Compass Bancshares

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Jerry W. Powell
General Counsel/Secretary

November 11, 2008

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attention: Comments Re: RIN # 3064-AD37

Re: Interim Rule Regarding Temporary Liquidity Guarantee Program

Ladies and Gentlemen,

This letter is submitted by Compass Bank and its parent holding company Compass Bancshares, Inc. (collectively referred to as "Compass") to comment on the Interim Rule Implementing the Temporary Liquidity Guarantee Program, 73 Fed. Reg. 64179, issued by the Federal Deposit Insurance Corporation (the "FDIC").

Compass fully supports the FDIC's efforts to encourage confidence and liquidity in the credit markets by creating the Temporary Liquidity Guarantee Program (the "TLGP"). Compass offers these comments on the TLGP and its two components, the Debt Guarantee Program and the Transaction Account Guarantee Program, in the hope of enhancing the effectiveness of the programs and ensuring wide participation.

A. The Debt Guarantee Program

1. Provide an Unconditional Guarantee of Timely Payment of Principal and Interest when Due

The nature of the debt guarantee needs to be strengthened in order to encourage the wide participation of banks and investors that the FDIC seeks. The guarantee should be simple, straightforward, and cover payment of principal and interest when due. There should be an acceleration provision to June 30, 2012 in the event of default for guaranteed debt that matures after that date. Without such a guarantee, issuing entities will not realize the full benefit of the program as investors make judgments about the likelihood of receivership or bankruptcy and how long claims and payment will be delayed. The uncertainties created by the waiting periods described in the TLGP as drafted and the non-contract rate of interest paid by the FDIC after a bankruptcy may well discourage investors or cause price discrimination among offerings based on the relative strength of the issuers. Both results would frustrate the FDIC's stated purposes.

2. <u>Federal Funds should be Excluded from the FDIC Guarantee</u>

The purchase and sale of federal funds as a source of overnight funding for banks involves many transactions and counterparties, and, given the short-term nature of the transactions, settlement arrangements that may not be conducive to the TLGP's requirements of written agreements. Federal funds provide an efficient and cost effective way to manage short-term funding needs. The majority of banks have been able to borrow effectively in the fed funds market for many years and even during the challenging period of the last twelve months. By including federal funds in the definition of "senior unsecured debt" at 370.2(e) to be guaranteed, the TLGP would increase dramatically the cost of such funding. Given the added transaction costs that inclusion of federal funds in the TLGP would cause, we respectfully suggest deleting federal funds purchased from the definition of "senior unsecured debt."

3. <u>If Federal Funds are to be Guaranteed, the Fee Charged should be Less</u>

The 75 basis point fee charged under the TLGP does not distinguish between the very different credit risk taken by the FDIC in guaranteeing eligible debt that matures the next business day (such as federal funds purchased) versus eligible debt that matures months or years later, up to June 30, 2012. The increased cost of such lower-risk debt might drive banks out of the inter-bank funding markets to find other borrowing sources, a result that would not advance the FDIC's purpose of strengthening the inter-bank funding markets. Indeed, should the high fee result in a reduction in the volume of federal funds purchased, an effect similar to a significant tightening of monetary policy by the Federal Open Market Committee, the consequences would appear highly undesirable.

Compass encourages the FDIC to replace the flat rate guarantee fee with a modestly increasing fee structure based on the term to maturity of the debt being guaranteed. The fee for federal funds purchased that mature the next business day should not be too dissimilar from the proposed fee for non-interest bearing transaction accounts as described in the Transaction Account Guarantee Program.

4. <u>A Written Agreement is Impractical in Purchase and Sale of Fed Funds</u>

The TLGP defines senior unsecured debt, including federal funds purchased, as "unsecured borrowing that . . . is evidenced by a written agreement." The Interim Rule further states that eligible entities that remain in the program must clearly disclose to interested lenders and creditors, in writing and in a commercially reasonable manner, what debt it is offering and whether the debt is guaranteed. Most federal funds transactions are conducted verbally either directly or acting through a broker and, in general, do not include a written agreement or even a confirmation. Generally, these transactions mature the next business day. Compass suggests that, if retained within the definition of "senior unsecured debt," federal funds purchased be exempted from the requirement of a written agreement.

