1. Which asset categories should be eligible for sale through the LLP? Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale? Are there specific portfolios where there would be more or less interest in selling through the LLP?

We believe the initial focus should be on distressed residential and commercial mortgages, as well as real estate acquisition, development, and construction (AD&C) loans as well as real estate owned (REO). We believe that the AD&C loans are the most problematic loans in the system. Even though these types of loans are not easily underwritten, they need to be dealt with to unclog the system.

2. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF? If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors?

In a typical lender / borrower relationship, ownership of the borrower is not allowed to pledge, sell or transfer their ownership interest (except to affiliates) without the consent of the lender. The FDIC, due to their guarantee, would ensure that subsequent investors meet the program's criteria established during the auction process if they had approval rights.

Amongst the equity holders there should also be provisions for the pledge, sale, or transfer of interests. This should be an option for both the Private Investor as well as Treasury. It would allow Treasury to realize the potential upside of the fund prior to complete liquidation. The provisions allowing for this would have to deal with the acceptability of the new capital by the remaining member given the roles and duties they will be taking over.

3. What is the appropriate percentage of government equity participation which will maximize returns for taxpayers while assuring integrity in the pricing by private investors? How would a higher investment percentage on the part of the government impact private investment in PPIFs? Should the amount of the government's investment depend on the type of portfolio?

The government equity participation should start with the base of 50%, but the Private Investor should be able to request more or less within a given range in their auction bid, which will have to be evaluated by FDIC in choosing the winning bidder. The range we would suggest would be 80% on the high end or contributed equity and 20% on the low end of contributed equity.

4. Is there any reason that investors' identities should not be made publicly available?

Winning bids should be made public.

5. How can the FDIC best encourage a broad and diverse range of investment participation? How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF?

The FDIC should consider that there are many private investment funds that have very specific geographic and asset class requirements such as Chicago multifamily or Southern California retail. Setting up focused asset pools such as described would allow for those funds to participate. For larger sized pools many investors still have asset class focus, but could diversify across geographies such as top 20 MSA – multifamily. Organizing pools in such a fashion will bring investors in that have the ability to increase value of the PPIFs through active management.

One method to assist Participant Banks in pooling their loans would be to allow potential private investors to "advertise" their investment platform on a central web site.

The valuation process should be standardized using an updated version of the Derived Investment Value methodology created by the RTC.

6. What type of auction process facilitates the broadest investor participation? Should we require investors to bid on the entire equity stake of a PPIF, or should we allow investors to bid on partial stakes in a PPIF? If the latter, would a Dutch auction process or some other structure provide the best mechanism for bridging the potential gap between what investors might bid and recoverable value? If multiple investors are allowed to bid through a Dutch auction, or similar process, how should asset management control be determined?

If the goal is to allow for smaller passive investors to participate, then one possible solution would be to have the initial auction select the main investor and asset manager of that PPIF. Through their bid the Private Investor should note if they wish to sell a portion of their equity position to passive investors. This ability to sell a portion of their equity position should be given guidance within an acceptable percentage range, and the bidder would still need to demonstrate they could close on the full bid price assuming no percentage interest would be sold off.

Once the winning bidder is announced, there could be a second auction allowing for passive investors to bid on the portion of the investment the winning bidder indicated they wished to sell. The auction should have a reserve price equal to the winning bid price. The auction would be for membership units, so as to not affect the pricing the main auction already established. However, if units are sold for higher than the reserve price value then the additional proceeds should also go to the Participant Bank. Since the winning bidder has the ability to close on the entire bid price it would not be an issue if the passive investor auction is undersubscribed.

7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions?

As mentioned in #1, we believe the initial priority should be placed on distressed residential and commercial mortgages, as well as residential and commercial AD&C loans as well as REO.

8. What are the optimal size and characteristics of a pool for a PPIF?

The process of pooling loan must take into consideration and be cognizant of the fact that there are multiple types and sizes of private capital sitting on the sideline. Accordingly, giving the Private Capital the ability to "advertise" their investment platform on a central web site as described in question 5, may allow Participant Banks to create focused pools that are created in such a way to create the most interest, maximizing competetion and thus theoretically price. Let the Private Investors describe the specific pool sizes, geographies, real estate asset classes and loan classes they are focused on so the banks can seek to fill those needs knowing that there are buyers out there for what they are putting together.

9. What parameters of the note and its rate structure would be essential for a potential private capital investor to know at the time of the equity auction to provide equity?

Leverage ratio, interest rate, fixed vs. floating rate (and benchmark and spread if floating), amortization period, loan term, renewal options, transferability of debt, guarantee fee.

