INDEPENDENT COMMUNITY
BANKERS of AMERICA

November 13, 2008

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

Submitted via email

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

Dear Mr. Feldman:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Federal Deposit Insurance Corporation (FDIC) Temporary Liquidity Guarantee (TLG) Program Interim Rule. Under the Program, the FDIC will guarantee, with certain limitations, all senior unsecured debt of eligible entities and fully guarantee noninterest-bearing transaction accounts.

ICBA applauds the FDIC's actions to unlock the credit markets. The Transaction Account Guarantee Program will enhance depositor confidence in community banks and free up bank capital used to purchase securities in connection with secured repurchase agreements for the benefit of large depositors. The Debt Guarantee Program, however, as currently, constituted provides few benefits for community banks as these institutions, by and large, in contrast to larger institutions, do not issue much in the way of senior unsecured debt, other than some federal funds purchased. The current pricing for the Debt Guarantee Program make it unattractive for federal funds purchased transactions. ICBA provides concrete suggestions to improve the TLG Program.

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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Overview of ICBA Comments

ICBA strongly applauds FDIC efforts to inform the industry of the TLG Program through the use of industry conference calls and a dedicated, comprehensive section on the FDIC web site. We also appreciate the FDIC's receptiveness to industry concerns as evidenced by the November 4, 2008 amendments to the interim rule.

Below please find a summary of our comments.

TLG Program Eligible Entities

- ICBA strongly urges the FDIC to exclude holding companies with significant non-bank subsidiaries as it would be grossly unfair for community banks and other insured depository institutions to be left with the tab, through a special assessment on FDIC-insured institutions only, for any Program losses above Program fees and assessments. If the FDIC determines it is appropriate for holding companies with significant non-bank subsidiaries to continue Program participation, ICBA requests the FDIC develop some methodology for these entities to pay a special assessment for their proportional share of any Program losses. Moreover, the expansion of deposit insurance to entities other than insured depository institutions is fraught with yet-to-be-determined consequences**.**

TLG Program Participation

- ICBA strongly urges the FDIC to require the largest banks to participate in the TLG Program since community banks are deeply concerned that too-big-to-fail banks have little incentive to participate in the Program.

Debt Guarantee Program

Senior Unsecured Debt

- ICBA recommends the FDIC consider the merits of providing a separate opt out for overnight federal funds to afford entities additional flexibility.

Guarantee Cap

- ICBA recommends the FDIC adopt a new guarantee cap for all Program participants based on an entity's total liabilities as of September 30, 2008.

Assessments

- ICBA applauds the FDIC's amendment to the interim rule suspending the accrual of assessments on overnight debt instruments until after the rule is finalized. This amendment is particularly helpful in addressing the unintended consequences of the interim rule on bankers' banks[2] agency federal funds programs.

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[2] The nation's 20 bankers' banks were organized and authorized solely to provide correspondent banking services to community banks, including savings and loan associations. Bankers' banks serve more than 6,000 respondents and are owned primarily by community banks and their holding companies. Unlike other correspondent banks, bankers' banks rely significantly on "due to" accounts and respondent overnight excess funds for liquidity since they have no retail demand deposit or savings accounts.

- ICBA strongly urges the FDIC to adopt a risk-based pricing model for the Debt Guarantee Program with guarantee fees ranging from under 10 basis points to no more than 50 basis points depending on a bank's CAMELS rating and the term of the borrowings. Under such a pricing model, overnight federal funds purchased by a bank with a CAMELS rating of 1 or 2 should be assessed a guarantee fee of 10 basis points or less. Small bank and thrift holding companies should be assessed a fee based on the CAMELS ratings for the companies' financial institution subsidiaries.

Long Term Non-Guaranteed Debt Option

- ICBA believes few community banks would use this option as these institutions do not, by and large, issue long-term senior unsecured debt.

Termination of Participation

- ICBA fully supports the FDIC's authority to terminate Program participation for individual entities in the interest of protecting the Deposit Insurance Fund from unnecessary losses and insured depository institutions from excessive assessments if the Program does not cover its costs. ICBA recommends the final rule include potential reasons for Program termination to assist participants in taking appropriate action to ensure continued participation.

