Massachusetts Bankers Association

November 13, 2008

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: RIN 3064-AD37
Temporary Liquidity Guarantee Program

Dear Mr. Feldman:

On behalf of our 200 commercial, savings and co-operative banks, federal savings banks, and savings and loan associations throughout Massachusetts and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's proposed rule implementing the Temporary Liquidity Guarantee Program (TLGP). The final interim rule was issued following a determination of systemic risk and is intended to mitigate any adverse effects on economic conditions or financial stability.

The rule includes two separate programs: unlimited deposit insurance for all funds in noninterest-bearing transaction and savings accounts and a temporary guarantee of newly-issued senior unsecured debt. Under the rule, all banks were automatically enrolled in both programs for an initial 30-day period. Institutions may then decide to opt-out of one or both components of the TLG Program.

While MBA understands the FDIC's rationale for implementing these programs, we are concerned that there may be some unintended consequences to individual institutions as well as the banking system as a whole. The situation in Massachusetts is also unique, since most state-chartered institutions already have full deposit insurance coverage through the Depositors Insurance Fund and the Cooperative Central Bank's Share Insurance Fund. Our comments on both components of the program are below.

Debt Guarantee Program

Under the interim final rule, the FDIC will guarantee all newly-issued senior unsecured debt issued on or after October 14, 2008 through and including June 30, 2009. Eligible bank debt must have a maturity date prior to June 30, 2012. The FDIC will guarantee debt only up to 125 percent of the par value of senior unsecured debt outstanding as of September 30, 2008.

After the initial 30-day period, banks that do not opt-out of the program will be assessed an annualized fee of 75 basis points multiplied by the amount of the debt issued. Under the rule, all debt issued for institutions that remain in the program will be guaranteed – banks will not be able to choose which debt is subject to the guarantee or the fee.

We expect some of our member institutions to take advantage of the debt guarantee program, however we have heard from a number of banks that are concerned with the overall cost of the guarantee. At a time when the FDIC is moving to more risk-based models for insurance premiums, it is unfortunate that the flat 75 basis point fee will apply to all institutions and all debt issued – even those institutions that remain financially strong.

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Creating a new formula given the temporary nature of the program might not be the most efficient solution, however. Allowing institutions to choose which debt would be guaranteed under the program would offer banks an opportunity to manage the cost of the program while still ensuring that appropriate levels of debt are covered by the federal guarantee.

In addition, we have some concerns with the methodology for determining the amount of debt institutions can issue under the program. Some of our member institutions had little or no senior unsecured debt outstanding as of September 30, 2008. Most banks only access federal funds when necessary, so precluding institutions that held no Fed funds as of that date may make a number of banks ineligible for the program. We encourage the FDIC to consider this issue and ensure that all banks, regardless of Fed funds status on September 30th, have access to the debt guarantee program.

Transaction Account Guarantee Program

The Transaction Account Guarantee Program provides temporary full guarantee for funds held in noninterest-bearing transaction and savings accounts. Under the rule, covered accounts include traditional demand deposit checking accounts that allow for an unlimited number of deposits and withdrawals at any time. It also encompasses official checks issued by an insured depository institution. The FDIC has also requested public comment on whether negotiable order of withdrawal (NOW) accounts held by sole proprietorships, non-profit religious, philanthropic, charitable organizations, or governmental units for the deposit of public funds if the interest paid is de minimis.

In addition, the interim rule states that a list of institutions that choose to opt-out of either component of the program will be made publicly available by the FDIC. In addition, institutions that opt-out of the Transaction Account Guarantee Program will be required to provide a disclosure to its customers and post a prominent notice in the main office and each branch office.

As you may know, Massachusetts state-chartered savings banks and cooperative banks are in the unique situation of having all excess deposits fully insured by one of two funds – the Depositors Insurance Fund (DIF) or the Share Insurance Fund (SIF). These funds are well-capitalized, with sufficient reserves to effectively manage the current economic downturn. No depositor has ever suffered losses in a bank insured by the FDIC and the DIF or SIF.

MBA is extremely concerned that the proposed notice requirements under the interim rule will put banks in Massachusetts that choose to opt-out at a significant disadvantage. Our member banks that have this excess coverage have already paid assessments to one of the two funds and may not believe it is worth the financial cost to remain in the Transaction Account Guarantee Program if they already have this alternate coverage for those accounts. We believe that publicizing the opt-out list, along with requiring institutions to post notices at each branch will lead to additional customer confusion and uncertainty regarding the safety of their deposits and the financial condition of their bank.

For those institutions with excess deposit insurance coverage through one of the Massachusetts funds, MBA suggests including an explanatory statement on any opt-out list published by the FDIC that clearly states that certain banks, identified on the list, have their deposits fully insured by the DIF or the SIF. In addition, we urge the FDIC to carefully consider the impact of requiring signage and other disclosures regarding this program that could create customer uncertainty. In particular, we believe the branch signage requirement is unnecessary, since the vast majority of bank customers will not be impacted by the guarantee program.

MBA recommends that disclosures be measured and balanced so as not to create additional confusion. We also believe that the FDIC should limit the requirement to only apply to those customers with the types of accounts covered under the interim rule. Providing disclosures to all customers regarding the bank's

participation in the Transaction Account Guarantee Program will be costly and overly burdensome. Disclosing the opt-in/opt-out status only to customers with covered accounts will also mirror the disclosure requirement for the Debt Guarantee Program.

Finally, providing full deposit insurance coverage for covered accounts requires the FDIC to take into account the deposit reclassification programs which are standard practice in the banking industry. Under these programs, generally established to permit banks to manage reserve requirements at the Federal Reserve, banks reclassify, on their general ledger, portions of transaction account balances as non-interest bearing non-transaction accounts, which are not subject to reserve requirements.

These programs are well-established in the banking industry, and have no effect on the liquidity of customers' transaction accounts. The FDIC recognizes such programs in the interim rule, and clarifies its intention to cover such balances as part of the Transaction Account Guarantee Program in the Questions and Answers document published on the agency's website.

While we support the FDIC's decision to provide unlimited deposit insurance for balances resulting from deposit reclassification programs, we believe that the language in the interim rule and Q & A document is too narrow and may not include all existing types of programs. Some programs involve time deposits, rather than savings accounts and the use of the term "sweeps" may not clearly capture all of the technical mechanisms under which these programs operate.

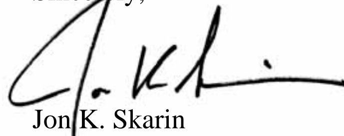
Requiring banks to suspend such programs in order to ensure coverage by the temporary Transaction Account Guarantee Program will introduce unnecessary operational challenges, and the resulting increase in required reserves will trap liquidity at the Federal Reserve which could be better deployed toward addressing liquidity issues in today's credit markets. This is contrary to the stated purpose of the TLG program.

We recommend that the FDIC clearly provide unlimited deposit insurance to all non-interest bearing customer transaction accounts, without requiring changes to banks' long standing deposit reclassification programs. This approach would greatly simplify the administration of the program and establish assessment and coverage related data that is largely already available on banks' Call Reports.

Conclusion

Thank you again for the opportunity to comment on the interim final rule. If you have any questions or need additional information, please contact me at (617) 523-7595 or via email at jskarin@massbankers.org.

Sincerely,



Jon K. Skarin
Director, Federal Regulatory & Legislative Policy

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