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November 13, 2008

Via Electronic Mail: Comments@fdic.gov

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

Re: Interim Rule for Temporary Liquidity Guarantee Program
RIN # 3064-AD37

Dear Mr. Feldman:

Thank you for the opportunity to provide comments to the Federal Deposit Insurance Corporation ("FDIC") on the Interim Rule for the Temporary Guarantee Liquidity Program, as amended by the Amendment to the Interim Rule ("Interim Rule"). The Temporary Liquidity Guarantee Program ("TLGP") was established at a critical time in the current economic crisis and has the potential to provide significant support to financial institutions and to help restore confidence in the banking system. The FDIC has worked quickly in launching a novel program and developing rules and procedures for its implementation. The information provided through Technical Briefings, Financial Institution Letters, published FAQs and the interim rulemaking has been timely and helpful. We have the following comments that we believe, if addressed in the final rule, will provide more transparency for the TLGP by improving the understanding of consumers and market participants, enhance its utility for financial institutions and increase the potential benefits of the program to the economy as a whole.

Characterization of the Guaranty

The guarantee provided for newly-issued senior unsecured debt ("Debt Guarantee Program") has the potential to increase liquidity and improve broad-based confidence in the banking system. Increased confidence and improved liquidity will encourage lending by participating financial institutions. Achieving these goals requires acceptance of the program by eligible institutions, and their investors, counterparties and the markets. Currently, these constituents continue to have questions regarding the guarantee and, as a result, are unable to attribute value to it, reducing its potential benefits and the likelihood of widespread participation by eligible institutions.

We believe that in order to achieve the Debt Guarantee Program's goals it is important to assure market participants that the guaranteed debt obligations will be paid promptly and that payment will be backed by the full faith and credit of the United States Government.

Payment Guarantee

In administering the deposit insurance program, the FDIC has long recognized the benefits of prompt payment of insured deposits. The same considerations that support the prompt payment of insured deposits support the prompt payment on guarantees under the Debt Guarantee Program.

Potential purchasers of senior unsecured debt actively manage their portfolios for maturity, interest rate and risk. Although the guarantee ultimately provides the backing of the U.S. Government, the risk associated with holding debt of the underlying institution is not fully mitigated when a potential repayment delay remains. Providing a guarantee for the timely repayment of interest and principal would eliminate the timing risk associated with the underlying institution's credit. Such a payment guarantee would be familiar to participants in the market for senior unsecured debt instruments who would be able to effectively value it, significantly enhancing available liquidity for participating institutions.

The final rule should provide for a payment guarantee that covers timely payment of interest and principal, instead of payment only under the procedures specified in §370.12(b) of the Interim Rule. The procedures specified in §370.12(b) of the Interim Rule introduce an element of uncertainty into the guarantee that negatively impacts the confidence that the program hopes to achieve. To paraphrase Walter Bagehot in *Lombard Street* in 1873, the object is to stay alarm and nothing, therefore, should be done to cause alarm. But, the way to cause alarm would be to fail to make prompt payment on the guarantee.

Full Faith and Credit

As Chairman Bair noted in her October 23, 2008 Statement on the TLGP, the guarantees are backed by the full faith and credit of the U.S. Government. We believe that the final rule should clarify that the guarantees provided under the Debt Guarantee Program are within 12 U.S.C. §1825(d) and are backed by the full faith and credit of the U.S. Government.

Instruments backed by the full faith and credit of the U.S. Government may be posted as collateral under numerous liquidity and funding agreements and may be subject to separate classification under investment guidelines.[1] Additionally, enhanced by a clear U.S.

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[1] We also note that instruments backed by the full faith and credit of the U.S. Government may not be issued in bearer form. Current and potential TLGP participants utilize medium-term note and other programs to issue senior unsecured debt globally; many of these programs provide for the issuance of senior unsecured debt in bearer form outside the United States. Although we believe the guaranteed debt should be backed by the full faith and credit of the U.S. Government (and not be issued in bearer form), we request a clear statement of the full faith and credit treatment in the final rule to provide potential issuers and market participants with certainty.

