March 17, 2009

MEMORANDUM: The Board of Directors

FROM: Mitchell L. Glassman, Director
Division of Resolutions and Receiverships

Sandra L. Thompson, Director
Division of Supervision and Consumer Protection

Arthur J. Murton, Director
Division of Insurance and Research

Roberta K. McInerney
Acting General Counsel

SUBJECT: Amendment of the Temporary Liquidity Guarantee Program to Extend the Debt Guarantee Program and to Impose Surcharges on Assessments for Certain Debt Issued on or after April 1, 2009

I. SUMMARY OF RECOMMENDATION

Staff recommends that the Board adopt and authorize publication in the *Federal Register* of the attached proposed Interim Rule. The Interim Rule would amend the Temporary Liquidity Guarantee Program (TLGP) by providing a limited extension of the Debt Guarantee Program (DGP) for insured depository institutions participating in the DGP. The extended DGP also would apply to other participating entities;[1] however, other participating entities that have not issued FDIC-guaranteed debt before April 1,

[1] The term "other participating entities" means bank holding companies, certain savings and loan holding companies, and certain FDIC-approved affiliates that are participating in the DGP.

2009 would be required to submit an application to and obtain approval from the FDIC to participate in the extended DGP.[2]

Entities that participate in the extended DGP would be permitted to issue FDIC-guaranteed debt until October 31, 2009. The Interim Rule also would extend the FDIC guarantee to no later than December 31, 2012 for debt issued on or after April 1, 2009. Staff recommends imposing surcharges on assessments for certain FDIC-guaranteed debt issued on or after April 1, 2009. Any surcharge collected in connection with the extended DGP would be deposited into the Deposit Insurance Fund.

The Interim Rule would permit IDIs and other entities participating in the extended DGP to apply to the FDIC to issue non-FDIC-guaranteed debt during the extension period.

As discussed more fully below and in the accompanying *Federal Register* preamble, the TLGP is part of a coordinated government-wide effort to provide liquidity to the financial service industry. This limited extension is intended to ensure an orderly phase-out of the TLGP and the accompanying return of IDIs and other participating entities to the non-guaranteed debt market, and is consistent with extensions to other liquidity programs recently announced by the Board of Governors of the Federal Reserve System (Federal Reserve).[3]

Discussion

In October 2008, the FDIC adopted the TLGP. The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the

---

[2] In approving such applications, the Interim Rule would permit the FDIC to impose any condition that it deems appropriate, including a requirement that an approved participating entity (that is not an IDI) pledge collateral to secure its obligation to repay the FDIC for any payment made pursuant to the FDIC's guarantee.
[3] 2009 Monetary Press Release, Release Date: February 3, 2009, http://www.federal reserve.gov/newsevents/press/monetary/20090203a.htm (last visited February 20, 2009) (announcing four month extensions until October 2009 of six liquidity programs originally scheduled to expire in April 2009).

Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

While liquidity in the financial markets has not returned to pre-crisis levels, there is compelling evidence that the DGP has been effective to date in improving short-term and intermediate-term funding for banking organizations. More than two-thirds of new public debt issuances by banking organizations between October 14, 2008, and March 4, 2009, that matures on or before June 30, 2012, are FDIC-guaranteed.[4] Thus far, non-FDIC-guaranteed debt issued by banking organizations has mostly been for relatively small amounts with some exceptions. During the first two months of the year, one banking organization issued $2 billion in ten-year senior notes, and another banking organization issued $4 billion in thirty year bonds, both without government guarantees.

The extended DGP, coupled with the surcharge provisions described below, should facilitate an orderly transition period for participating institutions to return to non-FDIC-guaranteed funding, and reduce the potential for market disruption when the program ends. Also, the extension should enhance bank liquidity while the elements of the Treasury's proposed Financial Stability Plan are fully implemented.[5] The extension would also partially address potential competitive disparities with similar programs in other countries.

