November 20, 2008

MEMORANDUM: The Board of Directors

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SUBJECT: Temporary Liquidity Guarantee Program

Recommendation

Staff recommends that the Board of Directors ("Board") authorize publication of the attached Final Rule with respect to the Federal Deposit Insurance Corporation's ("FDIC's") Temporary Liquidity Guarantee Program ("TLG Program") in the *Federal Register.*

Staff recommends that the following substantive changes be made to the previously published Amendments to the Interim Rule:

- Revising the definition of senior unsecured debt;
- Adding an alternative means for determining a debt guarantee limit for insured depository institutions with no senior unsecured debt or only Federal funds purchased as of September 30, 2008;
- Permitting a participating insured depository institution to combine its debt guarantee limit with that of its parent holding company/companies;
- Including trade confirmations as a sufficient form of written agreement for senior unsecured debt;
- Recognizing IOLTAs as a type of noninterest-bearing transaction account for purposes of the Transaction Account Guarantee Program;
- Recognizing NOW accounts with low interest rates as a type of noninterest-bearing transaction account for purposes of the Transaction Account Guarantee Program;

- Prescribing more specific disclosures for both components of the TLG Program;
- Providing for the timely payment of principal and interest under the Debt Guarantee Program upon an uncured payment default; and
- Revising the assessments for the Debt Guarantee Program to include a tiered assessment scale and moderately increased fees for certain bank holding companies, thrift holding companies, and affiliates.

Background

On October 13, 2008, the FDIC Board made a systemic risk recommendation, with the written concurrence of the Board of Governors of the Federal Reserve System, and the Secretary of the Treasury, after consultation with the President, determined that the systemic risk exception should be invoked in compliance with section 141 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. § 1823(c)(4). In order to mitigate or avoid adverse effects on financial stability, the FDIC announced the TLG Program under which the FDIC would guarantee, subject to certain limitations, all senior unsecured debt of insured depository institutions and certain holding companies issued between October 14, 2008, and June 30, 2009, with guarantees expiring not later than June 30, 2012. The FDIC also announced a transaction account guarantee program that provides a one hundred percent guarantee of noninterest-bearing transaction accounts at FDIC-insured depository institutions through December 31, 2009.

On October 23, 2008, the FDIC Board adopted and authorized publication of the Interim Rule with respect to the FDIC's TLG Program. The Interim Rule was published in the *Federal Register* on October 29, 2008, which established a comment deadline of November 13, 2008.

On November 3, 2008, the FDIC Board adopted and authorized publication of Amendments to the Interim Rule ("Amended Interim Rule"). The Amended Interim Rule extended the opt out deadline for the TLG Program from November 12, 2008, to December 5, 2008, and extended the deadline for compliance with the disclosure requirements from December 1, 2008, until December 19, 2008. In addition, the Amended Interim Rule made necessary adjustments to the assessment structure and posed additional questions for comment. The Amended Interim Rule was published in the *Federal Register* on November 7, 2008.

The FDIC has received over 700 comments from the public, including members of Congress, bankers, and trade associations. Staff has reviewed these comments and recommends that the Board approve and authorize publication of the attached Final Rule which incorporates appropriate changes in light of the comments that were filed.

Executive Summary

Subject to the conditions set forth in the rule, the TLG Program consists of two basic components: a temporary guarantee of newly-issued senior unsecured debt ("debt guarantee program") and a temporary full guarantee of funds in certain noninterest-bearing transaction accounts at FDIC-insured depository institutions ("transaction account guarantee program").

The protections provided by these programs were extended to any eligible entity as defined in § 370.2 of the Final Rule. Eligible entities include any FDIC-insured depository institution, any United States bank holding company including financial holding companies, and any United States savings and loan holding company that either engages only in activities that are permissible for financial holding companies to conduct under section (4)(k) of the Bank Holding Company Act of 1956 ("BHCA") or has at least one insured depository institution subsidiary that is the subject of an application that was pending on October 13, 2008, pursuant to section 4(c)(8) of the BHCA. The FDIC has also reserved the right to extend this protection to an affiliate of an eligible entity on a case-by-case basis as determined by the FDIC after a written request and positive recommendation made by the appropriate Federal banking agency. No holding company can continue its participation in the TLG Program unless it has a chartered, and operating, insured depository institution.

