TLGP FINAL RULE - JUST THE FACTS PART II

by Steve Brown

"The story you are about to read is true. Only the names have been changed to protect the innocent." Today we continue our story of the FDIC's Temporary Liquidity Guarantee Program ("TLGP") Final Rule. While we thought we could fit in all the particulars over just 2 days on both the Debt Guarantee and Transaction Account Guarantee Programs, it has become evident that won't be possible due to space constraints. As a result, we will cover the Transaction Account Guarantee particulars tomorrow, just in time for Turkey day. For today, as Sergeant Bill Gannon from Dragnet fame may have dryly stated, "Here are the facts, just the facts."

Debt Guarantee Program (continued from yesterday):

1. Interbank CDs (bank to bank, or "owed to an insured depository institution, credit union or a foreign bank") are guaranteed, while negotiable CDs (bank to non-bank, or brokered) are not guaranteed (already insured up to $250k). Banks that issue or roll over CDs using a rate posting service will be required to pay under the guarantee.

2. Unless an exception is granted by the FDIC, the maximum senior unsecured debt that can be issued is 125% of the par value of senior unsecured debt outstanding as of Sep. 30, 2008 and scheduled to mature on or before Jun. 30, 2009.

3. Again, if a bank had either no senior unsecured debt as defined or only had federal funds purchased, outstanding on Sep. 30, 2008, its debt guarantee limit is 2% of its consolidated total liabilities as of Sep. 30, 2008.

4. Participating banks can issue guaranteed debt in an amount equal to 2% of consolidated liabilities, but the holding company (BHC) remains under the 125% limitation (or must ask for an exception). The bank can issue under the combined debt limit (both bank and BHC), provided total guaranteed debt does not exceed combined debt limits).

5. Banks filing an exception must do so in letter form and address them to the Director, Division of Supervision and Consumer Protection, FDIC, 550 17th Street NW, Washington, DC 20429. Keep in mind the letter application should describe the details of the request, provide a summary of the applicant's strategic operating plan and also describe the proposed use of the debt proceeds.

6. The guarantee on any senior unsecured debt instrument issued prior to Dec. 6, 2008 with a maturity date of 30 days or less will expire on the earlier of its maturity date or the date the issuer opts out of the guarantee program.

7. No assessments will be charged to banks that opt out of the guarantee program on or before Dec. 5, 2008. Those that don't will be assessed from Nov. 13, 2008 on all senior unsecured debt (except overnight debt) issued on or after Oct. 14, 2008 & on or before Dec. 5, 2008 (still outstanding).

8. Banks that have opted out but later merge with another bank are allowed a one-time option to opt back in at that time.

9. Banks that are not subsidiaries of BHC can participate in the program without setting up a BHC.

10. Guaranteed debt may pay either a fixed or floating rate of interest (as long as it is based on a "common reference rate" defined as Treasuries, Prime or Libor).

11. After Dec. 5, 2008, federal funds and other unsecured borrowings with a maturity of < 30 days are not covered.

Our take on this portion of the guarantee is that most banks should probably stay in the program. While you will have to run detailed analysis and consider many things (i.e. make sure you pick up the CDs in your assessment calculations, understand you might not get an exception at the BHC level, have to be careful to disclose issuance is guaranteed or face big fines, consider the ramifications of your bank name on an FDIC website if you opt out, etc.), we believe the rewards outweigh the risks for most banks. Banks only get one shot at this (once you opt out you are permanently out), so we urge everyone to look very, very closely at the pros and cons before opting out. You still have time to think about this, but next week will come quickly, so please review carefully. If you want to read more, try these links:

1. Final Rule: http://www.fdic.gov/news/board/08BODtlgp.pdf

2. FAQ: http://www.fdic.gov/regulations/resources/tlgp/faq.html

BANK NEWS

New Gov't Programs

The FRB said it will purchase $600B in debt issued by or backed by government chartered housing finance companies. In another announcement, the FRB said it would set up a $200B program to support consumer and small business loans.

TLGP Issuance

Goldman Sachs looks like they will be the 1st major company to issue notes backed by the FDIC guarantee ($5B). Morgan Stanley and JPMorgan are reportedly also preparing offerings.

MMMFP

The Treasury extended the deadline for the money market mutual fund guarantee to Apr. 30, 2009.

Bank Lending

A new survey by Reuters finds 40% of lenders said they do not expect the credit climate to improve until 2010.