Disclosures

- The disclosure to the purchaser of the guarantee status of federal funds purchased is quite problematic, if not impossible. Federal funds are typically governed by master agreements. There is no supporting written documentation evidencing each federal funds transaction, wherein the disclosure could be made.

- Community banks not planning to participate in the Debt Guarantee Program have concerns that their institutions will be deemed unsafe and unsound due to their non-participation listing on the FDIC web site. Most likely, non-participating banks have liquidity and capital levels warranting no need to participate in the Program. It would be unfair for the reputation of these banks to be tainted due to incorrect public assumptions. To address this concern, ICBA recommends the FDIC issue a disclaimer statement on the webpage noting that a bank's listing on the web site should not be construed as an indicator of a bank's financial condition.

Reporting Requirements

- ICBA urges the FDIC to adopt a monthly average daily balance reporting requirement for overnight borrowings to lessen much of the associated reporting burden. With regard to reporting the amount of debt retired prior to the stated maturity, ICBA recommends the FDIC adopt an outstanding balance as of quarter-end reporting requirement.

Transaction Account Guarantee Program

Eligible Accounts

- ICBA supports expanding the Program to fully insure all transaction accounts (interest and non-interest bearing) through December 31, 2009 since banks have the ability to opt out of the Program. Expanding coverage to include all transaction accounts would level the playing field for community banks and other institutions NOT too big to fail by eliminating the incentive for customers to move funds to too-big-to-fail institutions or mutual fund money market accounts. Additionally, expanded coverage would greatly simplify banks explaining coverage to their customers as the interim provisions create an environment ripe for customer confusion and lack of understanding. Many community banks have few demand deposit accounts over $250,000, but transaction accounts with high balances are typically NOW accounts for small businesses, non-profits, and governmental entities.

- ICBA strongly urges the FDIC to specifically include "due to" accounts in the guarantee as these accounts are vital to the liquidity of community banks, and their correspondents, particularly bankers' banks.

Fees

- ICBA believes the 10-basis point fee is reasonable.

Disclosures

- ICBA recommends the inclusion of an institution's routing and transit number on the FDIC web site to assist stakeholders in determining the status of an institution's participation given bank name similarity. Again, community banks not planning to participate in the Guarantee Program have concerns that their institutions will be deemed unsafe and unsound due to their non-participation listing on the FDIC web site. Most likely, non-participating banks would have few, if any, accounts qualifying for full coverage. It would be unfair for the reputation of these banks to be tainted due to incorrect public assumptions. To address this concern, ICBA recommends the FDIC issue a disclaimer statement on the webpage noting that a bank's listing on the web site should not be construed as an indicator of a bank's financial condition.

- ICBA applauds the FDIC for not imposing the additional burden of requiring banks to send disclosure notices to their customers regarding the status of a bank's participation in the Program. In the event, the FDIC is contemplating additional customer disclosures; ICBA strongly encourages the FDIC to merely require banks to post model language on their web sites.

Temporary Liquidity Guarantee Program

On October 13, 2008, the FDIC Board used its systemic risk authority granted under the Federal Deposit Insurance Corporation Improvement Act of 1991 to establish the TLG Program to "preserve confidence and encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers." The TLG Program has two components, the Debt Guarantee Program guarantees, with certain limitations, all senior unsecured debt of eligible entities, and the Transaction Account Guarantee Program fully guarantees noninterest-bearing transaction accounts. The FDIC issued an interim rule with request for comments on October 23, 2008 and issued interim rule amendments on November 4, 2008.

Entities eligible to participate in the Program include: 1) FDIC-insured depository institutions; 2) U.S. bank holding companies and savings and loan holding companies with at least one chartered and operating insured depository institution; and 3) other affiliates of insured depository institutions deemed eligible by the FDIC after consultation with the appropriate Federal banking agency.

Eligible entities may opt out of either the Debt Guarantee Program or the Transaction Account Guarantee Program or both of the Programs by 11:59 pm EST on December 5, 2008 by completing the Election Form via FDIC*connect*. Failure to opt out of either Program constitutes a decision to continue participation in the Program. The choice to opt-in or opt-out, once made, is irrevocable. All eligible entities within bank and savings and loan holding companies must make the same participation election for each guarantee Program.

