TLGP FINAL RULE - TRANSACTION ACCOUNT GUARANTEE

by Steve Brown

Tomorrow is Thanksgiving and we sure have come a long way. The Pilgrims landed at Plymouth Rock in a ship built to transport wine, not people; only 50 of the 102 original Pilgrims survived to celebrate the first Thanksgiving and people ate that first dinner with only spoons and knives. As we prepare to give thanks and celebrate, we consider the FDIC's Temporary Liquidity Guarantee Program ("TLGP") Final Rule (as it relates to the Transaction Account Guarantee Program). Here is the breakdown of pertinent information:

Transaction Account Guarantee Program:

1. Banks have until Dec. 5, 2008, to opt out; deposit coverage lasts through Dec. 31, 2009, and disclosures must be posted in branches by Dec. 19, 2008.

2. Banks will be charged 10bp (as of Nov. 13, 2008) on any noninterest bearing transaction accounts over $250k. Assessments will be quarterly (based on the quarter-end not average, even if the bank's normal assessment is calculated using quarterly averages).

3. The insurance coverage on noninterest-bearing transaction accounts is on amounts over and above the $250k. Banks will not have to aggregate accounts to determine coverage.

4. An exception has been created for Interest on Lawyers Trust Accounts ("IOLTAs"). These are interest bearing accounts maintained by a law firm for clients (used for payment of court fees, escrow funds, retainers, etc.) and are guaranteed as noninterest bearing transaction accounts.

5. Another exception has been created for NOW accounts that pay interest rates no greater than 0.50%. The low rate is intended to ensure money market mutual funds are not destabilized or allow for weaker banks to attract deposits by paying up in rate. Such NOW accounts are also guaranteed.

6. Under the rule, a noninterest bearing transaction account is defined as one where interest is neither accrued nor paid; no advance notice of withdrawal is required; is an IOLTA; or, is a NOW account with an interest rate no higher than 0.50%.

7. Public funds held in noninterest bearing transaction accounts collateralized with pledged securities are included in the assessment for insurance.

8. Insurance for noninterest bearing transaction accounts includes municipal and government deposits.

9. Accounts where fees can be waived or that offer earnings/fee reducing credits would still qualify, as long as they meet the other requirements.

10. Disclosures - Banks can supplement the suggested FDIC disclosure language and provide additional information to customers including an explanation why the bank opted out. In addition, banks that offer noninterest bearing transaction accounts must post a prominent notice in the lobby

of their main office and each branch (however loan production offices are not considered branches). Banks offering online services must also include disclosures.

11. Sweep Accounts - Funds in sweep accounts are treated in the same manner as when a bank fails. Funds swept (transferred) from noninterest bearing accounts to other accounts are treated as being in the account they are transferred to. The exception is deposit reclassification programs (which are guaranteed), where funds are swept from noninterest bearing transaction accounts to noninterest bearing savings accounts. If funds are swept or reclassified to an interest-bearing or nontransaction account, bank must disclose to customers in writing that such actions void the guarantee. Sweep disclosures are left up to each bank to create since product offerings may vary widely.

BANK NEWS

Consumer TARP

The details of what is being called "TARP II" were released yesterday. This $20B allocation by the Treasury (administered by the NY Fed) is designed to assist in the purchase and liquidity of consumer (auto loans, credit cards, student loans, small business loans, etc) asset-backed securities ("ABS"). In the last several months the ABS market has all but dried up, hurting large bank liquidity. The NY Fed will also lend up to $200B to holders of the AAA-rated tranches for periods of up to 1Y (secured by the security).

Cheaper Mortgages

The Fed announced a $600B program to make mortgages cheaper buy purchasing debt and mortgage securities directly from the GSEs.