By issuing debt that is guaranteed under the TLG Program, an eligible entity consents to be bound by the parameters of the TLG Program. This consent acknowledges the FDIC's authority over the program and constitutes an agreement to provide relevant information and permit on-site reviews as needed after consultation with the appropriate Federal banking agency to determine compliance with the terms and requirements of the TLG Program. Violating the terms or requirements of the TLG Program set forth in the Final Rule constitutes a violation of a regulation and subjects the participating entity to enforcement actions under Section 8 of the FDI Act (12 U.S.C. 1818), including the possibility of assessment of civil money penalties under section 8(i) of the FDI Act (12 U.S.C. 1818(i)) and termination of deposit insurance under section 8(a)(2) of the FDI Act (12 U.S.C. 1818(a)(2)).

As initially presented, all eligible entities would be covered under the TLG Program without cost to the entity for the first 30 days of the program, unless the entity opts out within the initial 30 day period. The Interim Rule stated that on or before November 12, 2008, eligible entities must inform the FDIC whether they will opt out of the TLG Program. The Amended Interim Rule extended the deadline to opt out of the TLG Program until December 5, 2008. Under the Interim Rule, if an entity decided to opt out by November 12, 2008, it would not be charged an assessment for participation in the TLG Program during this initial period. Under the Amended Interim Rule, an eligible entity that chooses to opt out of the TLG Program by the new deadline of December 5, 2008, would not be assessed for its participation in the program. However, if an eligible entity chooses to remain in the program after December 5, 2008, the entity will be subject to certain assessments retroactive to November 13, 2008.

A. The Debt Guarantee Program

1. Nature of the Guarantee

The Amended Interim Rule stated that upon failure of a participating entity or the filing of a petition in bankruptcy, the FDIC will guarantee payment of the unpaid principal and contract interest accrued to the date of failure or bankruptcy of all FDIC-guaranteed debt. After consideration of the numerous comments presented respecting investor confidence in the FDIC's guarantee, particularly with regard to the timeliness of payment, the Final Rule is significantly changed to provide that the FDIC's obligation to pay on FDIC-guaranteed debt will be triggered by an uncured payment default.

The Final Rule amendments are recommended in order to make debt covered under the debt guarantee program more competitive in the market. Commenters argued that if the FDIC fails to make payment to a holder of debt as soon as its issuer defaults on a payment, the demand for debt under the FDIC's debt guarantee program could be severely curtailed. The investors most likely to purchase FDIC-guaranteed debt, such as fund managers and central banks, are particularly focused on ensuring timely receipt of scheduled payments of principal and interest, with minimal credit risk exposure. The commenters argued that the debt guarantee program, as structured under the Interim Rule, does not sufficiently meet the investment criteria of these investors.

The Final Rule is altered to recognize the commenters' arguments for changes to the debt guarantee program to substantially enhance the timeliness and certainty of payment under the guarantee. These revisions increase the likelihood that FDIC-guaranteed debt issuances by participating institutions will attain the highest ratings for that class of investments, which will help ensure that FDIC-guaranteed debt instruments are widely accepted within the investment community.

2. Senior Unsecured Debt

The Amended Interim Rule defined FDIC-guaranteed debt as senior unsecured debt issued by a participating entity that meets the requirements of the TLG Program. Under the Amended Interim Rule, senior unsecured debt means unsecured borrowing that: (a) is evidenced by written agreement; (b) has a specified and fixed principal amount to be paid in full on demand or on a date certain; (c) is noncontingent; and (d) is not, by its terms, subordinated to any other liability. The Amended Interim Rule detailed that senior unsecured debt includes, without limitation, federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility (IBF) of an insured depository institution, and Eurodollar deposits standing to the credit of a bank. Senior unsecured debt may be denominated in foreign currency. Senior unsecured debt does not include, e.g., obligations from guarantees or other contingent liabilities, derivatives, derivative-linked products, debt paired with any other security, convertible debt, capital notes, negotiable certificates of deposit, and deposits in foreign currency and Eurodollar

deposits that represent funds swept from individual, partnership or corporate accounts held at insured depository institutions.