There is no cost to eligible entities for participation in the TLG Program for the first 30 days (October 14, 2008 – November 12, 2008). Any eligible entity that opts-out of the TLG Program on or before December 5, 2008, will not pay any assessment under the Program.

The FDIC will maintain a list of entities not participating in the TLG Program on its web site. Additionally, each eligible entity must clearly convey to relevant parties whether it is or is not participating in the TLG Program. The FDIC will consider Program participation of an entity organized after expiration of the opt-out period on a case-by-case basis in consultation with the appropriate Federal banking agency.

TLG Program participants are subject to FDIC oversight regarding TLG Program compliance.

The FDIC has the authority to impose an emergency special assessment on insured depository institutions if Program fees and assessments are insufficient to cover any TLG Program loss. Any excess revenue will remain part of the Deposit Insurance Fund.

ICBA Comments: With the inclusion of bank and savings and loan holding companies in the TLG Program, the FDIC has taken the extraordinary step of extending the deposit insurance guarantee to entities other than insured depository institutions. This expansion is deeply troubling to the ICBA since: 1) many mega bank holding companies, including new bank holding companies such as Goldman Sachs, Morgan Stanley and American Express, have huge, highly risky, unregulated entities within the holding company structure; 2) these non-bank companies have significant unsecured debt qualifying for the Debt Guarantee Program; and 3) the FDIC has the authority to impose an emergency special assessment on insured depository institutions if Program fees and assessments are insufficient to cover any TLG Program loss.

ICBA strongly urges the FDIC to exclude holding companies with significant non-bank subsidiaries as it would be grossly unfair for community banks and other insured depository institutions to be left with the tab, through a special assessment on FDIC-insured institutions only, for any Program losses above Program fees and assessments. If the FDIC determines it is appropriate for holding companies with significant non-bank subsidiaries to continue Program participation, ICBA requests the FDIC develop some methodology for these entities to pay a special assessment for their proportional share of any Program losses. Moreover, the expansion of deposit insurance to entities other than insured depository institutions is fraught with yet-to-be-determined consequences.

Community banks are deeply concerned that too-big-to-fail banks have little incentive to participate in the TLG Program because their depositors and counterparties do not believe they are at risk of loss. Recent actions by the government have underscored the reality that there are two types of institutions. The largest banks and other financial institutions (notably, AIG) that have a de facto 100% government guarantee of their deposits and many other liabilities. As a result of the de facto unlimited guarantee at no cost, the largest banks have little incentive to participate in the TLG Program for which the FDIC will assess fees. Community banks are concerned that without the participation of the too-big-too fail banks, the Program is more likely to run a deficit, which would have to be paid for by an industry-wide assessment. ICBA strongly urges the FDIC to require the largest banks to participate in the TLG Program.

Debt Guarantee Program

The Debt Guarantee Program temporarily guarantees, with certain limitations, all newly-issued senior unsecured debt issued between October 14, 2008 and June 30, 2009. In the event of the failure of an insured depository institution or the holding company's filing of a bankruptcy petition, the FDIC will pay the debt's unpaid balance. The guarantee expires upon maturity of the debt instrument or 11:59 pm EST on June 30, 2012 whichever is earlier.

The FDIC will pay interest at the 90-day T-Bill rate if there is a delay in payment beyond the next business day after a participating entity's failure or bankruptcy filing date.

Entities participating in the Debt Guarantee Program are not exempt from complying with applicable federal and state securities laws and any other applicable laws.

ICBA Comments: Community banks appreciate the ability to opt out of the Debt Guarantee Program. The Program is of limited benefit to community banks. Community banks simply are not large enough to be able to issue unsecured debt in the debt markets. The only senior unsecured debt transaction that a typical community bank might enter into is an overnight federal funds purchase. Community banks, however, do have holding community lines of credit secured by bank stock and not being able to have these lines guaranteed puts them at a competitive disadvantage.

