business owners in the construction industry to successfully transition their banking relationships in an effort to obtain new lending sources. Nevertheless, we must base our decisions regarding continued funding of loans from a failed bank on our statutory duty to minimize losses and maximize recoveries for the failed bank receiverships.

Attachment

FDIC Receivership Funding of Unfunded Loan Commitments				
Failed Financial Institution	Failed Financial Institution City	State	Number of Fundings	Total Amount of Funding
1st Centennial Bank	Redlands	CA	8	$3,635,453
1st Heritage Bank	Newport Beach	CA	1	$301,062
1st National Bank of Nevada	Reno	NV	185	$54,723,452
Alpha Bank & Trust	Alpharetta	GA	8	$2,189,522
AmeriBank	Welch	WV	3	$349,455
AmTrust Bank	Cleveland	OH	9	$14,543,336
ANB Financial	Bentonville	AR	51	$20,030,895
Bank of Clark County	Vancouver	WA	6	$1,681,439
Bank of the Commonwealth	Norfolk	VA	1	$491,253
Bank of Wyoming	Thermopolis	WY	1	$50,000
Barnes Banking Company	Kaysville	UT	1	$250,000
Broadway Bank	Chicago	IL	2	$2,080,535
Centennial Bank	Ogden	UT	1	$45
Citizens Community Bank	Ridgewood	NJ	1	$21,070
Colonial Bank	Montgomery	AL	78	$2,974,274
Columbian Bank & Trust	Topeka	KS	6	$2,316,995
Community Bank of Nevada	Las Vegas	NV	2	$147,568
Community Bank of West Georgia	Villa Rica	GA	3	$794,628
Corn Belt Bank & Trust	Pittsfield	IL	1	$53,593
Corus Bank	Chicago	IL	10	$15,212,201
First Bank of Beverly Hills	Calabasas	CA	41	$16,404,157
First Bank of Idaho	Ketchum	ID	7	$461,824
First Georgia Community Bank	Jackson	GA	2	$27,000
First Integrity Bank	Staples	MN	1	$28,691
FirstCity Bank	Stockbridge	GA	32	$2,443,255
Florida Community Bank	Immokalee	FL	3	$205,427
Franklin Bank SSB	Houston	TX	148	$27,051,080
Freedom Bank	Bradenton	FL	1	$49,598
Haven Trust Bank	Duluth	GA	24	$14,981,926
Home Savings of America	Little Falls	MN	96	$21,281,615
Independent Banker's Bank	Springfield	IL	6	$2,888,111
IndyMac Federal Bank FSB	Pasadena	CA	2	$30,994
Integrity Bank	Alpharetta	GA	2	$402,201
Irwin Union Bank & Trust	Columbus	IN	1	$6,055
La Jolla Bank FSB	La Jolla	CA	2	$46,950
MagnetBank	Salt Lake City	UT	3	$118,882
Main Street Bank	Northville	MI	9	$876,068
Miami Valley Bank	Lakeview	OH	1	$24,095
Netbank	Alpharetta	GA	2	$154,000
New Frontier Bank	Greeley	CO	7	$255,039
Ocala National Bank	Ocala	FL	2	$85,093
Republic Federal Bank	Miami	FL	1	$115,971
Riverside Bank of the Gulf Coast	Cape Coral	FL	6	$368,043
RockBridge Commercial Bank	Atlanta	GA	2	$591,194
Sanderson State Bank	Sanderson	TX	1	$62,000
Security Pacific Bank	Los Angeles	CA	3	$767,367
Security Savings Bank	Henderson	NV	7	$9,930,143
Silver State Bank	Henderson	NV	32	$10,783,105
Silverton Bank	Atlanta	GA	151	$158,302,965
Tennessee Commerce Bank	Franklin	TN	2	$255,697
The Bank of Bonifay	Bonifay	FL	3	$43,635
The Community Bank	Loganville	GA	7	$1,174,130
Union Bank	Gilbert	AZ	2	$393,260
Warren Bank	Warren	MI	8	$1,916,013
Westsound Bank	Bremerton	WA	16	$1,767,822
Grand Total			**1011**	**$396,140,184**

Response to questions from the Honorable Lynn Westmoreland
by Bret D. Edwards, Director, Division of Resolutions and Receiverships,
Federal Deposit Insurance Corporation

Q1: Has the FDIC established a taskforce of independent experts to evaluate and submit recommendations on the high number of bank failures?

A1: Certain internal and external groups are reviewing aspects of the recent banking crisis and have made or will make recommendations to the FDIC regarding changes to policies, programs, and deposit insurance.

As of the end of June 2012, the FDIC's Office of Inspector General (OIG) had completed 96 Material Loss Reviews (MLR), 11 in-depth reviews, and 141 failed bank reviews as required by statute. In addition to those efforts, in May 2009, the OIG issued an internal memorandum that outlined the major causes, trends, and common characteristics of FDIC-supervised financial institution failures that had resulted in a material loss to the DIF. That memorandum, in part, prompted the FDIC to make a number of process changes to its supervision program in order to more quickly identify potential issues in banks at risk of deterioration. In December 2010, the OIG published the results of an audit that identified (1) the actions that the FDIC had taken to enhance its supervision program since the May 2009 memorandum, and (2) trends and issues that had emerged from subsequent MLRs. The OIG's report stated that the FDIC had either implemented or planned actions that substantially addressed its previously reported MLR-related trends and issues and that would enhance the FDIC's supervision program. The report included additional recommendations, which the FDIC's Division of Risk Management Supervision agreed to implement.

The OIG also has embarked on a comprehensive study of bank failures in accordance with Pub. L. No. 112-88, which requires the study of bank failures and the effects of shared-loss agreements; examination policies associated with troubled loans, appraisals, capital, and enforcement orders; and capital investment policies. The legislation also requires the Government Accountability Office to study the causes of bank failures since 2008, as well as similar topics that the OIG is addressing.

Pursuant to the recommendations of a study of Prompt Corrective Action (PCA) by the banking agencies' Inspectors General, FDIC staff is exploring the feasibility of incorporating non-capital triggers into the PCA framework. We also are studying how various risk factors should affect deposit insurance premiums. The FDIC's large insured depository institution assessment system was revised in April 2011 to better differentiate for risk and to better take into account losses the FDIC may incur should a large institution fail. Similarly, staff is evaluating the small bank deposit insurance assessment system to determine if changes are needed to account for risk taking observed in the majority of smaller institutions that have failed in recent years.

In a related area, the FDIC is conducting a comprehensive study of the future of community banking. The study will review the last 25 years and address a variety of issues related to community banks, including their evolution, characteristics, performance, challenges, and role in supporting local communities. More information on these studies will be available later this year.

Finally, the FDIC established the Advisory Committee on Community Banking in May 2009 to provide the FDIC with advice and guidance on a broad range of critical policy issues impacting small community banks, as well as the local communities they serve. The Advisory Committee, which is composed of a cross-section of community bankers from across the country, has discussed issues related to the financial crisis, the bank resolution process, and the impact of the Dodd-Frank Act on community banks.