Under the Final Rule, the FDIC has revised the definition of senior unsecured debt to exclude unsecured debt with a stated maturity of 30 days or less, which includes debts due on demand. Any overnight borrowing, or short-term borrowing of 30 days or less, will not be covered under the debt guarantee program. This change to the Amended Interim Rule was driven by a series of comments stating that the 75 basis point guarantee fee is too high in relation to prevailing overnight debt interest rates and that a guarantee is unnecessary for overnight commitments, in particular, federal funds purchased. Furthermore, recent market data from the Federal Reserve Board and market participants suggest less significant disruption in short-term money markets than in long-term debt markets, particularly as the Federal Reserve Board lowers short-term interest rates and actively provides liquidity. The FDIC believes that the debt guarantee program should help institutions to obtain stable, longer-term sources of funding where liquidity is currently most lacking.

Short-term unsecured debt with a stated maturity of 30 days or less issued under the Amended Interim Rule would have been issued with the expectation that it would be guaranteed under the debt guarantee program until maturity. Therefore, the Final Rule provides that any short-term debt issued after December 5, 2008, will not be eligible for guarantee under the debt guarantee program. The change, however, will not affect short-term unsecured debt already issued under the program. The guarantee on any guaranteed senior unsecured debt instrument with a stated maturity of thirty days or less will expire on the earlier of: (1) the date the issuer opts out of the debt guarantee program (if it does), or (2) the maturity date of the instrument.

The Final Rule also amends the requirement that senior unsecured debt must be evidenced by a written agreement. The FDIC has clarified in the Final Rule that trade confirmations are a sufficient form of written agreement to establish eligibility as senior unsecured debt. Concerns were raised that written agreements are not common for federal funds and other overnight debt or transactions with short maturities. While these specific concerns are moot as the Final Rule no longer defines such debt as eligible for the guarantee, in order to encompass all relevant forms of unsecured debt, the definition related to written agreement was amended.

3. Amount of guaranteed debt

The Amended Interim Rule stated that any participating entity that did not have senior unsecured debt as of September 30, 2008, could apply to the FDIC for permission to issue debt under the debt guarantee program and allowed the FDIC to determine what the entity's debt guarantee limit would be. However, a large number of eligible entities did not have senior unsecured debt outstanding as of September 30, 2008. Therefore, in order to limit the application burden on eligible entities and the FDIC, the Final Rule provides exceptions to the basic 125 percent debt guarantee limit.

First, although short term unsecured debt is now excluded from the debt guarantee program, participating entities will still use such instruments to determine their 125 percent debt guarantee limit. For participating entities that had senior unsecured debt outstanding as of September 30, 2008, the debt guarantee limit is determined using a definition of senior unsecured debt inclusive of debt obligations with stated maturities of 30 days or less that also meet the remaining requirements of the definition of senior unsecured debt in the Final Rule. Insured depository institutions that had no senior unsecured debt outstanding as of September 30, 2008, as well as those that had only Federal funds purchased as of September 30, 2008, will have an alternative debt guarantee limit of two percent of total liabilities as of September 30, 2008. Participating entities, other than insured depository institutions, that had no senior unsecured debt, may seek to have some amount of debt covered by the debt guarantee program. The FDIC, after consultation with the appropriate Federal banking agency, will decide on the debt guarantee limit, on a case-by-case basis.

Second, if an entity becomes an eligible entity after October 13, 2008, the entity's debt guarantee limit will be zero dollars, unless a higher limit is established by the FDIC, after consultation with the entity's appropriate Federal banking agency. These entities may apply to the FDIC for a determination of what their debt guarantee limit will be, and the FDIC will make these determinations on a case by case basis. This process is the same as that specifically provided in the Amended Interim Rule for entities that become eligible after the opt-out date. Newly formed entities before the opt-out date were intended to be treated the same way, and the Final Rule clarifies this issue by providing that all entities that become eligible after October 13, 2008, will have to apply for a debt guarantee limit on a case by case basis.

Third, if an affiliate of a participating entity is designated as an eligible entity by the FDIC after consultation with the entity's appropriate Federal banking agency, the FDIC will establish the entity's debt guarantee limit at the time of such designation.