The Debt Guarantee Program is particularly problematic and burdensome for bankers' banks given their role as clearing houses by matching the funding needs of some community banks with the excess funding of other banks. Bankers' banks provide this service to more than 6,000 community banks nationwide. Since bankers' banks rely primarily on overnight federal funds for the liquidity necessary to support their operations, bankers' banks would incur significant costs to participate in the Program. Additionally, the Program creates new burdens for bankers' banks such as disclosing to each community bank respondent which banks on the approved federal funds buyer listing have opted out of the Program as well as monitoring the cap for each trade to ensure transactions are in fact guaranteed.

Senior Unsecured Debt Definition

The interim rule defines senior unsecured debt as "unsecured borrowing that: is evidenced by written agreement; has a specified and fixed principal amount to be paid in full on demand or on a specified date; is non-contingent; and is not, by its terms, subordinated to any other liability." Instruments eligible for the debt guarantee include: federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility, and Eurodollar deposits standing to the credit of the bank. The guarantee does not apply to debt used to prepay outstanding debt that is not FDIC guaranteed or debt extended to an insider of the eligible entity.

ICBA Comments: There is considerable industry debate on whether federal funds should be included in the guarantee. Some institutions are concerned, particularly bankers' banks, that the Program, in conjunction with the Federal Reserve's rate of interest on excess reserves, could effectively shut down the overnight federal funds market. Others would not feel comfortable selling federal funds unless the borrower participates in the Program, particularly during the existing market stress.

Many believe that in the not-so-distant future, the overnight federal funds market will have two types of transactions – guaranteed and non-guaranteed. Some federal funds sellers will see value in the guarantee and accept a lower rate while others will prefer traditional returns.

The requirement that senior unsecured debt, including federal funds, be evidenced in writing would be problematic for agency overnight federal funds programs as there are no written contracts only wire transfer advices.

ICBA recommends the FDIC consider the merits of providing a separate opt out for overnight federal funds to afford entities additional flexibility.

Guarantee Cap

The FDIC guarantee is capped at 125 percent of the senior unsecured debt outstanding, excluding debt extended to affiliates, as of September 30, 2008 that is scheduled to mature on or before June 30, 2009. Each individual participating entity within a holding company structure will have a separate cap. The FDIC will consider, in consultation with the eligible entity's primary federal regulator, the circumstances of any eligible entity with no senior unsecured debt prior to September 30, 2008 and "may determine an alternate threshold calculation."

The FDIC may restrict the amount of an entity's senior unsecured debt limit to a level below the 125 percent limitation if supervisory information so warrants. The FDIC on a case-by-case basis may allow an entity to temporarily exceed the 125 percent limitation. Additionally, the FDIC has the sole-discretion to approve the participation of a participating entity's affiliate in the guarantee Program after submitting a written request and receiving a recommendation from the appropriate Federal banking agency.

A participating entity is prohibited from issuing guaranteed debt in excess of its cap and from issuing non-guaranteed debt until it has reached its guarantee cap. Once the guarantee cap is exceeded, a participating entity can issue non-guaranteed debt in any amount and for any maturity with the appropriate disclosures.

If a participating entity issues debt in excess of its cap and identifies it as "guaranteed by the FDIC", its guarantee fee will increase to 150 basis points on all outstanding guaranteed debt. The entity will be subject to enforcement actions, including civil money penalties, as appropriate.

ICBA Comments: The existing formula for determining the guarantee maximum amount unfairly hampers community banks' ability to obtain the liquidity necessary to fund their operations. A bank's liquidity needs should not be based on a one-day snapshot as it is well-documented that banks' liquidity positions are seasonal due to the needs of their customers and it is quite common for community banks to pay off federal funds near quarter end. The inability of community banks to include unfunded credit lines in the cap computation is an additional liquidity constraint. ICBA recommends the FDIC adopt a new guarantee cap based on a bank's total liabilities as of September 30, 2008. This would allow community banks to have a certain percentage of their total funding, including federal funds, Federal Home Loan Bank advances, discount window borrowings, and other borrowings, in the form of senior unsecured debt guaranteed by the FDIC to help ensure access to liquidity.

ICBA encourages the FDIC to take appropriate steps for ensuring that FDIC regional offices and other Federal banking agencies are aware of the process for requesting cap increases.

