Hunton & Williams

Client Alert

November 2008

Contacts

Peter G. Weinstock
1445 Ross Avenue Suite 3700
Dallas, TX 75202-2799
(214) 468-3395
pweinstock@hunton.com

Zonnie Breckinridge
111 Congress Avenue
Suite 1800
Austin, TX 78701
(512) 542-5002
zbreckinridge@hunton.com

FDIC Issues Final Rule Under Temporary Liquidity Guarantee Program

The FDIC issued its final rule on the Temporary Liquidity Guarantee Program on Friday, November 21, 2008. The key changes from the Interim and Amended Interim Rules are as follows:

Debt Guarantee Program Changes:

- Revises definition of senior unsecured debt to exclude any obligation with a stated maturity of 30 days or less
- Provides a debt guarantee cap of 2 percent of total liabilities as of September 30, 2008 for depository institutions that had no senior unsecured debt or only Fed funds outstanding as of September 30
- Allows participating banks or thrifts to combine their debt guarantee limit with that of their parent company so long as the total guarantee limit does not exceed the combined limit for the bank or thrift and its holding company
- Permits trade confirmations to serve as sufficient written agreement for senior unsecured debt
- Guarantees timely payment of principal and interest following a payment default
- Revises fee structure as follows:

For debt with a maturity of:	Annualized assessment rate (in basis points) is:
→ 180 days or less	→ 50
→ 181 – 364 days	→ 75
→ 365 days or greater	→ 100

The rates set forth above will be increased by 10 basis points for senior debt issued by a holding company or affiliate that is not an insured depository institution if, as of September 30, 2008, the assets of the holding company's combined depository institution subsidiaries constitute less than 50 percent of consolidating holding company assets.

Transaction Account Guarantee Program Changes:

- Includes all IOLTAs in the program
- Includes NOW accounts with interest rates of 0.50 percent or less in the program

This limited NOW account coverage is only available if the bank commits to maintain the interest rate at or below 0.50 percent at all times through December 31, 2009. So, if a bank has a NOW account whose rate is indexed to some external rate or product, the terms on the account will need to be modified to cap the rate at 0.50 percent through 2009. This change will likely require prior notice and may diminish the attractiveness of the account.

It should be noted that, despite comments to the contrary, the final rule provides that premiums assessed for the Transaction Account Guarantee Program will be based on quarter-end balances (as they are for existing premiums) rather than on the quarterly average balances of such accounts, notwithstanding the fact that these deposit products typically have more volatile daily balances. The FDIC reasoned that “the additional cost and reporting burden associated with [calculating the quarterly average balances] . . . do not seem appropriate given the temporary nature of the guarantee program.” If your bank has large, temporary increases in DDA or NOW account volumes at the end of the year (or any other quarter), you will want to consider the impact of these accounts on the fees that you will be required to pay.

The deadline for opting out of either or both parts of the Temporary Liquidity Guarantee Program is December 5. Please note that even if your institution chooses to remain in the Senior Debt Guarantee Program, you must file the Election Form with the FDIC by December 5 via FDIC*connect* and certify to that agency the amount of senior unsecured debt that was outstanding at the institution as of September 30, 2008, even if that amount is 0. Holding companies that wish to participate in the program and that had no senior debt outstanding at September 30 should file a request to the agency for a determination of the amount that they wish to have guaranteed.

For further information and a copy of the rule go to www.fdic.gov/regulations/resources/TLGP/index.html