



**Highlights of FDIC Final Rule
Temporary Liquidity Guarantee Program
November 21, 2008
Updated: December 1, 2008**

Temporary Liquidity Guarantee Program

On October 13, 2008, the FDIC Board used its systemic risk authority granted under the Federal Deposit Insurance Corporation Improvement Act of 1991 to establish the TLG Program to “preserve confidence and encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers.” The TLG Program has two components, the **Debt Guarantee Program** guarantees, with certain limitations, senior unsecured debt with a term greater than 30 days of eligible entities, and the **Transaction Account Guarantee Program** fully guarantees noninterest-bearing transaction accounts and NOW accounts with interest rates of 50 basis points or less. The FDIC issued a final rule on November 21, 2008.

Eligibility and Opt-Out

Entities eligible to participate in the Program include: 1) FDIC-insured depository institutions; 2) U.S. bank holding companies and savings and loan holding companies with at least one chartered and operating insured depository institution; and 3) other affiliates of insured depository institutions deemed eligible by the FDIC after consultation with the appropriate Federal banking agency.

From October 14, 2008 through December 5, 2008 each eligible entity is deemed a Program participant unless the entity opts out. No later than 11:59 pm ET on December 5, 2008, all banks and bank holding companies should complete the Temporary Liquidity Guarantee Program Election Form, using *FDICconnect*, affirming or declining participation in the Debt Guarantee Program or the Transaction Account Guarantee Program, or both.

Since all eligible entities are already enrolled in the Program through December 5, 2008, the option to continue participation is pre-selected. An entity electing to discontinue Program participation should select the option indicating that it does not wish to continue participation. The choice to opt-in or opt-out, once made, is irrevocable. Failure to opt-out of either Program constitutes a decision to continue participation. All eligible entities within bank and savings and loan holding companies must make the same participation election for each guarantee Program; failure to do so constitutes an opt-out by all holding company members.

The Election Form also requires Debt Guarantee Program participants to report the amount of senior unsecured debt as of September 30, 2008. Banks with no senior unsecured debt or only with Federal funds purchased as of September 30, 2008, should report “zero”. Although debt with a term of 30 days or less is excluded from the Program, participating entities should still include such amounts for purposes of determining their guarantee cap. Participating entities desiring to have the option of issuing certain non-guaranteed senior unsecured debt before issuing the maximum amount of guaranteed debt must complete the applicable section on the Election Form.

There is no cost to eligible entities for participation in the TLG Program for the first 30 days (October 14, 2008 – November 12, 2008). Any eligible entity that opts-out of the TLG Program on or before December 5, 2008, will not pay any assessment under the Program.

The FDIC will maintain a list of entities not participating in the TLG Program on its web site. Additionally, each eligible entity must clearly convey to relevant parties whether it is or is not participating in the TLG Program. The FDIC will consider Program participation of an entity organized after expiration of the opt-out period on a case-by-case basis in consultation with the appropriate Federal banking agency.

TLG Program participants are subject to FDIC oversight regarding TLG Program compliance and the FDIC will establish appropriate recordkeeping requirements.

The FDIC has the authority to impose an emergency special assessment on insured depository institutions if Program fees and assessments are insufficient to cover any TLG Program loss. Any excess revenue will remain part of the Deposit Insurance Fund.

Debt Guarantee Program

The Debt Guarantee Program temporarily guarantees, with certain limitations, newly-issued senior unsecured debt issued between October 14, 2008 and June 30, 2009. In the event of payment default, the FDIC will timely pay the debt’s unpaid principal and/or interest. The guarantee expires upon maturity of the debt instrument or 11:59 pm EST on June 30, 2012, whichever is earlier.

Entities participating in the Debt Guarantee Program are not exempt from complying with applicable federal and state securities laws and any other applicable laws.

Senior Unsecured Debt Definition

From October 12, 2008 through December 5, 2008, senior unsecured debt is defined as “unsecured borrowing that: is evidenced by written agreement or industry-accepted trade confirmation; has a specified and fixed principal amount to be paid in full on demand or on a specified date; is non-contingent and contains no embedded options, forwards, swaps, or other derivatives, and is not, by its terms, subordinated to any other liability.” Instruments eligible for the debt guarantee include: federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility, and Eurodollar deposits standing to the credit of the bank. The guarantee does not apply to debt used to prepay outstanding debt that is not FDIC guaranteed or debt extended to an insider of the eligible entity.

After December 5, 2008, federal funds and other unsecured borrowings with a term of “one month” or less will NOT be covered under the Program.

Guarantee Cap

The FDIC guarantee is capped at 125 percent of the institution’s senior unsecured debt outstanding, excluding debt extended to affiliates, as of September 30, 2008 that is scheduled to mature on or before June 30, 2009. Each individual participating entity within a holding company structure will have a separate cap. Insured depository institutions with no senior unsecured debt or only federal funds purchased as of September 30, 2008 will have a debt guarantee limit of two percent of consolidated total liabilities as of September 30, 2008. For entities other than insured depository institutions with no senior unsecured debt as of September 30, 2008, the FDIC will determine, in consultation with the appropriate Federal banking agency, whether any debt will be covered under the Program.

The FDIC may restrict the amount of an entity’s senior unsecured debt limit to a level below the appropriate cap if supervisory information warrants. The FDIC on a case-by-case basis may allow an entity to temporarily exceed its guarantee cap.

