

FDIC Announces Temporary Liquidity Guarantee Program Final Interim Rule, Temporary Deposit Insurance Coverage Increases

The FDIC has issued an interim final rule implementing the agency's Temporary Liquidity Guarantee Program (TLGP), consisting of unlimited insurance coverage for certain accounts and the guarantee of certain newly issued senior unsecured debt. The FDIC announced the TLGP in mid-October in order to promote liquidity and bolster confidence in the U.S. banking system. Recently, the FDIC issued FIL-125-2008 announcing that it is extending the time period for opting out of the TLGP.

Eligible institutions are automatically enrolled in the TLGP without cost for the first 30 days. Originally, organizations that do not wish to participate in either aspect of the program were required to opt-out by November 12, 2008. However, the FDIC has extended that deadline, giving organizations until December 5, 2008 to opt-out; after that date, institutions will be charged a fee for their participation. Once an organization has made a decision to opt-out, that decision is irrevocable. Likewise, a decision to continue to participate in either aspect of the TLGP also is irrevocable.

Under the TLGP, the FDIC will provide, irrespective of dollar amount, unlimited deposit insurance coverage for non-interest bearing transaction deposit accounts until December 31, 2009 (the "Transaction Account Guarantee Program"). For purposes of the FDIC rules, the definition of a "non-interest bearing transaction account" includes accounts that do not pay interest as well as allow for an unlimited number of deposits and withdrawals. After the December 5 opt-out deadline, the FDIC will assess fees to participating institutions at a 10-basis-point surcharge on all deposits covered over the \$250,000 per account standard insurance limit. To opt-out, entities must submit their election to do so through FDICconnect, the FDIC's secure e-business website. An Election Form will be available at the website beginning November 12, 2008.

As part of the TLGP, the FDIC will also guarantee newly-issued senior unsecured debt of participating institutions issued between October 14, 2008 and June 30, 2009 ("the Debt Guarantee Program"). The Debt Guarantee Program will cover up to 125 percent of the par or face value of this senior unsecured debt. The debt guarantee will remain in effect until June 30, 2012 for certain debt maturing beyond June 30, 2009.

The final interim rules provide entities participating in the Debt Guarantee Program with the option of issuing certain non-guaranteed senior unsecured debt before issuing the maximum amount of guaranteed debt. Election of this option would allow the entity to issue, at any time and without regard to the cap, non-guaranteed senior unsecured debt with a maturity date after June 30, 2012. Again, participating entities that elect this option must do so through FDICconnect by December 5, 2008 and pay a nonrefundable fee.

For purposes of the program, senior unsecured debt includes federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, and certificates of deposit standing to the credit of a bank. The FDIC does not consider senior unsecured debt to include (among other things) obligations from guarantees, derivatives, convertible debt, capital notes, an unsecured portion of otherwise secured debt, or negotiable certificates of deposit. After the December 5, 2008 opt-out deadline, the FDIC will assess fees to participating institutions at 75 cents for every \$100 of unsecured debt that is guaranteed.

Although the FDIC stated the rule was effective immediately, comments will be taken for a 15-day period. The final interim rule may be accessed through the FDIC website at: www.fdic.gov/news/board/TLGPreg.pdf. FAQs have now also been released and may be accessed through the FDIC website at: www.fdic.gov/regulations/resources/TLGP/faq.html.

In a separate action earlier this month, the FDIC issued a press release detailing the temporary increase in federal deposit insurance coverage from \$100,000 to \$250,000 per depositor under the Emergency Economic Stabilization Act of 2008 (EESA). The press release urged FDIC-insured institutions to notify their customers of the increase in deposit insurance and its temporary nature. A breakdown of the temporary increase in deposit insurance limits, in light of EESA and TLGP, may be accessed through the FDIC website at: <http://www.fdic.gov/news/news/financial/2008/fil08102a.html>.

These issues will be discussed in greater detail at the November BCG Chapter Meeting (available only to BCG members) scheduled for Friday, November 21. In the meantime, for questions pertaining to TLGP participation or temporary increases in deposit insurance under the EESA, contact Mark Aldrich or Mark Moore.