September 9, 2009

MEMORANDUM: The Board of Directors

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SUBJECT: Notice of Proposed Rulemaking proposing alternatives for concluding the debt guarantee component of the Temporary Liquidity Guarantee Program (TLGP)

I. SUMMARY OF RECOMMENDATION

Staff recommends that the Board adopt the attached Notice of Proposed Rulemaking (NPR) and authorize its publication in the *Federal Register*. The NPR offers two alternatives for phasing out the Debt Guarantee Program (DGP), a component of the TLGP. Under Alternative A, the DGP would expire as provided for by the FDIC's existing regulation on October 31, 2009, with the FDIC's guarantee for such debt expiring no later than December 31, 2012. Under Alternative B, the DGP will expire as provided for in the current regulation, however, the FDIC would establish a limited six-month emergency guarantee facility to be made available in emergency circumstances to insured depository institutions (IDIs) and certain other entities participating in the DGP upon application to the FDIC and with the approval of the Chairman, after consultation with the Board.

Discussion

In October 2008, the FDIC adopted the TLGP. The TLGP is part of a coordinated effort by the FDIC and other federal agencies to address recent disruptions in credit markets and the resultant inability of financial institutions to obtain funding and make loans to creditworthy borrowers.

The TLGP is composed of two components: a debt guarantee component and a transaction account guarantee program.[1] The DGP initially permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the FDIC's guarantee for such debt to expire no later than June 30, 2012. On May 29, 2009, for IDIs and certain other entities that previously had participated in the TLGP, the Board extended the issuance period for the DGP until a date no later than October 31, 2009, and the FDIC's guarantee until a date no later than December 31, 2012.[2]

In the attached NPR, staff presents two alternatives for phasing out the debt guarantee component of the TLGP. Since the domestic credit and liquidity markets appear to be normalizing and since the number of entities utilizing the DGP has decreased, Alternative A proposes that the DGP conclude as provided for in the current regulation. Alternative B proposes the expiration of the period for issuing debt under the DGP as it currently exists, but adds an emergency guarantee facility to be accessed, if emergency circumstances warrant, on a limited, case-by-case basis by IDIs and certain other entities participating in the DGP. These entities would be required to apply to and receive the prior approval of the FDIC before using the emergency guarantee. This

[1] On August 26, 2009 the Board approved for publication in the *Federal Register* a final rule providing for a six-month extension of the transaction account guarantee (TAG) program, through June 30, 2010. 74 FR 45093 (September 1, 2009). That final rule was issued following the FDIC's publication of a Notice of Proposed Rulemaking which, similar to this Notice, presented two alternatives for phasing out the TAG. [See, 74 FR 31217 (June 30, 2009).

[2] The extension was made available to IDIs and other participating entities that had issued FDIC-guaranteed debt on or before April 1, 2009, without application to the FDIC. Other participating entities that applied to and received approval from the FDIC also were permitted to participate in the extended DGP.

limited emergency guarantee facility would afford protection to entities participating in the DGP that are unable to issue non-guaranteed debt to replace maturing debt because of market disruptions or other circumstances beyond their control.

II. THE NOTICE OF PROPOSED RULEMAKING

A. Alternative A

Alternative A would preserve the current regulation regarding the duration of the FDIC's guarantee of senior unsecured debt under the DGP. Thus, all IDIs participating in the DGP (and other participating entities that had either issued guaranteed debt before April 1, 2009, or had not issued guaranteed debt before April 1, 2009, but had otherwise received the FDIC's permission to issue non-guaranteed debt) would be permitted to issue FDIC-guaranteed senior unsecured debt until October 31, 2009. The FDIC's guarantee for such debt issuances would expire no later than December 31, 2012.

B. Alternative B

Under Alternative B, the general operation of the DGP will expire as provided for in the current regulation. In Alternative B, however, the FDIC would establish a limited, six-month emergency guarantee facility upon expiration of the DGP on October 31, 2009. Under this alternative, all IDIs and other entities that had issued FDIC-guaranteed senior unsecured debt pursuant the DGP on or before September 9, 2009, would be permitted to apply to access the FDIC's emergency guarantee facility. The FDIC would consider applications to use the emergency guarantee facility on a limited, case-by-case basis if the applicant could demonstrate its inability to issue non-guaranteed debt to replace maturing debt as a result of market disruptions or other circumstances beyond the applicant's control.

If approved, an applicant would be permitted to issue FDIC-guaranteed debt through and including April 30, 2010, with the FDIC's guarantee for such debt expiring no later than December 31, 2012. Nothing in proposed Alternative B Rule would affect any conditions that the FDIC previously may have placed on the issuance of debt by an IDI or other entity participating in the DGP. The FDIC would be permitted to impose additional conditions or limitations (including limiting executive compensation, bonuses, or the payment of dividends), as appropriate, on entities permitted to issue guaranteed debt under the proposed emergency guarantee facility.

A. *Application Requirements*

Under Alternative B applications to participate in the emergency guarantee facility would be required to be submitted to the Director of the Division of Supervision and Consumer Protection on or before April 30, 2010. The application would be expected to include a projection of the sources and uses of funds through December 31, 2012; a summary of the entity's contingency plans; a description of the collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee; a description of the plans for retirement of the FDIC-guaranteed debt; a description of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt; a description of management's efforts to mitigate the effects of such disruptions or circumstances; conclusive evidence that demonstrates an entity's inability to issue non-guaranteed debt; and any other relevant information that the FDIC deems appropriate.

B. *Participation Fee*

The proposal outlined in Alternative B provides for an annualized participation fee of at least 300 basis points on any FDIC-guaranteed debt issued pursuant to the emergency guarantee facility. The FDIC would reserve the discretion to increase the participation fee on a case-by-case basis, depending upon the risks present in the issuing entity's organization. The participation fee is intended to limit participation in the emergency guarantee facility only to those entities that are unable to rollover maturing debt due to market disruptions or other circumstances beyond their control. Staff believes that the participation fee may provide an appropriate deterrent to applications based on other, less severe circumstances or concerns. Consistent with the existing DGP, a participating entity using the emergency guarantee facility may be required to pledge sufficient collateral to ensure the repayment of any principal and interest payments made by the FDIC under the guarantee facility and also would be subject to other conditions and restrictions that the FDIC deems appropriate, including limiting executive compensation, bonuses, or the payment of dividends.

Staff recommends that the Board authorize publication of the attached Notice of Proposed Rulemaking and seek comments during a 15 day comment period regarding which of the two proposed alternatives presents a more effective process for phasing out the DGP.