AMERICAN BANKERS ASSOCIATION ®

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

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Robert W. Strand
Senior Economist
202-663-5350
rstrand@aba.com

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By electronic delivery

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

Attention: Comments

Re: RIN 3064–AD37; Amendment of the Temporary Liquidity Guarantee Program to Extend the Debt Guarantee Program and to Impose Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009; 12 CFR Part 370; 74 Federal Register 12078, March 23, 2009

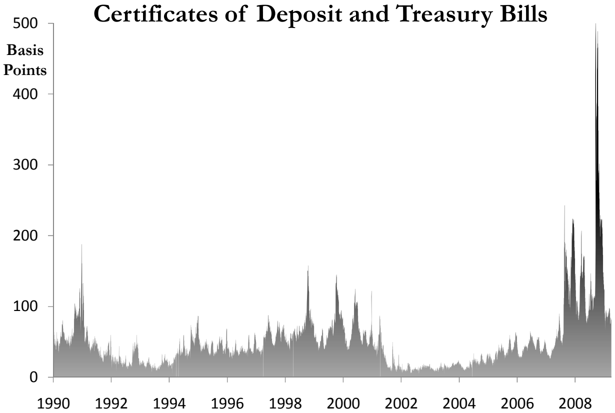
Dear Mr. Feldman:

The American Bankers Association (ABA) welcomes the opportunity to comment on the Interim Rule from the Federal Deposit Insurance Corporation (FDIC) to extend, with surcharge fees, the Debt Guarantee Program (DGP) of the Temporary Liquidity Guarantee Program (TLGP). ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $14 trillion in assets and employ over 2 million men and women.

The Interim Rule extends the DGP by four months, so that institutions that elected (by December 5, 2008) to participate are allowed to issue guaranteed debt through October 31, 2009, as compared to the former endpoint of June 30, 2009. However, participating holding companies that have not issued guaranteed debt must apply by June 30, 2009, to stay in the DGP. The maximum term of the guarantee is also extended, from June 30, 2012, to December 31, 2012. There are surcharge fees for guaranteed debt issued after March 31, 2009, but participating institutions are allowed to apply to issue non-guaranteed debt during the extension period (and avoid surcharges).

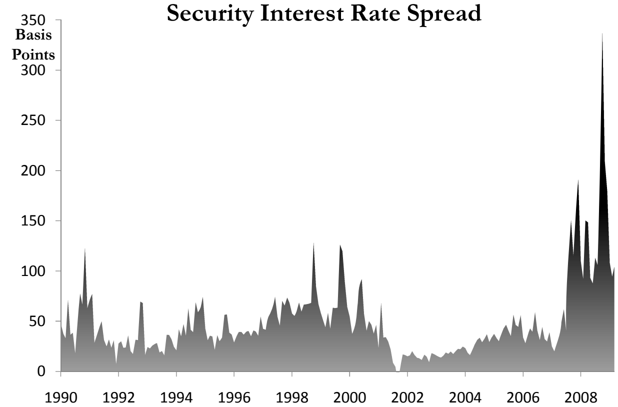
ABA supports the proposed temporary extension of the DGP, because evidence from the debt markets indicates that the financial turmoil has not fully dissipated; however we encourage the FDIC to unwind the program in the near future. Chart 1 demonstrates that interest rate spreads on certificates of deposit have narrowed considerably from recent highs and are trending toward historical norms. Still, these premiums remain above 1991–1998 levels (before the very low 2001–2007 period), and are more reflective of troubled periods in the past. While some of the current spread may reflect the unusually low Treasury securities rates, Chart 2 shows that the LIBOR-Treasury overnight spread is also high compared to the pre-financial turmoil period. Given that the markets have not fully adjusted, extension of the DGP through October will give banks time to roll over existing debt.

