

**FEDERAL DEPOSIT INSURANCE CORPORATION'S
TEMPORARY LIQUIDITY GUARANTEE PROGRAM**

I. In General

- A. Established by an interim rule which became effective on October 23, 2008. 12 C.F.R. Part 370.
- B. Based on a finding of systemic risk.
 - 1. Found by the Secretary of the Treasury after consultation with the President, along with the written recommendation of the Federal Reserve Board. 12 U.S.C. § 1823(c)(4)(G).
 - 2. “The severity of today’s financial conditions affects more than just a single insured depository institution: the financial stability of a significant number of financial institutions is being threatened, and the nation’s entire financial system appears to be at risk.”
- C. Two principle components.
 - 1. Debt Guarantee Program.
 - 2. Transaction Account Guarantee Program.

II. Debt Guarantee Program

- A. Applies to senior unsecured debt, broadly defined.
 - 1. Must be:
 - (a) Evidenced by a written agreement;
 - (b) Have a specified and fixed principal amount to be paid in full on demand or on a date certain;
 - (c) Not contingent;
 - (d) Not subordinated by its terms to any other liability;
 - (e) Clearly identified as “guaranteed by the FDIC”; and
 - (f) Reported to the FDIC.
 - 2. Includes:
 - (a) Federal funds purchased;
 - (b) Promissory notes;

- (c) Commercial paper;
- (d) Unsubordinated unsecured notes;
- (e) Certificates of deposit standing to the credit of a bank;*
- (f) Bank deposits in an international banking facility of an insured banking institution;*
- (g) Eurodollar deposits standing to the credit of a bank; * and
- (h) Obligations denominated in foreign currencies.

3. Excludes:

- (a) Guarantees and other contingent liabilities;
- (b) Derivatives and derivative-linked products;
- (c) Debt paired with any other security;
- (d) Convertible debt;
- (e) Capital notes;
- (f) The unsecured portion of otherwise secured debt;
- (g) Negotiable certificates of deposit;
- (h) Deposits in foreign currency and Eurodollar deposits that represent funds swept from individual, partnership or corporate accounts;
- (i) Loans to affiliates, including parents and subsidiaries, and institution-affiliated parties; and
- (j) Debt issued to prepay other debt that is not guaranteed by the FDIC.

B. Maximum amount.

- 1. Generally limited to 125% of the par value of senior unsecured debt (excluding debt to affiliates or institution-affiliated parties) that was both:
 - (a) Outstanding on September 30, 2008; and

* The term “bank” for this purpose includes all domestic and foreign depository institutions.

- (b) Scheduled to mature on or before June 30, 2009.
 - 2. Participating institutions can issue unguaranteed debt subject to disclosure requirements and other conditions.
 - 3. Violation may result in a special assessment or enforcement action.
 - 4. The FDIC may increase or decrease the 125% limit, or impose other restrictions.
 - 5. All participating institutions must calculate the amount of their senior unsecured debt outstanding as of September 30, 2008, excluding debt extended to affiliates, that was scheduled to mature on or before June 30, 2009, and report that information to the FDIC no later than November 12, 2008.
- C. Date of issue.
- 1. On or after October 14, 2008.
 - 2. On or before:
 - (a) November 12, 2008, if the institution chooses to opt out of the debt guarantee program; or
 - (b) June 30, 2009, if the institution does not opt out of the debt guarantee program.
- D. Duration of guarantee.
- 1. Generally, the earlier of the maturity of the debt or June 30, 2012.
 - 2. Institutions can also elect to issue non-guaranteed debt with maturities beyond June 30, 2012 at any time, in any amount, and without regard to the guarantee limit. 12 C.F.R. § 370.3(f).
 - (a) Must notify the FDIC by November 12, 2008.
 - (b) Requires a non-refundable fee payable to the FDIC equal to 37.5 basis points times the amount of the entity's senior unsecured debt to non-affiliates outstanding as of September 30, 2008, with a maturity date on or before June 30, 2009.
 - (i) Collected in six equal monthly installments.
 - (ii) Offsets assessments for guaranteed debt.