10. Would it be preferable for the selling bank to take a note from the PPIF in exchange for the pool of loans and other assets that it sells? Alternatively, what would be the advantages and disadvantages of structuring the program so that the PPIF issues debt publicly in order to pay cash to the selling bank? Would a public issuance of debt by the PPIF limit its flexibility compared to the issuance of a note to a selling bank?

Consideration should be given to the speed at which a public market can be formed for PPIF debt. In the beginning it may work best to issue a note to the selling bank, should a public market develop, then the selling bank should be able to convert their note to cash at that point.

11. In return for its guarantee of the debt of the PPIF, the FDIC will be paid an annual fee based on the amount of debt outstanding. Should the guarantee fee be adjusted based on the risk characteristics of the underlying pool or other criteria?

The guarantee fee should be a fixed percentage of the debt and not be risk adjusted. The risk adjustment should be accounted for in the determination of the amount of leverage that the FDIC is willing to guarantee.

12. Should the program include provisions under which the government would increase its participation in any investment returns that exceed a specified trigger level? If so, what would be the appropriate level and how should that participation be structured?

No, as this would be less attractive for the private investor. The government equity investment returns are tied to the effective asset management performed by the private investor, it may be advantageous to incentivize the asset manager through a larger share of the profits if certain return hurdles are achieved.

13. Should the program permit multiple selling banks to pool assets for sale? If so, what constraints should be applied to such pooling arrangements? How can the PPIF structure equitably accommodate participation by smaller institutions? Under what process would proceeds be allocated to selling banks if they pool assets?

Yes, it would allow for the smaller banks to put together more targeted loan pools as previously suggested. This creates some difficulties however. The banks would need to agree on a weighting scale, based on the estimated values of the loans in the pool, perhaps this is something the FDIC through their valuation of the assets can aid with. In addition, it is being contemplated that when a pool is sold be one bank, that bank can choose to say decline the winning bid. If you have multiple banks of which any one of those banks could reject the bid, the private investor has even more risk that a winning bid is declined. For these pools it may make sense to let the selling banks set a reserve price so the private investors have confidence that a winning bid will actually win the pool of loans.

14. What are the potential conflicts which could arise among LLP participants? What structural arrangements and safeguards should the FDIC put into place to address or mitigate those concerns?

Depending on the auction format, the FDIC may have a conflict given they are selecting the winning bid, of which the participant bank is only concerned with getting the highest price, but the FDIC due to its guarantee will want the most qualified bidder that has the greatest chance of *a successful PPIF. A fairness opinion or some other independent review of the bid selection process may be needed to mitigate this issue.*

15. What should the relative role of the government and private sector be in the selection and oversight of asset managers? How can the FDIC most effectively oversee asset management to protect the government's investment, while providing flexibility for working assets in a way which promotes profitability for both public and private investors?

Government equity should set the parameters and objectives of the fund operations through a some form of member agreement and the Asset Manager should be given the ability to execute on those objectives so long as the methods fall within those parameters. This agreement should be established at inception of the PPIF. The Asset Manager should keep the Government equity current on the fund status and there should be an approval process should the asset manager feel a method outside the original set parameters be the best course of action for a given asset in the fund.

16. How should on-going servicing requirements of underlying assets be sold to a PPIF and paid for? Should value be separately attributed to control of the servicing rights?

Servicing should be sold along with the loan pools, but timing of the transfer of servicing and establishment of sub-servicing agreements should be negotiated at the time of sale.

17. Should data used by the independent valuation consultant, as well as results of such consultant's analysis, be made available to potential bidders? Should it be made available to potential sellers prior to their decision to submit assets to bid?

Private Investors: The data used should be provided, but the results should not. The Private Investor will be creating their own model to value the loan pool, but from a transparency standpoint, the Private Investor should have access to the same information that the valuation consultant used as part of their due diligence.

Participant Banks: It may make sense to share this information with the selling bank prior to opening the auction process. If the FDIC valuation comes in far below the bank's expectation, it would give the bank the opportunity to either give further input or evidence to help support their expectations or give them the ability to pull the pool from consideration prior to the auction process. If this process occurs it may allow the Participant Bank and FDIC to negotiate a reserve price based on that valuation that they would have to accept, which would comfort private investors that a winning bid will not later be rejected by the bank. With or without a reserve price there is potential for sunk costs by the FDIC and the independent valuation firm, but there would seem to be less wasted time due to the Participant Bank if their reserve price is not met in the auction and there is not time spent evaluating the bids.