Chart 1
Interest Rate Spread Between Three-Month Certificates of Deposit and Treasury Bills



Source: Federal Reserve

Chart 2
Overnight Eurodollar-Treasury Security Interest Rate Spread



Source: Federal Reserve, British Bankers Association

The stated intent of the Interim Rule is to provide orderly transition for participating institutions to return to non-guaranteed funding and reduce market disruption when the DGP ends.[1] ABA agrees with these objectives and the pending changes to the DGP that support them, including:

- surcharge fees for guaranteed debt issued after March 31, 2009,
- potential collateral or other requirements on some holding company participants,
- allowing participating institutions to issue non-guaranteed qualifying debt, and
- inclusion of mandatory convertible debt in the guarantee program.[2]

These provisions encourage participating institutions to move away from reliance on FDIC guarantees and toward use of non-guaranteed debt or debt that will ultimately provide capital. ***We believe that it is very important that the FDIC wind down the DGP in an orderly fashion and return to its charter mission to protect deposits in the nation's banks.***

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[1] FDIC, "Amendment of the Temporary Liquidity Guarantee Program …," 74 Federal Register 12079, March 23, 2009.
[2] Adding mandatory convertible debt to the list of securities covered under the DGP is provided for in FDIC, "Modification of Temporary Liquidity Guarantee Program," 74 Federal Register 9522, March 4, 2009. Also see the ABA letter to the FDIC, dated March 19, 2009, regarding that Interim Rule.

ABA makes the following recommendations for the Interim Rule, as discussed in detail below:

- ABA supports surcharge fees on guaranteed debt in recognition of the risk that all FDIC-insured institutions bear for losses under the Temporary Liquidity Guarantee Program.
- The FDIC should balance its exposure under the Debt Guarantee Program while considering the competitive effects on banks.

ABA supports surcharge fees on guaranteed debt in recognition of the risk that all FDIC-insured institutions bear for losses under the Temporary Liquidity Guarantee Program.

ABA supports the surcharge fees in compensation for the risk involuntarily undertaken by FDIC-insured institutions not participating in the program. We note that only 55.7 percent of FDIC-insured institutions signed up to participate in the DGP.[3] Nonetheless, should the expenses of the overall TLGP exceed its revenues, all FDIC-insured institutions, including 3,733 not participating in the DGP, would be assessed to make up the difference.[4] To recompense for the risk exposure, the Interim Rule imposes surcharge fees (*i.e.*, in addition to the schedule of fees by maturity).[5] These surcharges will go into the FDIC insurance fund and not be available to cover TLGP expenses.

Certainly, the surcharge fee may discourage some from issuing longer-term guaranteed debt. Providing an option to issue non-guaranteed debt may help mitigate this effect.

ABA has advocated for use of TLGP revenues to support the insurance fund, as the banking industry is obligated to pay for any losses emanating from either the insurance fund or the TLGP. While the surcharges are directly applied to the fund, we believe it is also appropriate to apply additional TLGP funds if the FDIC determines that the revenue is exceeding the expected losses of the guarantees. These revenues from the TLGP, as well as other developments noted in ABA's letter of April 1, mean that there may not be an immediate need for the proposed second quarter 2009 special assessment, or that it would be far less than originally proposed.[6]

The FDIC should carefully manage its risk exposure under the Debt Guarantee Program while considering the competitive effects on banks and contribution of the program to stabilizing credit markets.

The guarantee of non-deposit debt is new to the FDIC, so reasonably the FDIC has taken steps to manage its exposure. We believe this is prudent as the entire banking industry must pay for excess losses of the TLGP. However, we are concerned about the unintended side-effects of denying

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[3] FDIC, *Quarterly Banking Profile*, Fourth Quarter 2008, Table I-C.
[4] ABA calculation based on data provided on www.fdic.gov on April 3, 2009.
[5] For insured depository institutions, the surcharge is 10 basis points (b.p.) through June then 25 b.p. thereafter, annualized for the debt maturity. For holding companies, it is 20 b.p. through June then 50 b.p. thereafter, annualized.
[6] ABA president and CEO Edward L. Yingling letter to the FDIC of April 1, 2009, regarding the Interim Rule on "Assessments," 74 Federal Register 9338, March 3, 2009.

additional access. ABA recommends that the FDIC should flexibly balance its exposure under the DGP considering the competitive effects on FDIC-insured institutions.

