The Huntington National Bank
Legal Department
Huntington Center
41 South High Street
Columbus, Ohio 43287

November 7, 2008

By e-mail to: comments@fdic.gov

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Attn: RIN 3064-AD37

Re: Interim Rule Regarding Temporary Liquidity Guarantee Program
73 FR 64179 (October 29, 2008)

Dear Mr. Feldman:

This letter is submitted on behalf of The Huntington National Bank[1] in response to the above-referenced interim rule, which implements the Temporary Liquidity Guaranty Program ("TLGP"). We fully support the FDIC's efforts through the TLGP to help relieve restrictions in the credit markets and to enhance liquidity of financial institutions. Our comments are intended to suggest improvements to increase the effectiveness of the TLGP and to seek clarifications.

1. *Exclude Overnight Federal Funds and Sweep Transactions.* We recommend that the FDIC remove from the definition of "senior unsecured debt" overnight Federal Funds transactions as well as sweep transactions into instruments that would otherwise be "senior

[1] The Huntington National Bank ("Huntington Bank") is a national bank and the principal subsidiary of Huntington Bancshares Incorporated, which is a $55 billion regional bank holding company headquartered in Columbus, Ohio. Along with its affiliated companies, Huntington Bank has more than 142 years of serving the financial needs of its customers, and provides innovative retail and commercial financial products and services through more than 600 regional banking offices in Indiana, Kentucky, Michigan, Ohio, Pennsylvania and West Virginia. Huntington Bank also offers retail and commercial financial services online at huntington.com; through its technologically advanced, 24-hour telephone bank; and through its network of approximately 1400 ATMs. Selected financial service activities are also conducted in other states including: dealer sales activities in Arizona, Florida, Nevada, New Jersey, New York and Tennessee; private financial and capital markets group services in Florida; and mortgage banking offices in Maryland and New Jersey. Huntington Bank's affiliate, Huntington Insurance, Inc., offers retail and commercial insurance agency services in Ohio, Pennsylvania, Michigan, Indiana and West Virginia. International banking services are made available through the headquarters office in Columbus, a limited purpose office located in the Cayman Islands and another office located in Hong Kong.

unsecured debt".[2] These transactions do not need a guarantee, and in any case, the 75 basis point pricing applicable to these transactions is very expensive and is likely to cause institutions to avoid these transactions if possible and replace them with secured borrowing sources, such as the Federal Reserve Discount Window or FHLB advances, or other sources not subject to the guarantee. Furthermore, coverage of sweeps will increase the likelihood that an institution could violate its 125% guarantee cap, because such sweeps are highly automated and the amount of such sweeps vary depending upon the balances in customer accounts, which balances are determined by the institution's customers. It will be very difficult for institutions to be sure such sweeps do not inadvertently cause the institution to exceed its 125% cap.

2. *Definition of Senior Unsecured Debt*. It is not clear whether negotiable CDs issued to a bank are included or excluded, since CDs issued to the credit of a bank are included pursuant to §370.2(e)(1) of the rule and negotiable CDs are excluded pursuant to §370.2(e)(3) of the rule. In other words, it is not clear if the exclusion in (e)(3) supercedes the inclusion in (e)(1). Additionally, §370.2(e)(3) of the rule excludes "deposits in foreign currency" which implies that deposits in U.S. Dollars are included, although we do not believe the FDIC intends that all U.S. Dollar deposits in an eligible depository institution are "senior unsecured debt" for the TLGP program. We also note that pursuant to §370.2(e)(3) of the rule, "loans to" affiliates and institution affiliated parties are also excluded. We think the reference to "loans to" is confusing here and should be changed to refer to debt that is issued by the participating entity to these entities. Also, it would be helpful to clarify the meaning of "institution affiliated parties", such as by reference to that term as defined elsewhere in FDIC rules.

3. *Timing of Senior Unsecured Debt Guarantee*. The guarantee of senior unsecured debt under the Debt Guaranty Program should be modified to cover principal and interest payments as they become due, rather than provide coverage only at the time of failure (in the case of a depository institution) or bankruptcy (in the case of a non-depository issuer of debt). We believe that potential investors in this guaranteed debt will view anything less than a guarantee of timely interest payments and of payment of principal at maturity as insufficient, since such investors are typically not in a position to forego interest for any period of time or to run the risk of principal not being paid at maturity but at some later date. Such perceived deficiencies in the guarantee, when factored in with the imbedded cost of the guarantee, could have the effect of reducing demand for this type of debt rather than increasing it by providing the intended credit enhancement FDIC is contemplating. Additionally, the rule should make clear that this guarantee is backed by the full faith and credit of the United States government, so that this is clear to potential investors.