5. Allow Participating Entities More Flexibility to Determine which Debt Issuances will not be Guaranteed

The TLGP does not allow participating entities to select which newly issued senior unsecured debt is to be FDIC-guaranteed and which will not be at the time they issue such debt. The Interim Rule only allows a participating entity to issue non-guaranteed debt either after it has issued the maximum amount of guaranteed debt or, if an election is made by December 5, 2008 and a fee paid, to issue non-guaranteed debt with maturities beyond June 30, 2012. Compass strongly urges the FDIC to consider allowing participating entities the flexibility to issue both guaranteed and non-guaranteed senior unsecured debt on an issue-by-issue basis as market conditions and balance sheet needs dictate.

6. Include Negotiable Certificates of Deposit under the FDIC Guarantee

With respect to types of senior unsecured debt, Compass recommends the inclusion of negotiable certificates of deposit. Negotiable certificates of deposit are vital funding sources to the banking industry. All banks must manage their balance sheets in a safe and sound manner and this requires diversifying funding across different sources, maturities and instruments. Neglecting to include negotiable certificates of deposit may cause a major source of funding for many banks to shrink or dry up as depositors seek other places to invest their funds. The FDIC has chosen to guarantee commercial paper regardless of who purchases it. Negotiable certificates of deposit, whether sold to a bank or a non-bank, are similar short-term sources of funding. Favoring one source over another may cause unexpected and unwelcome consequences. We believe that there are steps that could be taken to track negotiable certificates of deposit of the size and type commonly sold to institutional investors by using CUSIP numbers or other identifiers to distinguish them.

7. Modify Calculation of Maximum Amount of Guaranteed Debt Allowed

Under § 370.3(b), "the maximum amount of debt to be issued under the debt guarantee is 125 percent of the par value of the participating entity's senior unsecured debt, excluding debt extended to affiliates or institution affiliated parties, outstanding as of September 30, 2008 that was scheduled to mature on or before June 30, 2009." Basing the computation of the maximum amount of debt on a single day, particularly a month-end and quarter-end date, may provide a distorted view of a bank's balance sheet. Many short-term factors can affect a balance sheet dramatically at a single point in time and a measurement taken on a single date does not reflect the true funding needs of an organization. As an alternative, Compass suggests that the FDIC compute the maximum debt amount of each participating entity based on 125 percent of either (a) the average balance of senior unsecured debt outstanding during the third quarter of 2008 or (b) the highest balance of senior unsecured debt outstanding during the third quarter of 2008.

8. Allow Flexibility to Issue Combined Maximum Amount of Debt at the Bank or Holding Company Level

In the Amendment to the Interim Rule, you have requested comment on whether banks should "be allowed to issue guaranteed debt in an amount equal to the bank's cap plus its holding company's (ies') cap, so long as the total guaranteed debt issued by the bank and its holding company (ies) does not exceed their combined cap." You also ask how this process could be managed to assure that the entities do not exceed their combined cap. Compass urges the FDIC to include the flexibility of allowing either or both of the bank and holding company (ies) of a bank group to issue guaranteed debt up to the limit of the combined cap. Such flexibility will not frustrate the FDIC's stated goals for this program and will allow needed flexibility to issuers in order to manage their liquidity. As other programs provide liquidity and/or capital to banks specifically, it makes great sense for the Debt Guarantee Program to provide flexibility for bank groups to choose which entity will issue guaranteed debt up to the combined limit. Tracking the combined limit can be done by reporting from the consolidated top tier holding company.

B. Transaction Account Guarantee Program

1. Need for Uniform Disclosure and FDIC Guidance

The TLGP requires disclosures and notices to be posted by December 19, 2008. Compass suggests that the FDIC publish model disclosures and provide guidelines detailing how they must be displayed. We note that the time allowed for compliance with the notice requirements is quite short and urge the FDIC to take this fact into consideration when formulating guidance on the required disclosures.

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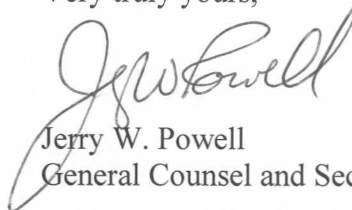
The TLGP and its Debt Guarantee Program and Transaction Account Guarantee Program have the potential to be useful instruments during these uncertain economic times. Compass encourages the FDIC to consider the changes suggested above in order to encourage wide participation by eligible entities and achieve the FDIC's stated purposes. Compass strongly supports these efforts by the FDIC and we look forward to working together on these important matters.

Very truly yours,



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