TLGP FINAL RULE - JUST THE FACTS PART 1

by Steve Brown

In the 1960's Sergeant Joe Friday from the T.V. show Dragnet often told people to give him "just the facts." While we would like to talk more about Dragnet (we were big fans), unfortunately we just don't have the space. That's because we need to give you "just the facts" on the 102 pages that comprise the Final Rule (issued last Friday) of the FDIC's Temporary Liquidity Guarantee Program ("TLGP"). We know many community bankers are trying to figure out what to do, so here are the facts.

Debt Guarantee Program:

1.Opt-out deadline is Dec. 5, 2008.

2.FDIC will post on its website a list of banks that have opted out of either or both components of the TLGP.

3.Primary reason for the program is to establish a temporary guarantee of senior unsecured debt to improve liquidity in the inter-bank and unsecured term debt markets.

4.Debt must be issued by June 30, 2009.

5.Debt is guaranteed until its maturity date or June 30, 2012, whichever comes first.

6.Banks that did not have senior unsecured debt outstanding (or only had Fed Funds purchased) as of Sep. 30, 2008, can issue debt to 2% of total liabilities. FDIC may also increase the cap on a case-by-case basis (but will review use of funds to ensure use is for stressed sectors such as mortgage lending, consumer or small business lending).

7.Fees are charged based on the instrument's maturity with 31 to 180 days at 50bp, 181 to 364 days at 75bp and 365 days or more charged 100bp. Additional fees of 10bp are charged for debt issued by holding companies ("BHC") if bank subsidiary is < 50% of consolidated BHC assets.

8.Senior unsecured debt excludes any obligation with a stated maturity of 30 days or less (including Fed Funds and overnight sweeps), derivatives, capital notes, the unsecured portion of secured debt, negotiable CDs, revolving credit agreements, any funds regardless of form that are swept from individual, partnership or corporate accounts held at depository institutions.

9.Senior unsecured debt includes Federal Funds with a stated maturity > 30 days, promissory notes, commercial paper, CDs (other than negotiable CDs) owed to an insured depository institution (for itself only), insured credit union (under NCUA) or a foreign bank (whether insured by the FDIC or regulated by a foreign bank supervisory agency).

10.FDIC will closely monitor and "limit as needed" the use of the guarantee by weaker institutions (undefined in the rule).

11.Guarantee has been strengthened to cover timely payment of principal and interest. In addition, while debt is backed by the full faith and credit of the US, it will carry a 20% capital risk weight. Regulators felt this helps ensure institutions are not encouraged to reduce capital levels.

12. Guaranteed debt cannot be used to prepay unguaranteed.

13. To avoid violations of 23A, BHCs must fund bank subsidiary ACH account in advance of FDIC assessment debit.

14. Written agreements or trade confirmations are both sufficient forms to establish guarantee eligibility.

15. If there is not enough money to cover expenses of the program, the FDIC will assess all financial institutions whether or not they have previously opted out.

16. Debt cannot be paired or bundled with other securities, structured, contain embedded options or be used for trade credit (such as letters of credit).

17. Preferred stock issued under TARP is considered equity and would not meet the definition of senior unsecured debt.

18. Guarantee does not extend to revolving credit lines, BHC lines of credit (secured or unsecured), any portion of secured debt issued or debts issued to affiliates.

19. Banks issuing debt under the program must file a "Master Agreement" with the FDIC.

Those are about 70% of the facts, so tune in tomorrow when we complete the list and talk more specifically about the impact, whether to opt out and other special considerations - "dum-de-dum-dum."

BANK NEWS

Closed

Regulators shut Downey Savings ($13B, CA), PFF Bank & Trust ($3.7B, CA) and Community Bank ($681mm, GA). US Bank will assume the deposits and assets (including 213 branches) of Downey and PFF in conjunction with a loss sharing agreement with the FDIC. Bank of Essex ($382mm, VA) will assume the deposits and selected assets of Community Bank. The cost of these 3 failed institutions to the FDIC deposit fund is estimated at $2.2B.

Citi

The Bank received an amazing $306B of guarantees plus $20B of new cash from the Treasury. In exchange, the Gov't will get $27B in preferred equity at an 8% dividend.

Merger Tax Obligations

Legislation was introduced that would overturn a Treasury Dept. decision (Notice 2008-83) to allow the acquiring bank to utilize an acquired bank's losses to help pay for the merger.

Auto Bank

GMAC has applied for status as a bank holding company so that it can access TARP.