<u>Assessments</u>

All eligible debt will be charged an annualized fee equal to 75 basis points multiplied by the amount of debt issued and calculated for the maturity period of that debt or June 30, 2012, whichever is earlier.

For entities remaining in the Program after December 5, 2008, the assessment will commence accruing on November 13, 2008, on all senior unsecured debt, other than overnight debt instruments:

- issued on or after October 14, 2008 that is still outstanding on November 13, 2008; and,
- issued on or after November 13, 2008 and before December 6, 2008.

Beginning December 6, 2008, Program participants will pay assessments on all senior unsecured debt issued on or after December 6, 2008.

The FDIC will not issue assessment refunds for guaranteed debt retired before the scheduled maturity. The FDIC will collect fees using direct debit and eligible entities must ensure adequate funds are in its designated account to cover the fees. Failure to ensure adequate funds are available constitutes nonpayment of assessments and subjects the participating entity to civil money penalties.

ICBA Comments: ICBA applauds the FDIC's amendment to the interim rule suspending the accrual of assessments on overnight debt instruments until after the rule is finalized. This amendment is particularly helpful in addressing the unintended consequences of the interim rule on bankers' banks agency federal funds programs.

As stated earlier, the only senior unsecured debt transaction that a typical community bank might enter into is an overnight federal funds purchase. Federal funds are generally perceived by the market to have minimal credit risk and carry the same risk weighting, 20 percent, as government-sponsored agency debt. The current market rate of interest for these overnight inter-bank loans is between 25 to 50 basis points. The 75-basis-point fee makes the Program guarantee unattractive for overnight funds. Moreover, the risk of default is extremely low, and as a consequence, we do not believe the 75-basis-point fee is justified for overnight federal fund purchases.

Community banks, particularly bankers' banks, overwhelming believe the 75-basis-point fee is punitive and excessive. With regard to bankers' banks, the 75 basis-point guarantee fee places significant stress on their business models given their reliance on federal funds to fund their operations.

The FDIC is seeking comments on whether it should charge different rates for federal funds and/other short-term borrowings compared to longer-term borrowings, and if so, why, and what the distinguishing criteria between types of borrowings and the rate differential should be. ICBA supports a pricing model with varying rates given that term borrowings have inherently more risk. Such a pricing model would be consistent with the FDIC risk-based pricing model for general deposit insurance. Insured depository institutions posing greater risk to the Deposit Insurance Fund pay higher premiums. The same pricing model should apply to the Debt Guarantee Program.

ICBA strongly urges the FDIC to adopt a risk-based pricing model for the Debt Guarantee Program with guarantee fees ranging from under 10 basis points to no more than 50 basis points depending on a bank's CAMELS rating and the term of the borrowings. For example, under such a pricing model, overnight federal funds purchased by a bank with a CAMELS rating of 1 or 2 should be assessed a guarantee fee of 10 basis points or less. Small bank and thrift holding companies should be assessed a fee based on the CAMELS ratings for the companies' financial institution subsidiaries.

<u>Long Term Non-Guaranteed Debt Option</u>

Participating entities have the option of issuing certain long term (maturing after June 30, 2012) non-guaranteed senior unsecured debt without regard to the cap and at any time. A non-refundable fee will be assessed equal to 37.5 basis points times an entity's senior unsecured debt with a maturity date on or before June 30, 2009 and outstanding as of

September 30, 2008. The fee, collected in six equal monthly installments, will offset the fees related to an entity's guaranteed debt until it is exhausted.

ICBA Comments: ICBA believes few community banks or community bank holding companies would exercise this option as these institutions, by and large, do not issue long-term senior unsecured debt.

<u>Termination of Participation</u>

The FDIC, after consultation with a participating entity's Federal banking agency, may terminate an entity's participation in the Debt Guarantee Program. Termination would be prospective and the entity would have to notify its customers and creditors that it is no longer issuing guaranteed debt.

ICBA Comments: ICBA fully supports the FDIC's authority to terminate Program participation in the interest of protecting the Deposit Insurance Fund from unnecessary losses and insured depository institutions from excessive assessments if the Program does not cover its costs. ICBA recommends the final rule include potential reasons for Program termination to assist participants in taking appropriate action to ensure continued participation.