Existing TLGP assessment rates, including DGP assessment rates, are intended to cover the losses related to the program. The proposed surcharge provisions would not be intended to cover potential losses to the TLGP. Rather, the surcharge amounts collected would be deposited in the DIF and used by the FDIC when calculating the reserve ratio. The surcharge provisions recognize that a relatively small portion of the industry is actively using the DGP, but all IDIs ultimately bear the risk that a systemic risk

---

[4] Bloomberg.
[5] Secretary Geithner Introduces Financial Stability Plan, http://www.treas.gov/press/releases/tg18.htm (last visited Feb. 19, 2009).

assessment might be necessary to recover any excess losses attributable to the program.[6] In addition, by statute, the systemic risk assessment does not include bank holding companies, thrift holding companies or affiliates that nonetheless benefit from the TLGP. The surcharge is intended to compensate DIF members, by increasing funds deposited directly into the DIF, for bearing the risk that TLGP fees will be insufficient and that a systemic risk assessment will be levied.

With this Interim Rule, staff proposes that the FDIC begin the orderly phase out of its TLGP, a program that has provided benefit to insured depository institutions, bank and certain savings and loan holding companies, and certain of their affiliates.

II. THE INTERIM RULE

A. Extension of the Debt Guarantee Program

Under the existing TLGP, participating entities were permitted to issue senior unsecured debt until June 30, 2009. The FDIC agreed to guarantee this debt until the earlier of the maturity of the debt or June 30, 2012.

This Interim Rule provides a limited extension of the DGP for participating insured depository institutions. The extended DGP also would apply to other participating entities that issued FDIC-guaranteed debt before April 1, 2009; however, other participating entities that have not issued FDIC-guaranteed debt as of April 1, 2009 would be required to submit an application to and receive approval from the FDIC to participate in the extended DGP.

Entities that participate in the extended DGP would be permitted to issue FDIC-guaranteed senior unsecured debt, including mandatory convertible debt, until October 31, 2009. The Interim Rule also would extend the expiration date for the FDIC's guarantee – set to expire no later than June 30, 2012 under the existing program - to the

[6] See 12 U.S.C. 1823(c)(4)(G)(ii).

earlier of the stated maturity date or December 31, 2012. The extended guarantee would apply only to senior unsecured debt issued on or after April 1, 2009.

Under the Interim Rule, entities that participate in the extended DGP also could apply to the FDIC to issue non-FDIC-guaranteed debt after June 30, 2009. If approved, such entities would be permitted to issue non-FDIC-guaranteed debt after June 30, 2009.[7]

The proposed amendment would not change an eligible entity's existing debt guarantee limit, or affect any conditions that the FDIC may have placed on the issuance of debt by an IDI or other participating entity. In addition, consistent with prudent liquidity management practices, staff proposes to alert participating entities in its *Federal Register* publication that issuance levels under TLGP should be consistent with existing funding plans and estimated liquidity needs.

B. Surcharges for Certain Guaranteed Debt Issuances

Surcharges provided for in the Interim Rule would be imposed on an annualized basis and would apply only to FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year. For such debt issued on or after April 1, 2009, until and including June 30, 2009, and maturing on or before June 30, 2012, the surcharge on assessments would be 10 basis points for IDIs and 20 basis points for other participating entities.

A surcharge would be imposed on assessments for FDIC-guaranteed debt issued under the extended DGP – that is, FDIC-guaranteed debt issued after June 30, 2009 and on or before October 31, 2009, or FDIC-guaranteed debt issued on or after April 1, 2009 with a maturity date after June 30, 2012. The applicable surcharge on assessments for IDIs would be 25 basis points. For other participating entities that have issued FDIC-guaranteed debt under the DGP before April 1, 2009 (and for such entities that have not issued FDIC-guaranteed debt under the DGP before April 1, 2009, but that have been

---

[7] Some participating entities elected to pay a fee to issue long-term non-guaranteed debt that could mature beyond June 30, 2012, pursuant to 12 CFR 370.6(f). The Interim Rule would require these entities to apply to issue other than long-term non-guaranteed debt, but there would be no additional cost for such issuances if approved by the FDIC.

approved by the FDIC to participate in the extended DGP), the applicable surcharge on the assessments would be 50 basis points.

The amount of any surcharge collected in connection with the extended DGP would be deposited into DIF and used by the FDIC when calculating the DIF reserve ratio. Staff anticipates that the amount of revenue that the surcharge produces will enable the FDIC to reduce the amount of the special assessment provided for in the Interim Rule adopted on February 27, 2009.

C. Effective Date and Comment Period

Staff recommends that the Board find good cause for making these modifications effective immediately as an Interim Rule.

Staff further recommends that the Board seek comment on the Interim Rule during a 15 day comment period.