Government guarantee, debt issued under the program should obtain the highest ratings from credit rating agencies, enhancing its marketability and reducing funding costs.

Debt backed by a commitment for timely payment and the full faith and credit of the U.S. Government should provide investors with a high degree of confidence in repayment. These two components, working together, would increase the benefits of the Debt Guarantee Program for participants, their counterparties and the banking sector.

Consistent with these comments, we believe the bank regulatory agencies should provide a zero risk-weighting for guaranteed debt under a program that provides a payment guarantee for timely payment of interest and principal, backed by the full faith and credit of the U.S. Government.

<u>Fee Assessment</u>

The Interim Rule provides for a 75 basis point fee for all newly-issued senior unsecured debt covered by the Debt Guarantee Program. The TLGP guarantee will build confidence in the banking system and encourage lending to the extent that eligible institutions' participation in the program enhances liquidity. Application of the assessment, as currently structured, across all covered debt instruments may severely limit the appeal of the TLGP to institutions that purchase significant quantities of Federal Funds or issue other short-term unsecured senior debt. Costs of funds are priced to include duration risk of the debt, with short-term obligations, particularly overnight obligations, bearing a lower rate of interest than longer-term instruments, even during periods of market dislocation. The application of the 75 basis point fee to overnight Federal Funds and similar debt instruments issued by affiliates of insured depository institutions with a maturity of seven days or less would be prohibitively costly and effectively eliminate these otherwise available sources of liquidity. To encourage the broad participation by financial institutions that will build systemic confidence, the final rule should reflect a fee system that takes into consideration the relative duration risk associated with short-term and longer-term debt.

<u>Transparency Regarding Participating Institutions</u>

Upon announcement, all eligible institutions were automatically included in the TLGP. This automatic inclusion provided an immediate statement of confidence in the banking system from the FDIC. The opt-out system minimizes the effort required by institutions that are already participating and do not wish to change their status. Under the Interim Rule, the FDIC will provide public notice of institutions that have elected to opt out of the TLGP. The mechanics for notification and opt-out list publication can be modified to enhance the transparency of the TLGP as the opt-out date passes. Because of uncertainties relating to the coverage of the TLGP, the TLGP and the banking system would benefit from a web-based list of participating financial institutions, as well as, or rather than, non-participating financial institutions. This positive listing would confirm the status of institutions that only

became eligible under §307.2(a)(4) and provide certainty with respect to institutions eligible under §307.2(a)(3) (as modified by §307.2(d)).

The definition of eligible institution provides information necessary for financial institutions to determine whether or not they will be eligible for the TLGP. However, consumers, market participants and counterparties do not possess the detailed information regarding corporate structure, banking activity and non-banking activity necessary to conduct a similar analysis. Nor do market participants have the resources or time required for such a review of all potential TLGP participants. For example, a market participant or potential counterparty considering an extension of credit will not have any means to readily determine if a U.S. savings and loan holding company is engaged in impermissible activities under the Bank Holding Company Act. Without understanding the threshold question of whether the potential counterparty is eligible under the TLGP, review of the opt-out list will not provide meaningful information.

We strongly encourage the FDIC to publish the list of <u>participating institutions</u> in TLGP to enhance the transparency and the benefits of TLGP.

<u>Newly-Issued Senior Unsecured Debt Definition</u>

The Interim Rule describes the debt categories that will be considered within the scope of the Debt Guarantee Program and provides examples of excluded debt. We believe that the following modifications and clarifications to the final rule's definition of newly-issued senior unsecured debt would further the purposes of the TLGP:

1. Include senior unsecured debt instruments that are used as components of Tier 1 or Tier 2 capital instruments.

2. Clarify that a senior unsecured debt instrument will be covered by the guarantee if it is newly issued in exchange for outstanding senior unsecured debt (without cash consideration).