The Final Rule also responds to comments received by adding a provision allowing a participating insured depository institution to issue debt under its debt guarantee limit as well as its holding company's(ies') debt guarantee limit. A participating insured depository institution has the opportunity to issue guaranteed debt in an amount equal to the participating entity's limit plus its holding company's(ies') limit, so long as the total guaranteed debt issued by the participating entity and its holding company(ies) does not exceed their combined debt guarantee limit. Allowing consolidated entities to decide whether an insured depository institution should issue debt rather than its parent does not increase the FDIC's liability for the debt and provides participating entities additional flexibility to obtain funding. This provision applies to participating entities within a holding company structure but does not apply to affiliates.

B. The Transaction Account Guarantee Program

The FDIC received hundreds of comments on the transaction account guarantee program, including many form letter comments. Most of the commenters argued that the full guarantee should be extended to certain interest-bearing accounts including Interest on Lawyers' Trust Accounts ("IOLTAs"), accounts owned by the government or accounts with public funds, and Negotiable Order of Withdrawal Accounts ("NOW Accounts"). In considering the changes to be made in light of these comments, staff considered the importance of maintaining a bright line between interest-bearing and noninterest-bearing accounts in serving to prevent misunderstandings about the scope of the program.

1. IOLTAs

The Final Rule provides that IOLTA accounts will be covered under the transaction account guarantee program. IOLTA accounts contain funds transferred to a lawyer by a client or by a third-party on behalf of a client to be held for a particular purpose. The funds are generally held for a short period of time and cannot earn interest for the client net of banking charges and administrative fees. But by pooling these funds together, and eliminating some of the banking fees, large IOLTA accounts net a small interest payment. Since these interest payments properly belong neither to the client nor the attorney, these funds are collected for charity. In most cases these funds benefit legal aid or other legal service organizations. The many comments received on this issue argue that since the holders of the accounts do not derive the benefit from the interest payments on these accounts, they should receive the same treatment as non-interest bearing accounts, and thus should be included in the coverage under the transaction account guarantee program. Further, without this coverage, an attorney may be inclined to seek other means of maintaining his clients' funds in order to benefit from the additional coverage under the TLG Program. Some lawyers might decide that their fiduciary responsibility with respect to their clients' funds mandates the transfer of the funds to a fully protected noninterest-bearing transaction account. This desire to fulfill their fiduciary duties may have the unintended consequence of harming the legal services entities that these funds assist. In light of these arguments, the Final Rule extends coverage to IOLTA accounts under the transaction account guarantee program.

2. NOW Accounts and Government Accounts

The law provides that certain depositors are eligible to hold "negotiable order of withdrawal" or NOW accounts. Though these accounts are interest-bearing, the account is similar to a demand deposit account in that the depositor is permitted to make withdrawals by negotiable or transferable instruments. *See* 12 U.S.C. §1832. In fact, a NOW account is defined as a type of "transaction account." *See* 12 CFR 204.2(e)(2). Commenters argued that a NOW account, being a transaction account and also being an account with limited interest, should be protected under the transaction account guarantee program. When the interest rate is low, such an account is similar to a noninterest-bearing transaction account. Accordingly, the Final Rule provides that NOW accounts with interest rates no higher than .50 percent shall be insured as noninterest-bearing

transaction accounts. The interest rate may not exceed .50 percent, however, at any time prior to the expiration date of the program. This change should provide stability to payment processing accounts structured as NOW accounts, without creating risks of destabilizing money market mutual funds or allowing weaker institutions to attract deposits in these ownership categories through higher interest rates. Because government entities are eligible to have NOW accounts, they will be covered by this exception if they are paid interest at a rate that does not exceed .50 percent.

The Final Rule requires that the insured depository institution, at which the NOW account is held, commit to maintain the interest rate at or below .50 percent for the duration of the transaction account guarantee program. Notwithstanding this requirement, a NOW account with an interest rate above .50 percent as of November 21, 2008, may be treated as a noninterest-bearing account for the purposes of the transaction account guarantee program if the insured depository institution at which the account is held readjusts the interest rate on such accounts to a rate no higher than .50 percent before January 1, 2009, and commits to maintain the adjusted rate through December 31, 2009.

C. Disclosures

1. Under the Debt Guarantee Program

Prompted in part by comments encouraging the FDIC to impose standard, uniform disclosures, the Final Rule prescribes uniform disclosures that participating entities must include in written materials underlying senior unsecured debt issued after December 19, 2008, through June 30, 2009, which clearly indicate whether the debt is or is not guaranteed under the debt guarantee program. This requirement becomes effective on December 19, 2008. Until then the Amended Interim Rule requires that eligible entities should provide adequate disclosures of the substance of this future requirement in a "commercially reasonable manner."