4. *Newly Issued Debt*. The FDIC's guarantee applies to "newly issued" senior unsecured debt, meaning senior unsecured debt issued during the covered period from October 14, 2008,

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[2] We believe overnight Federal Funds may already be excluded because it is our understanding that they are not evidenced by a written agreement, and maybe not even by a written confirmation (which in any case would not appear to be a written agreement). We are unsure if the FDIC intended overnight Federal Funds to be excluded for this reason.

through June 30, 2009. The FDIC should clarify that "newly issued" debt includes senior unsecured debt issued in the covered period under remaining availability in a shelf registration where the shelf registration was in existence prior to October 14, 2008.

5. *Need for Optionality for Issuance of Guaranteed Debt*. The rule should be modified to permit more flexibility with respect to issuing non-guaranteed debt and to clarify potential confusion in the way this limitation is expressed. The requirement to issue only guaranteed debt until an institution reaches its 125% cap is expressly limited in §370.5(f) of the rule to "senior unsecured debt" (presumably as that term is defined in the rule), whereas the authorization in §370.3(f) to issue long-term guaranteed debt with maturities beyond June 30, 2012, if the specified election procedure to do so is followed is not by its terms limited to "senior unsecured debt". We believe the rule is not intended to limit or restrict any debt issued by a covered institution other than "senior unsecured debt". Thus, §370.3(f) should be revised to make clear it is only applicable to "senior unsecured debt", and the rule could more generally make clear that it is not intended to restrict or limit any debt issuance of an institution that is not "senior unsecured debt" as defined in the rule. More generally, however, it is unnecessarily restrictive to prohibit an institution from being able to issue non-guaranteed "senior unsecured debt" before it has reached its 125% cap. This prohibition does not necessarily make it any easier to distinguish guaranteed from non-guaranteed "senior unsecured debt", since there will continue to be non-guaranteed "senior unsecured debt" in the marketplace even with this prohibition because of debt previously issued or debt issued by ineligible entities or debt of participating institutions who have reached their 125% cap. The FDIC could specify other ways to identify which debt is guaranteed under the program, which, in addition to the required written disclosure provided on the debt instrument, could include special identifiers such as specific CUSIP numbers or listing debt guaranteed by the program on the FDIC's website. Moreover, institutions should be able to have the flexibility as to whether for any particular form of "senior unsecured debt" the institution wants to incur the additional cost of obtaining the credit enhancement offered by the debt guarantee, or instead determine that this form of credit enhancement is not necessary for that particular debt issuance. The requirement to issue only "senior unsecured debt" that is guaranteed until the cap is reached will likely result in unnecessary costs when the institution believes the guarantee is not needed for a particular form of debt, and may result in institutions turning to other forms of debt not covered by this guarantee, such as secured debt, and thus work against the apparent intent of the TLGP to increase interbank unsecured lending. Optionality would also make it easier for an institution to control the amount of its "senior unsecured debt" so as not to inadvertently exceed its 125% cap.

6. *125% Debt Cap*. An institution's 125% cap is determined based on an institution's senior unsecured debt outstanding as of September 30, 2008. The FDIC should clarify if that means outstanding as of the close of business on September 30 or outstanding at any time on September 30. For example, if the debt matured and was paid off or was paid off early on September 30 was it outstanding as of September 30? Also, the FDIC should clarify whether this cap is intended to be a cap on the amount of guaranteed debt issued (so that once the cap is reached no further guaranteed debt can be issued even if outstanding guaranteed debt

subsequently falls below the 125% cap) or on the amount of guaranteed debt outstanding at any given time.

