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TO: Commercial Mortgage Securities  
Association

FROM: Scott A. Sinder  
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RE: Update – U.S. Department of the Treasury’s Legacy Securities Public-Private  
Partnership Investment Program

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### **Overview**

Today, the U.S. Department of the Treasury released some additional details concerning the Legacy Securities Public-Private Investment Program initially announced on March 23, 2009. Most of the new details address the process for selecting asset managers for the program. These details, along with others that may be of particular interest to CMSA because they were raised in CMSA’s March 27, 2009 meeting with Treasury staff, are summarized below.

### **Selection of Asset Managers**

Treasury provides several new details regarding the process for selecting private managers for the Legacy Securities Public-Private Investment Funds (“PPIFs”), including confirmation that the managers will be expected to raise \$500 million in private capital for the PPIFs in order to participate in the program. The private capital must be raised within 12 weeks

after being pre-qualified as a PPIF manager (the pre-qualification process is discussed below). Of relevance to a question raised by CMSA about the \$500 million requirement in the March 27, 2009 meeting with Treasury officials, Treasury now advises, however, that it anticipates opening the program to smaller fund managers, which may result in a lower minimum private capital raising requirement. Treasury has also emphasized the importance of participation by small, veteran-, women-, and minority-owned businesses in the program, which are encouraged to apply and/or partner with those entities that are selected as PPIF managers.

With respect to another matter raised by CMSA during the March 27 meeting – the ability of PPIF managers to hedge their investment positions – Treasury states that Legacy Securities PPIFs will be “long-only investment funds” in keeping with the agency’s investment objectives, but that it will consider PPIF-level hedging proposals, such as interest rate hedging programs. And Treasury’s pledge to open the program to more entities than the first five (or more) that it expects to initially qualify may be relevant to the concern CMSA raised in the meeting about the unfair advantages that those managers could leverage.

It should be noted that the deadline for submission of applications to serve as PPIF managers has been extended from April 10, 2009 to April 24, 2009; Treasury will also pre-qualify applicants and inform those entities by May 15 of their pre-qualification.

Significantly, Treasury also clarifies that the list of qualification criteria for PPIF managers that had previously been published will be “viewed holistically,” meaning that failure to meet any one criterion will not necessarily disqualify an applicant. But based on Treasury’s simultaneous statements confirming the \$500 million private capital raising requirement and confirmation of the restrictions on transactions with affiliates and others, those two criteria might not be negotiable, at least for the first round of private manager selections.

## **PPIF Structure**

As previously reported, each PPIF will have the option to obtain debt financing from Treasury if it meets certain criteria. For example, a PPIF can obtain Treasury debt financing in an aggregate amount of up to 50% of its total equity capital so long as the fund does not provide its private investors with voluntary withdrawal rights. A PPIF also has the option of using the Legacy Term Asset-Backed Securities Loan Facility (“TALF”), any other Treasury program, or other private sources to finance the purchase of eligible assets as long as the fund’s public and private capital are leveraged proportionately from these other sources of debt financing. (Note that Treasury specifies in its latest announcement that PPIFs will receive the same terms for Legacy TALF as any other investor).

Treasury advises that it is considering three options for fund managers to consider in analyzing capital structure:

1. No Treasury debt financing; leverage limited to Legacy TALF, any other Treasury program, or debt financing raised from private sources.
2. Leverage limited to senior secured Treasury debt financing (up to 100% of Fund’s total equity capital); no additional leverage permitted.
3. Unsecured Treasury debt financing (up to 50% of Fund’s total equity capital) and additional leverage through TALF, any other Treasury program, or debt financing raised from private sources; subject to total leverage requirements and covenants to be agreed upon.

It is further advised that “terms of the Senior Secured and Unsecured Treasury Debt Financing (interest rate in particular) should appropriately reflect total Fund leverage and current market conditions.”

With respect to equity investment, Treasury advises that although it anticipates providing equity capital of up to 100% of the private capital raised, there two caveats: the ultimate percentage will be determined on a case-by-case basis; and Treasury’s total debt and equity

investment per PPIF will be limited to a level to be determined after Treasury reviews all PPIF manager proposals.

There is not much additional information concerning the warrants Treasury will take in the PPIFs, but Treasury does explain that the terms and amounts of the warrants will be partly based on the amount of Treasury debt financing taken by the PPIF, and “will be evaluated on a case-by-case basis.”

**Definition of “Eligible Assets”**

Finally, Treasury adds the qualifier “non-agency” to the description of assets eligible for purchase in the Legacy Securities PPIF program. Treasury had previously identified “Eligible Assets” as “commercial mortgage-backed securities and residential mortgage-backed securities originally issued prior to 2009.” Treasury also advises that it will seek comment from PPIF managers about expanding the Legacy Securities program to other asset classes in the future.

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Treasury is expected to announce more details concerning the Legacy Securities program in the near future, and we will keep you apprised of these announcements.