2. Under the Transaction Account Guarantee Program

Like the Amended Interim Rule, the Final Rule requires that insured depository institutions post a prominent notice in their main office and in each branch clearly indicating whether the institution is participating in the transaction account guarantee program. Based upon a comment received from a bank that does not offer transaction accounts, the Final Rule has been amended to exclude banks that do not offer transaction accounts from the disclosure requirements. If the institution offers transaction accounts and is participating, the notice must state that funds held in noninterest-bearing transaction accounts, the definition of which now includes IOLTAs and qualifying NOW accounts, at the institution are fully guaranteed. These notices must be provided in simple, readily understandable text. Further, if the institution uses sweep arrangements or other actions that result in funds being transferred or reclassified to an interest-bearing or nontransaction account, the institution must disclose those actions to the affected

customers and clearly advise them, in writing, that such actions will void the FDIC guarantee.

Based upon comments received, the Final Rule includes a website notice requirement for those institutions that offer Internet deposit services. The Final Rule also contains uniform sample disclosure notices for both participating and non-participating institutions. The Final Rule expands the required sweeps disclosures to include other situations where transferred or reclassified funds will no longer be eligible for full coverage, such as the situation where an institution offers official checks drawn on another insured depository institution that has chosen to opt out of the transaction account guarantee program. Despite a comment advocating that uniform sweeps disclosures be adopted, given the complexity and diversity of sweeps products, the Final Rule allows institutions to fashion their own disclosure statements to fit the applicable sweeps products involved, as long as the disclosure statement complies with the requirements in the Final Rule that the disclosures be accurate, clear and in writing. The requirements in the Final Rule become effective December 19, 2008, and disclosures before then are to be made in a "commercially reasonable manner."

3. Publication of participation in the TLG Program

As under the Amended Interim Rule, under the Final Rule, the FDIC will publish: (1) a list of the eligible entities that have opted out of the debt guarantee program, and (2) a list of the eligible entities that have opted out of the transaction account guarantee program. While the FDIC received numerous comments questioning the fairness of these actions, we continue to believe it is important that both lenders and depositors be able to ascertain, from one central source, whether entities eligible to participate in the TLG Program are participating in either or both components of the TLGP Program. Any customer confusion that might otherwise disadvantage some institutions could be addressed in customer disclosures provided by the institutions.

D. Assessments for the Debt Guarantee Program

The multiple revisions to the debt guarantee program provisions under the Final Rule require the revision of the assessments made under the program. The Final Rule revises the definition of senior unsecured debt to exclude debt with a stated maturity of 30 days or less and guarantees the timely payment of principal and interest upon an uncured payment default, rather than guaranteeing payment following the bankruptcy or receivership of the issuer. These changes, and recognition of the effect of the guarantee on an insured depository institution's cost of issuing debt, necessitate revision of the assessment rate for the debt guarantee program. The Final Rule modifies the assessment rates under the debt guarantee program as follows:

For debt with a maturity of	The annualized assessment rate (in basis points) is
180 days or less (excluding overnight debt)	50
181-364 days	75
365 days or greater	100

The FDIC believes that these fees appropriately reflect the value of the guarantee to insured depository institutions and the market value of guaranteed debt.

The Amended Interim Rule did not distinguish between the fees assessed to insured depository institutions and those charged to holding companies or affiliates. The Final Rule modifies the fee structure for the debt guarantee program to impose modestly higher fees on all non-insured depository institutions within a holding company structure where the insured depository institutions present less than 50% of consolidated assets. These entities will pay an increase of 10 basis points above the assessment rates listed for insured depository institutions for any guaranteed debt issued by the entity. The increased fees are a matter of fairness. Although the FDIC has every expectation that the TLG Program will pay for itself, if there is a deficit, it will be paid for through a systemic risk assessment on insured depository institutions. By statute the systemic risk assessment does not include bank holding companies, thrift holding companies, or affiliates who nonetheless will benefit from the TLG Program. Therefore, these entities are asked to pay a higher premium from the start, since they are not at risk of paying an additional fee at the end of the program.