<u>Disclosures for Debt Guarantee Program</u>

Effective December 19, 2008, in order for debt to be guaranteed, the face of any debt documentation must include the words "guaranteed by the FDIC." Additionally, Program participants must "clearly identify, in writing and in a commercially reasonable manner," to purchasers whether newly-issued debt is guaranteed. Prior to December 19, disclosures must be provided in a commercially reasonable manner.

The FDIC will maintain a list of entities not participating in the Debt Guarantee Program web site.

ICBA Comments: The disclosure of the guarantee status of federal funds purchased is quite problematic, if not impossible. Federal funds are typically governed by master agreements. There is no supporting written documentation evidencing each federal funds transaction and it would be impossible to obtain executed documentation for each transaction. Moreover, there is no feasible way for buyers to track the guarantee status of federal funds transactions.

Community banks not planning to participate in the Debt Guarantee Program have concerns that their institutions will be deemed unsafe and unsound due to their non-participation listing on the FDIC web site. Most likely, non-participating banks have liquidity and capital levels warranting no need to participate in the Program. It would be unfair for the reputation of these banks to be tainted due to incorrect public assumptions. To address this concern, ICBA recommends the FDIC issue a disclaimer statement on the webpage noting that a bank's listing on the web site should not be construed as an indicator of a bank's financial condition.

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<u>Reporting Requirements</u>

Debt Guarantee Program participants must report via the Election Form on FDIC*connect* the amount of outstanding senior unsecured debt as of September 30, 2008 that is scheduled to mature on or before June 30, 2009 to determine the maximum amount subject to the guarantee. Any newly-issued debt must be reported using FDIC*connect*. A participating entity must also report whether it has issued guaranteed debt exceeding its limits. A chief financial officer or equivalent must certify the accuracy of all reporting.

ICBA Comments: ICBA understands for billing and tracking purposes, the FDIC will likely collect the issue date, maturity date, and dollar amount of each debt instrument issued within a specified period of time from the issuance date. ICBA also understands the FDIC is evaluating periodic alternative reporting requirements to ease the reporting burden. ICBA appreciates FDIC efforts to lessen banks' reporting burden. Providing the referenced information for newly-issued debt would not be problematic, except for overnight borrowings such as federal funds purchased. It would be extremely problematic to report federal funds purchased at the instrument level given the potential transaction frequency. ICBA urges the FDIC to adopt a monthly average daily balance reporting requirement for overnight borrowings to lessen much of the associated burden. With regard to reporting the amount of debt retired prior to the stated maturity, ICBA recommends the FDIC adopt an outstanding balance as of quarter-end reporting requirement.

Transaction Account Guarantee Program

Under the Transaction Account Guarantee Program, noninterest-bearing transaction accounts are fully insured from October 14, 2008 through the earlier of the date the institution opts out (opt-out deadline is December 5, 2008) or December 31, 2009. This guarantee is in addition to and separate from coverage provided under the FDIC general deposit insurance rules.

<u>Eligible Accounts</u>

Accounts eligible for the guarantee include those earning no interest and requiring no advance notice of intended withdrawals. Eligible accounts include traditional checking accounts and funds swept or transferred to another type of noninterest-bearing deposit account (i.e. noninterest-bearing savings account). NOW accounts and money market deposit accounts are currently excluded from the Program. The FDIC is seeking comments on whether NOW accounts held by sole proprietorships, non-profit organizations, and government entities should be in the Program.

ICBA Comments: ICBA supports expanding the Program to fully insure all transaction accounts (interest and non-interest bearing) through December 31, 2009 since banks have the ability to opt out of the Program. Expanding coverage to include all transaction accounts would level the playing field for community banks and other institutions NOT too big to fail by eliminating the incentive for customers to move funds to too-big-to-fail institutions. Additionally, fully insuring all transaction accounts would place banks on an equal footing with mutual fund money market accounts. Many community banks have few demand accounts over $250,000, but transaction accts with high balances are NOW accounts for small businesses, non-profits and governmental entities. To prevent a liquidity drain from these accounts leaving community banks, these should be eligible for coverage under the program. Expanded coverage would also simplify banks explaining coverage to their customers.