7. *Safe Harbor for Good Faith Violations*. The penalties applicable to an institution that exceeds its 125% cap are very severe considering the uncertainties surrounding what constitutes "senior unsecured debt" to determine the cap amount in the first place as well as going forward, and the difficulties of controlling or knowing exactly when the cap is reached. The interim rule provides that if an institution exceeds its cap, then the cost of all guaranteed senior unsecured debt under the program will double to 150 basis points. Additionally, under §126 of the Emergency Economic Stabilization Act of 2008, there is increased liability for representing or implying that any "obligation" is insured or guaranteed by the FDIC when it is not. The FDIC should provide a safe harbor and corrective action procedure for good faith errors that result in the cap being exceeded. Implementation of other recommendations in this letter—such as more optionality with respect to issuance of guaranteed senior unsecured debt and removal of overnight sweeps—will also help reduce potential inadvertent violations of the cap.

8. *Lobby Disclosure for Transaction Account Guarantee Program*. It would be helpful if the FDIC would provide a safe harbor model notice for the disclosure required by §370.5(h)(3) of the rule so that institutions can understand what notice language referring to noninterest bearing transaction accounts will be deemed by the FDIC to be "in simple, readily understandable text". Such a model notice would also promote uniformity in the notice among depository institutions, since it is likely that most (if not all) depository institutions would use an FDIC model notice form.

9. *Noninterest-Bearing Transaction Accounts*. By excluding NOW accounts from the definition of "noninterest-bearing transaction account", the FDIC is creating potential confusion by using the term "transaction account" differently than that term is used under §204.2 of the Federal Reserve Board's Regulation D. Since noninterest-bearing NOW accounts are likely to be rare, but do exist, we believe that the FDIC could remove that exclusion and not noticeably increase the types of accounts covered by the unlimited deposit insurance. Taking such action would also make it somewhat easier to provide the required lobby notice "in simple, readily understandable text", since otherwise that notice would apparently have to include a reference to "NOW account", "transaction account" and "demand deposit account" terminology, whereas including NOW accounts within "noninterest-bearing transaction accounts" would presumably permit the lobby notice to refer to "checking accounts that don't pay interest", which would appear to be closer to the required "simple, readily understandable" standard. Consistency with Regulation D is also important because under §370.4(c) of the rule, funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account are treated as being in the transaction account for purposes of the unlimited deposit insurance. Under §204.2(d)(2) of Regulation D, the term "savings deposit" includes money market deposits accounts (MMDAs). However, since the FDIC does not define "savings deposit account" in its rule, and because the FDIC defines uses the term "transaction account" differently than under Regulation D, it is not clear whether the FDIC intends to include MMDAs as "savings deposit

accounts". We believe here as well it would be best for the FDIC to use terminology consistent with Regulation D and include MMDAs as "savings deposit accounts".

10. *Exception for Reserve Management Accounts*. We appreciate and fully support the exception provided by §370.4(c) with respect to funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account. These kind of sweeps are very common in most checking accounts in accordance with procedures recognized by the Federal Reserve Board since at least the mid-1990's and which depository institutions use to manage reserve requirements for transaction accounts. As indicated above, we believe that MMDAs are included in this exception as being within the definition of "savings deposit account" in Regulation D, but it would help if FDIC would clarify that.

11. *Pricing for Transaction Account Guarantee Program*. The FDIC should further clarify how the 10 basis point assessment works for the unlimited deposit insurance coverage for noninterest-bearing transaction accounts. For example, the FAQs posted by the FDIC on its website indicate that an institution that has not opted out will pay 10 basis points on noninterest-bearing transactions account balances in excess of $250,000. Will depository institutions have to track this on a per account or per depositor basis? For example, does this mean that if a depositor has $1 million in a noninterest-bearing transaction account, that the assessment is 10 basis points on $750,000? What if the same depositor had four noninterest-bearing transaction accounts instead of one and had $250,000 in each of the four accounts? Would the institution then not be charged the 10 basis points at all? Is the amount "in excess of $250,000" an amount at a given point in time? Is it some average over some period? The FDIC should be considering how practical it will be for depository institutions to track information on a per account or per depositor basis in order to determine the base for the 10 basis point assessment. We believe it would be easier if the FDIC were to consider a base related to the total dollar amount of demand deposit accounts reported on the institution's call report divided by the product of $250,000 times the number of demand deposit accounts.

12. *Reference Correction*. Interim rule §370.6(d)(2) has an internal reference to "paragraph (e)(1) of this section" and there is no paragraph (e)(1).

Thank you for the opportunity to comment on this interim rule.

Very truly yours,

Daniel W. Morton
Senior Vice President & Senior Counsel