The Amended Interim Rule provided that if an entity did not opt out by December 5, 2008, they would be assessed fees for any senior unsecured debt issued and outstanding after November 13, 2008. The changes to the definition of senior unsecured debt in the Final Rule require clarification of what debt will be included in the assessment beginning November 13, 2008. Starting November 13, 2008, participating entities will be assessed for any senior unsecured debt (excluding overnight debt) that is issued on or after October 14, 2008, and on or before December 5, 2008, that is still outstanding as of December 5, 2008. This includes assessments for debt with stated maturities of 30 days or less (excluding overnight debt). This short term debt continues to be guaranteed in the program until its maturity and institutions are responsible for paying the assessment for this guarantee. Starting December 6, 2008, participating entities will be assessed for all senior unsecured debt issued on or after December 6, 2008. As short term debt is no longer included in the definition of senior unsecured debt as of December 6, 2008, there will no longer be assessments for the short term debt.

The Amended Interim Rule provided an increased assessment to deter participating entities from impermissibly issuing guaranteed debt above their debt guarantee limit. The Amended Interim Rule stated that any participating entity that issued FDIC-

guaranteed debt in excess of the debt guarantee limit established by the FDIC would have its assessment rate for guaranteed debt increased to 150 basis points on all outstanding guaranteed debt. Due to the above changes to the assessment structure, the Final Rule amends this increased assessment provision as well. Any participating entity that issues guaranteed debt in excess of the debt guarantee limit established by the FDIC will have its applicable assessment rates increased 100 percent on all outstanding FDIC-guaranteed debt. The FDIC may reduce this assessment and impose a smaller increase if it determines that good cause has been shown to do so. The Assessment Appeals Committee will be delegated the authority to make these decisions.

E. Payment of Claims by the FDIC pursuant to the TLG Program

After considering the comments on the payment of claims provisions of the Amended Interim Rule, the Final Rule provides significant changes to how the FDIC will deal with payments under the debt guarantee program. The fundamental changes made in the claims section of the Final Rule relate to: (1) the trigger for the payment obligation; (2) the method by which the guarantee obligation may be satisfied and (3) a requirement for participating entities to agree to certain initial undertakings in order to participate in the debt guarantee program.

The Final Rule provides that the FDIC's obligation under the guarantee for senior unsecured debt will be triggered by an uncured payment default. Accordingly there is now no reason to provide distinct processes for banks and holding companies. Therefore the Final Rule is simplified and describes a uniform payment process.

The Final Rule provides that the FDIC will satisfy the guarantee obligation by making scheduled interest and principal payments under the terms of the debt instrument. The FDIC will be subrogated to the rights of debtholders to the extent of payments made under the guarantee program, against the issuer, including in respect of any insolvency proceeding. Payment by making scheduled payments under a debt instrument will constitute satisfaction of the obligation to the extent of such payments.

For debt issuances whose final maturities extend beyond June 30, 2012, at any time thereafter the FDIC may elect to make a payment in full of all the outstanding principal and interest under the debt issuance.

Claimants must make demand for payment on FDIC-guaranteed debt within 60 days of the occurrence of an uncured payment default. The Final Rule also requires specific information to be filed with any claim under the program. This information includes for example, evidence that an uncured payment default has occurred under the terms of the debt instrument and that the claimant is the actual owner of the FDIC-guaranteed debt obligation. If demand for payment is made through an authorized representative, additional proof is required to demonstrate the authority to make the claim. In addition, the claimant must assign its rights in the debt to the FDIC as well as any claim it may have in any insolvency proceeding arising in connection with its ownership of FDIC-guaranteed debt. This assignment must cover all distributions on the debt from the

proceeds of the receivership or bankruptcy estate of the issuer, whichever the case may be.

Payment will be made upon receipt by the FDIC of a conforming claim. Such a process should permit debtholders to avoid any loss on their investment. The Final Rule now provides a process by which a claim may be filed with the FDIC by an authorized representative of the debtholders. The representative must demonstrate its capacity to act on behalf of a class of debtholders. Alternatively, debtholders for whom an authorized representative was not designated, or who elect not to be so represented, may file individual claims.