The interim provisions create an environment ripe for customer confusion and lack of understanding. For example, imagine a banker trying to explain to a non-profit organization with a noninterest-bearing transaction account and a NOW account both with balances greater than $250,000 why the noninterest-bearing account is fully insured and the NOW account is insured up to $250,000. Expanding coverage to include NOW accounts held by sole proprietorships, non-profit organizations, and government entities would then create an environment whereby NOW accounts owned by individuals would not be eligible for unlimited coverage and banks would have to explain to individual accountholders with both types of accounts why one account is fully insured and the other is not.

The majority of the nation's community banks maintain accounts with correspondent banks for the clearing and settlement of transactions. Community bank respondents typically maintain a daily account floor (compensating balance) and any excess funds are sold into the federal funds marketplace. These accounts rarely earn interest; however, they do receive earnings credits to offset the costs of correspondent services. These accounts are "due from" (asset) accounts on respondents' balance sheets and "due to" (liability) accounts on correspondent's balance sheets. It appears these accounts would be eligible for the Transaction Account Guarantee. ICBA strongly urges the FDIC to specifically include "due to" accounts in the guarantee as these accounts are vital to the liquidity of community banks, and their correspondents, particularly bankers' banks.

Fees

Beginning November 13, 2008, Transaction Account Guarantee Program participants will pay a 10-basis-point fee on all noninterest-bearing transaction account amounts exceeding $250,000. Assessments will be included on regular quarterly assessment invoices from November 13, 2008 through December 31, 2009.

ICBA Comments: ICBA believes the 10-basis-point fee is reasonable.

Disclosures

Effective December 19, 2008, all FDIC-insured depository institutions must post prominent lobby notices "in simple, readily understandable text" conveying whether they are participating in the Transaction Account Guarantee Program. Program participants' notices must also state that all funds held in noninterest-bearing transaction accounts are fully insured by the FDIC. Banks using sweep arrangements or taking other actions where funds are transferred or reclassified to an interest-bearing account or non-transaction account must disclose those actions to affected customers and "clearly advise them, in writing, that such actions will void the FDIC guarantee." Prior to December 19, disclosures must be provided in a commercially reasonable manner.

The FDIC will maintain a list of entities not participating in the Transaction Account Guarantee Program on its web site.

ICBA Comments: ICBA appreciates the importance of customers, shareholders, and employees having easy access to information regarding an insured depository institution's participation in the Program. ICBA recommends that the FDIC establish model language for disclosing whether an institution is or is not participating in the program as well as for the complexities associated with funds swept from noninterest-bearing transaction accounts to interest-bearing or non-transaction accounts. ICBA strongly encourages the FDIC to develop model language for this Program to facilitate customer and industry understanding of the guarantee.

Additionally, the extension of the guarantee to all transaction accounts would greatly simplify disclosure.

ICBA recommends the inclusion of an institution's routing and transit number on the FDIC web site to assist stakeholders in determining the status of an institution's participation given bank name similarity. Again, community banks not planning to participate in the Guarantee Program have concerns that their institutions will be deemed unsafe and unsound due to their non-participation listing on the FDIC web site. Most likely, non-participating banks would have few, if any, accounts qualifying for full coverage. It would be unfair for the reputation of these banks to be tainted due to incorrect public assumptions. To address this concern, ICBA recommends the FDIC issue a disclaimer statement on the webpage noting that a bank's listing on the web site should not be construed as an indicator of a bank's financial condition.

ICBA applauds the FDIC for not imposing the additional burden of banks sending disclosure notices to their customers regarding the status of a bank's participation in the program. If the FDIC is contemplating additional customer disclosures, ICBA strongly encourages the FDIC to merely require banks to post model language on their web sites. Individual customer notices will be very costly and onerous to produce and disseminate.

Again, ICBA appreciates the opportunity to comment on this interim rule. If you have any questions or need additional information, please contact the undersigned by email at viveca.ware@icba.org or by telephone at (202) 659-8111. Thank you.

Regards,

/s/

Viveca Ware
Senior Vice President
Payments and Technology Policy