An institution is prohibited from issuing guaranteed debt in excess of its cap and from issuing non-guaranteed debt until it has reached its guarantee cap. Once the guarantee cap is exceeded, a participating entity can issue non-guaranteed debt in any amount and for any maturity with the appropriate disclosures.

If an institution issues debt in excess of its cap and identifies it as “guaranteed by the FDIC”, its applicable fee will increase by 100 percent. The entity will be subject to enforcement actions, including civil money penalties, as appropriate.

Fees/Assessments

All eligible debt will be charged an annualized fee corresponding to the debt instrument's term multiplied by the amount of debt issued and calculated for the maturity period of that debt or June 30, 2012, whichever is earlier.

For entities remaining in the Debt Guarantee Program after December 5, 2008, assessments will start accruing on November 13, 2008, on all senior unsecured debt, other than overnight debt instruments:

- Issued on or after October 14, 2008 that is still outstanding on November 13, 2008; and,
- Issued on or after November 13, 2008 and before December 6, 2008.

Beginning December 6, 2008, Program participants will pay assessments on all senior unsecured debt issued on or after December 6, 2008:

- 50 basis points for debt with a maturity of 180 days or less (excluding short term debt);
- 75 basis points for debt with a maturity of 181-364 days; and,
- 100 basis points for debt with a maturity of 365 days or greater.

Holding companies with significant non-bank subsidiaries will pay an additional 10 basis points.

The FDIC will not issue assessment refunds for guaranteed debt retired before the scheduled maturity. The FDIC will collect fees using direct debit and the institution must ensure adequate funds are in its designated account to cover the fees. Failure to do so constitutes nonpayment of assessments, and is subject to civil money penalties.

Long Term Non-Guaranteed Debt Option

Participating entities have the option of issuing certain long term (maturing after June 30, 2012) **non-guaranteed** senior unsecured debt without regard to the cap and at any time. A non-refundable fee will be assessed equal to 37.5 basis points times an entity's senior unsecured debt with a maturity date on or before June 30, 2009 and outstanding as of September 30, 2008. The fee, collected in six equal monthly installments, will offset the fees related to an entity's guaranteed debt until it is exhausted. Thereafter, the entity must pay additional fees on guaranteed debt as it issued the debt.

Termination of Participation

The FDIC, after consultation with a participating entity's Federal banking agency, may terminate an entity's participation in the Debt Guarantee Program. Termination would be prospective and the entity would have to notify its customers and creditors that it is no longer issuing guaranteed debt.

Disclosures for Debt Guarantee Program

Effective December 19, 2008, Program participants must provide written disclosure, using model language provided by the FDIC, whether the debt is or is not guaranteed.

The FDIC will maintain a list of entities not participating in the Debt Guarantee Program on the FDIC web site.

Reporting Requirements

Debt Guarantee Program participants must report via the Election Form on FDIC*connect* the amount of outstanding senior unsecured debt as of September 30, 2008 that is scheduled to mature on or before June 30, 2009 to determine the maximum amount subject to the guarantee. Any newly-issued debt must be reported using FDIC*connect*. A participating entity must also report whether it has issued guaranteed debt exceeding its limits. A chief financial officer or equivalent must certify the accuracy of all reporting.

Transaction Account Guarantee Program

Under the Transaction Account Guarantee Program, noninterest-bearing transaction accounts, certain NOW accounts, and IOLTA accounts are fully insured from October 14, 2008 through the earlier of the date the institution opts out (opt-out deadline is December 5, 2008) or December 31, 2009. **This guarantee is in addition to and separate from coverage provided under the FDIC general deposit insurance rules.**

Eligible Accounts

Accounts eligible for the guarantee include those earning no interest and requiring no advance notice of intended withdrawals. Eligible accounts include traditional checking accounts and funds swept or transferred to another type of noninterest-bearing deposit account (i.e. noninterest-bearing savings account); NOW accounts paying less than 0.50 percent interest; and, Interest on Lawyers Trust Accounts (IOLTAs). Also covered are NOW accounts paying interest above 0.50 percent as of November 21, 2008 if the rate is reduced to 0.50 percent or lower before January 1, 2009 and this lower rate is maintained through December 31, 2009. There is no interest rate limitation on IOLTAs. Money market deposit accounts are excluded from the Program.

Fees/Assessments

Beginning November 13, 2008, Transaction Account Guarantee Program participants will pay a 10-basis-point fee on amounts in covered accounts exceeding \$250,000. Assessments will be based on quarterly Call Report submissions and included on regular quarterly assessment invoices from November 13, 2008 through December 31, 2009.

Any entity opting out of the Program on or before December 5, 2008 will not pay any assessment.

Disclosures

Effective December 19, 2008, all FDIC-insured depository institutions must post prominent main office and branch notices using the FDIC model language conveying whether they are participating in the Transaction Account Guarantee Program. An institution's web site must also clearly convey whether it is or is not participating in the Program. Banks using sweep arrangements or taking other actions where funds are transferred or reclassified to an interest-bearing account or non-transaction account must disclose those actions to affected customers and "clearly advise them, in writing, that such actions will void the FDIC guarantee." The FDIC does not provide model language for sweep arrangements. Prior to December 19, disclosures must be provided in a commercially reasonable manner.

The FDIC will maintain a list of entities not participating in the Transaction Account Guarantee Program on its web site.