The Final Rule provides that a participating entity acknowledges by its participation in this program that it will become indebted to the FDIC for any payments the FDIC may make in satisfaction of its guarantee obligation. The participating entity that issues FDIC-guaranteed debt will be unconditionally liable to the FDIC for repayment of amounts expended under the guarantee. In the event that a participating entity is placed into receivership or bankruptcy after the FDIC has made payment on its guarantee, the FDIC will be a bona fide creditor in those proceedings. Finally, the Final Rule requires each participating entity to execute and file with the FDIC, as part of its notification of participation in the debt guarantee program a "Master Agreement." Under this document, the participating entity: (1) acknowledges and agrees to the establishment of a debt owed to the FDIC for any payment made in satisfaction of the FDIC's guarantee of a debt issuance by the participating entity and agrees to honor immediately the FDIC's demand for payment on that debt; and (2) arranges for the assignment to the FDIC, by the holder of any guaranteed debt issued by the participating entity, of all rights and interests in respect of that debt upon payment to the holder by the FDIC under the guarantee and for the holder's release the FDIC of any further liability under the debt guarantee program with respect to the particular issuance of debt.

In order to protect the FDIC from abuses in the debt guarantee program, the Final Rule indicates that the FDIC will generally consider the failure of an insured depository institution to make a payment on its outstanding debt such that the FDIC is required to make payment under the guarantee as grounds for the appointment of the FDIC as conservator or receiver of such insured depository institution. Thus, if institutions default on their guaranteed obligations they face immediate closure. In addition, the Final Rule provides that the failure of a U.S. Bank Holding Company to make a payment on its outstanding debt such that the FDIC is required to make payment under the guarantee constitutes an unsafe or unsound practice and subjects the institution to enforcement actions under section 8 of the FDI Act (12 U.S.C. 1818).

F. Additional Clarifications

1. Deposits at a Non-U.S. Branch of the Bank

The definition of senior unsecured debt contained in the Amended Interim Rule includes Eurodollar deposits standing to the credit of a bank. A commenter asked for clarification

as to whether the guarantee extends to a deposit account of another bank at any non-U.S. branch of the bank, including accounts denominated in currencies other than U.S. dollars since the Amended Interim Rule did not expressly address those deposits.

The Final Rule clarifies that senior unsecured debt includes U.S. dollar denominated inter-bank deposits with a stated maturity greater than 30 days, including certificates of deposit (other than negotiable certificates of deposit), deposits in an IBF of an insured depository institution and deposits on the books and records of non-U.S. branches of U.S. depository institutions that are owed to a bank. Under the Final Rule, senior unsecured debt does not include deposits denominated in a foreign currency and deposits at non-U.S. branches of U.S. depository institutions other than inter-bank deposits that are denominated in U.S. dollars. Also, under the Final Rule, senior unsecured debt includes only deposits owed to a bank in its own capacity and not as agent.

2. Definition of a Bank

The Amended Interim Rule also stated that senior unsecured debt included "for example, … certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility (IBF) of an insured depository institution, and Eurodollar deposits standing to the credit of a bank." For purposes of that definition, the Amended Interim Rule defined "bank" to mean an insured depository institution or a depository institution regulated by a foreign bank supervisory agency. The Final Rule clarifies this definition to provide that a depository institution regulated by a foreign bank supervisory agency does not include a central bank or other similar non-U.S. government entity that performs central bank functions or an international financial institution such as the International Monetary Fund. The FDIC never intended to include these institutions among those regulated by a foreign bank supervisory agency, and never intended them to be encompassed by this definition.

In addition, for this purpose only, credit unions are added to the definition of "bank." One commenter argued that credit unions should be given the same consideration as that given to foreign banks. The Final Rule provides that credit unions insured by National Credit Union Administration (NCUA) meet the definition of a bank within the definition of senior unsecured debt in the Final Rule. Therefore certificates of deposits owed to a credit union are considered senior unsecured debt and may be covered by the debt guarantee program.

3. Full Faith and Credit

Under the Final Rule, the required disclosures will now reiterate that FDIC-guaranteed debt under the debt guarantee program is subject to the full faith and credit of the United States pursuant to section 15(d) of the FDI Act, 12 U.S.C. 1825(d).

4. Sweeps

Some commenters requested guidance as to the meaning of "savings account." The FDIC does not intend to create a special definition of "savings account" for purposes of the transaction account guarantee program. Rather, the FDIC shall apply the definition in Regulation D (dealing with reserve requirements) because the sweep programs at issue are established for purposes of Regulation D. *See* 12 CFR Part 204.