Capital Purchase Program Related Debt

The TLGP and the Department of the Treasury's ("Treasury") Capital Purchase Program ("CaPP") are complementary programs, both designed to restore confidence and liquidity in the banking system. Participants in the CaPP are issuing securities to the Treasury, enhancing their capital levels. The investment of U.S. taxpayer resources into financial institutions is not intended to be a long-term solution; the CaPP was established to provide interim capital relief during a period marked by an unprecedented lack of investor confidence in healthy financial institutions. The securities sold to the Treasury are structured to provide an economic incentive for participating institutions to redeem them through the issuance of securities providing replacement capital. CaPP provides that the proceeds from qualified equity offerings of replacement capital can be used to redeem the preferred stock held by the

Treasury and will result in a reduction of the warrant for common stock held by the Treasury, under certain circumstances.

CaPP participants will have the ability under that program to issue various securities to replace the Treasury capital. Several of the securities that would be offered in connection with a qualified equity offering include a senior unsecured debt component. The inclusion of these senior unsecured debt instruments in the Debt Guarantee Program would enhance the ability of CaPP participants to issue new securities and redeem Treasury's investment. For example, certain mandatory convertible securities can be issued with terms that provide both capital and the economic benefits of a debt instrument and would qualify for Tier 1 capital treatment. These securities include a senior unsecured debt component. Another capital security includes a senior unsecured note issued with a forward purchase contract, obligating the financial institution to sell its common or preferred stock in the future. This security similarly provides both capital and the economic benefit of a debt instrument. These widely-used capital instruments that include senior unsecured debt instruments provide diversified sources of capital for financial institutions, and a TLGP guarantee of the senior unsecured debt will facilitate the replacement of capital provided by the Treasury.

We believe the final rule should include in the Debt Guarantee Program those newly-issued senior unsecured debt instruments that are used in connection with capital raising transactions.

Exchange of Debt

Newly-issued senior unsecured debt may be issued to existing borrowers in exchange for outstanding debt. A financial institution may engage in such an exchange as part of its liquidity and funding strategy, taking into consideration its overall cost of funds and management of outstanding liabilities. Exchange of a new debt instrument for an outstanding debt instrument may improve a financial institution's overall liquidity position through the terms of the replacement debt. More efficient funding of liabilities for financial institutions will improve their liquidity position and promote the goals of the TLGP. These exchange transactions may be executed efficiently and without registration with the Securities and Exchange Commission under the exemption provided by section 3(a)(9) of the Securities Act of 1933, as amended. The newly-issued debt would be subject to the Debt Guarantee Program assessment and notice provisions. The FDIC's exposure on the guarantee of this debt, like other debt, would be limited by the debt insurance cap. A financial institution would only have incentive to exchange outstanding debt in the limited circumstances where such an exchange would provide a meaningful improvement to the financial institution's liquidity and risk position. We believe the final rule should clarify that newly-issued senior unsecured debt issued in an exchange for outstanding debt without cash consideration should be covered by the guarantee.

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Management of Issuance Limitation - The 125% Cap

The Interim Rule addresses the calculation, reporting and management of issuance of guaranteed debt under the 125% cap, and provides for a punitive fee assessment across all of an institution's debt under the Debt Guarantee Program if that institution exceeds its issuance cap. While we believe that the guarantee under the Debt Guarantee Program continues to apply to debt in excess of the 125% cap and that this coverage is critical to the success of the Debt Guarantee Program, we believe that the FDIC should clarify that the guarantee program includes newly-issued senior unsecured debt in excess of the 125% cap.

Clarification in the final rule that any debt issued in excess of the issuance cap will be covered by the guarantee will provide confidence to market participants and potential counterparties that the risk associated with a breach of the issuance cap will fall exclusively on the issuing financial institution.

Structured Products

We support the letter submitted on November 13, 2008 by the Structured Products Association, and the comments expressed therein. The financial instruments described in that letter are widely used as part of effective risk management and funding strategies and form a required component of many financial institutions' liquidity management. Including these senior unsecured debt instruments within the TLGP's Debt Guarantee Program would enhance the program's ability to restore liquidity in the banking system.

We appreciate the opportunity to comment and would be pleased to answer any questions you may have or provide supplemental information. Please contact me at 202-887-1500.

Sincerely,

Oliver I. Ireland