ABA believes that institutions that opted out of the DGP last December should have a second chance to opt in, given that the program has changed in material respects. The four-month extension of the program, as well as addition of mandatory convertible debt, make the DGP more attractive than when bankers had to choose whether to opt in or out last December. As noted above, tightness in the debt markets has not yet been resolved, as many expected then. Moreover, many banks may have debt maturing in the new timeframe, which they intend to roll over, which could not have been considered in making the decision to opt out of the program. Thus, the FDIC should provide a way for banks to enroll during the extension period.

Similarly, the Interim Rule does not alter participating institutions' existing guaranteed debt issuance limits. While we understand the intent to contain the FDIC's aggregate exposure, we believe that this policy carries on significant inequities between issuers. Institutions that had high levels of senior unsecured debt outstanding last September, in many cases by coincidence, will continue to be advantaged through the DGP. On the other hand, issuers that held limited or no senior unsecured debt last September will not be able to raise liquidity or capital to the same degree, putting them at a competitive disadvantage in extending new loans and offering other business. The original TLGP rule allows institutions that had no senior unsecured debt outstanding last September to apply to the FDIC for a positive guaranteed debt cap.[7] However, we have heard from many banks that the system has discouraged participation by these institutions. ***We recommend that FDIC weigh the effect on intra-industry competition when reviewing such applications.***

In addition, ***ABA suggests that the FDIC consider allowing banks with guaranteed debt issuance capacity to transfer such capacity to the holding company, with such bank holding companies paying the proposed stepped-up fees to issue guaranteed debt.*** ABA believes that DGP participants with this added issuance flexibility will be able most effectively to address their short- and intermediate-term funding concerns. Our understanding is that a large amount of DGP capacity within the organizational structures of regional and local banking firms resides at the bank rather than at their holding companies. These institutions have issued equity instruments primarily at the holding company level and now are unable to leverage the DGP efficiently to access the funding markets and manage their balance sheets.

The Interim Rule allows all FDIC-insured institutions that signed up to participate in the DGP to take advantage of the extended period. However, holding companies that signed up to participate but did not issue guaranteed debt by the end of March must apply to continue to participate. The Interim Rule spells out the paperwork required and implies that such applications may be denied.[8] It also states that such holding companies may be required to post collateral and be subject to other

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[7] FDIC, "Temporary Liquidity Guarantee Program," 73 Federal Register 72244, November 26, 2008.
[8] The Interim Rule (page 12080) says: "The application must include a summary of the applicant's strategic operating plan; the proposed use of the debt proceeds; the entity's plans for retiring any FDIC-guaranteed debt; a description of the entity's financial history, current condition and future prospects; the risk presented by the proposal to the FDIC; and any other relevant information that the FDIC deems appropriate."

conditions.[9] While the ability to manage all the credit risk of the program is paramount, the FDIC should consider whether there are competitive inequities between program participants and non-participants, and if such inequities may have increased with the continuing challenges in the debt markets. Smaller holding companies may be most affected by the new requirements, as supported by the fact that the average amount of guaranteed debt an issuer had outstanding at the end of last year was a sizeable $3.5 billion.[10] These new requirements may be necessary to protect the FDIC insurance fund, and ***ABA again requests that when considering the reapplications and requiring collateral the FDIC consider the competitive effects on all institutions.***

Conclusion

ABA appreciates this opportunity to comment on the Interim Rule. The Debt Guarantee Program is designed to assure that sound banks and banking firms have adequate liquidity, which in turn is intended to support their continued lending and help stimulate the lagging economy. We are prepared to work with the FDIC staff on this and other amendments to the Temporary Liquidity Guarantee Program.

Sincerely,

Robert W. Strand

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[9] The Interim rule (page 12080) says: "The FDIC also may condition its approval on any requirement deemed appropriate, including without limitation, the pledge of collateral by the applicant to secure the applicant's obligation to reimburse the FDIC for any payments made pursuant to the FDIC's guarantee."
[10] FDIC, *Quarterly Banking Profile*, Fourth Quarter 2008, Table IV-C.