- E. Entities which do not opt out cannot choose which debt will be guaranteed. All eligible debt will be guaranteed up to the guarantee limit when issued, subject to Section 370.3(f) regarding long term debt.
- F. If an institution does not opt out of the debt guarantee program, it must clearly identify, in writing and in a commercially reasonable manner, to any interested lender or creditor whether newly issued debt it is offering is guaranteed or not.
- G. The issuance of guaranteed debt constitutes agreement to the FDIC's authority over the program.
- H. Assessments.
 - 1. No assessment is required for the period from October 14, 2008 through November 12, 2008.
 - 2. Beginning November 13, 2008, any eligible entity which has not opted out will be charged 75 basis points per year on the amount of eligible guaranteed debt.
 - (a) June 30, 2012, will be used as the maturity date if the debt matures after that date.
 - (b) The assessment will not be reduced if guaranteed debt is prepaid.
 - 3. The assessment will be increased to 150 basis points if an institution issues guaranteed debt in excess of the guaranteed amount limit and represents it as being guaranteed by the FDIC.
 - (a) May also result in enforcement action.
 - 4. Failure to report the debt to the FDIC, or pay the required assessments, may invalidate the guarantee.
 - (a) Query how creditors will monitor this.
- I. No exemption from SEC disclosure requirements.

III. Transaction Account Guarantee Program

- A. Accounts covered.
 - 1. Must be non-interest bearing transaction accounts.
 - 2. Cannot reserve the right to require advance notice of withdrawal.
 - 3. Does not include NOW accounts or money market deposit accounts.

4. Does not include funds swept or transferred to another type of deposit or non-deposit account, other than funds swept to a non-interest bearing savings account.

B. Amount and duration.

1. In addition to other FDIC insurance coverage.
2. Expires December 31, 2009, or upon earlier opt-out.

C. Disclosure.

1. Each institution must post a prominent notice in the lobby of its main office and each branch clearly indicating whether it is participating in the transaction account guarantee program. If the entity is participating in the program, the notice must also state that funds held in non-interest bearing transaction accounts at the entity are fully insured by the FDIC.
 - (a) Must be in simple readily understandable text.
 - (b) Must disclose to customers in writing if a sweep arrangement voids the guarantee.
2. These disclosure requirements become effective December 1, 2008. Prior to that date, the substance of these disclosures must be disclosed in a commercially reasonable manner.

D. Assessments.

1. There is no assessment for the period from October 14, 2008 through November 12, 2008.
2. An institution which does not opt out will pay quarterly an annualized 10 basis point assessment on deposit amounts exceeding \$250,000 in non-interest bearing transaction accounts.

IV. Eligible Institutions

A. Any bank or savings association, the deposits of which are insured by the FDIC.

1. Excludes insured branches of foreign banks for purposes of the Debt Guarantee Program.

B. Bank holding companies organized under U.S. law.

C. Savings and loan holding companies organized under U.S. law.

1. Must either:

- (a) Engage only in activities that are permissible for financial holding companies under Section 4(k) of the Bank Holding Company Act, or
 - (b) Have at least one insured depository institution subsidiary which is the subject of an application under Section 4(c)(8) of the Bank Holding Company Act that was pending on October 13, 2008.
- D. Other affiliates of insured depository institutions designated as eligible entities by the FDIC.

V. Participation

- A. Covers all eligible entities through November 12, 2008, unless they opt out sooner.
- B. Can opt out of either the Debt Guarantee Program or the Transaction Account Guarantee Program or both.
 - 1. Notice of an election to opt out must be given by November 12, 2008.
 - 2. Failure to opt out by November 12, 2008, constitutes a decision to opt in.
 - 3. Issuance of FDIC guaranteed debt is a decision to opt in.
 - 4. A decision to opt in or opt out is irrevocable.
 - 5. All eligible entities within a bank holding company or savings and loan holding company must make the same decision. Failure to do so constitutes an opt out by all members of the group.
- C. The FDIC will publish on its website a list of institutions which have opted out of each program.
- D. The FDIC can terminate any institution's participation in both programs.
 - 1. Prospective only.
 - 2. Must notify customers and creditors.
- E. The FDIC will impose an emergency assessment to cover any loss or expense not covered by the other assessments.
 - 1. This assessment will apparently not be limited to institutions which opt into the programs.

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