

## **WBA PROGRAM**

### **FDIC DEBT GUARANTEE PROGRAM**

#### **A. General Discussion.**

1. Debt Guarantee Program initially became effective on October 14, 2008, and expires on June 30, 2009.
2. FDIC issued Final Rules for Debt Guarantee Program on November 21, 2008. A copy of the Final Rules is included with these materials.
3. Under Debt Guarantee Program, FDIC guarantees newly issued senior unsecured debt of eligible entities.
4. Its purpose is to provide liquidity to inter-bank lending market and promote stability in unsecured funding market for bank.
5. FDIC guarantees newly issued senior secured debt of eligible entities in event of uncured failure of participating entity to make timely payment of principal or interest as required under guaranteed debt instrument.
6. Allows following eligible entities to participate:
  - a. FDIC insured institutions.
  - b. U.S. bank holding companies.

- c. U.S. savings and loan companies.
  - d. Any affiliate of an insured depository institution approved by FDIC after written request.
7. Each eligible entity is automatically covered under Debt Guarantee Program from October 14, 2008, through December 5, 2008, unless it opts-out on or before December 5, 2008.
  8. On or before December 5, 2008, eligible entities **must** inform FDIC whether they opt-out of either or both Debt Guarantee Program and Transaction Account Guarantee Program.
  9. Beginning on December 6, 2008, all eligible entities that do not opt-out will pay assessments on all senior unsecured debt on or after December 6, 2008.
  10. Eligible entity that opts-out of the Debt Guarantee Program on or before December 5, 2008, will not pay any assessments.
  11. Eligible entities which elect to participate in Debt Guarantee Program and which issue guaranteed debt:
    - a. Agree to supply information requested by FDIC and be subject to periodic FDIC onsite reviews to determine compliance.
    - b. Are subject to enhanced supervisory oversight to prevent rapid growth or excessive risk taking.

12. Others.

**B. Differences Between Final Rule Issued By FDIC on November 21, 2008, and Interim Rule Issued By FDIC on October 14, 2008.**

1. FDIC guarantees timely payment of principal and interest.
  - a. Under Interim Rule, FDIC's guaranteed payment was triggered by receivership or bankruptcy. Under Final Rule, FDIC's guarantee is triggered by payment default.
  - b. FDIC will continue to make scheduled interest and principal payments through maturity, except for debt with maturity beyond June 30, 2012, FDIC may elect to make payment in full.
2. All participating entities in Debt Guarantee Program must execute and file with FDIC a "Master Agreement" as part of its notification of participation in Debt Guarantee Program.
  - a. In effect requires filing an election form by December 5, 2008, and agreement to be bound by terms of Master Agreement.
  - b. Master Agreement must be signed as of date of election by chief financial officer or equivalent and returned to FDIC within 5 business days of date of election to continue participation in Debt Guarantee Program. E-mail is preferred method of delivery to: [MasterAgreement@fdic.gov](mailto:MasterAgreement@fdic.gov).

- c. Master Agreement requires that all documents governing issuance of senior unsecured debt subject to FDIC guarantee contain certain standard provisions. Standard provisions are attached as Annex A to Master Agreement.
    - d. Copy of Master Agreement is included with these materials.
- 3. Final Rules prescribe specific disclosure language for issuer of senior unsecured debt under Debt Guarantee Program.
  - a. Final Rule includes specific mandatory language for debt issued under Debt Guarantee Program that specifically states debt is backed by full faith and credit of U.S.
  - b. Final Rule also requires certain language be included in governing documents for issuance of senior unsecured debt that is not subject to FDIC guarantee.
- 4. Revised definition of senior unsecured debt covered under Debt Guarantee Program.
  - a. Effective December 6, 2008, senior unsecured debt covered by Debt Guarantee Program excludes any obligation with stated maturity of 30 days or less (including debt with maturity of "one month").
  - b. FDIC guarantee of previously issued guaranteed senior unsecured debt for period October 14, 2008, through December 5, 2008, with stated maturity of 30 days or less expires on earlier of date issuer opts-out or maturity date of instrument.

5. Revised fee structure for Debt Guarantee Program.

a. New fee structure:

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

b. Rates increase by 10 basis points if senior unsecured debt issued by holding company or affiliate other than insured depository institution if as of September 30, 2008, combined assets of all insured depository institutions affiliated with such entity constitute less than 50% of consolidated holding company assets.

6. Provides alternative means for establishing guarantee cap for insured depository institution that either has no senior unsecured debt outstanding or only federal funds purchased as of September 30, 2008.

a. Applies to participating entity that is insured depository institution that has no senior unsecured debt as of September 30, 2008, or only has federal funds purchased as of September 30, 2008.

b. Its debt guarantee limit will be 2% of its consolidated total liabilities as of September 30, 2008.

c. Such insured depository institution should report zero for Item B on Election Form and will be assigned an alternative maximum guaranteed amount of 2% of total liabilities as reported on its

September 30, 2008, call report or its Thrift Financial Report, as applicable.

7. Combines debt guarantee limits of participating insured depository institution and its parent holding company.
  - a. With proper written notice to FDIC and its parent holding company, participating insured depository institution may issue guaranteed debt in amount equal to its limit plus its holding company's limit.
  - b. Provided total guaranteed debt issued by insured depository institution and its holding company does not exceed their combined debt guarantee limit.
8. Approves trade confirmations as sufficient form of written agreement for senior unsecured debt.

**C. Senior Unsecured Debt.**

1. From October 13, 2008, through December 5, 2008, senior unsecured debt means:
  - a. Evidenced by written agreement or trade confirmation.
  - b. Includes specific and fixed principal amount to be paid on date certain.

- c. Pays either fixed or floating interest rate based on commonly used reference rate (would include single index of U.S. Treasury bill rate, prime rate and LIBOR).
  - d. Is noncontingent and contains no embedded options, forwards, swaps or other derivatives.
  - e. Is not by its terms subordinated to any other liability.
2. **After December 5, 2008, means all of above and that debt has stated maturity of more than 30 days (would therefore exclude overnight Fed Funds).**
3. Senior unsecured debt may **include** (if its meets other qualifying factors contained in final rules), for example:
- federal funds purchased
  - promissory notes
  - commercial paper
  - unsubordinated unsecured notes
  - U.S. dollar denominated certificates of deposit owed to insured depository institution, insured credit union or foreign bank
  - U.S. dollar denominated deposits in an international banking facility of insured depository institution owed to an insured depository institution or foreign bank
  - Eurodollar deposits standing to credit of a bank.
4. Senior unsecured debt **excludes**, for example:
- any obligation with stated maturity of one month
  - obligations from guaranties or other contingent liabilities
  - derivatives
  - debt paired with any other security

- convertible debt
- capital notes
- unsecured portion of otherwise secured debt
- negotiable certificates of deposit
- revolving credit agreements
- structured notes
- instruments used for trade credit
- retail debt securities
- deposits in foreign currency or other foreign deposits (except where otherwise permitted under final rules)
- any funds regardless of form swept from individual, partnership or corporate accounts held at depository institutions
- loans from affiliates, including parents and subsidiaries and institution affiliated parties (such as controlling shareholders, directors and officers)
- trust preferred securities

5. Program applies to senior unsecured debt:

- a. Issued between October 14, 2008, and June 30, 2009.
- b. If issued by June 30, 2009, FDIC will provide guarantee coverage for such debt until earlier of (1) maturity date of debt or (2) June 30, 2012.
- c. For debts maturing beyond June 30, 2009, debt guarantee will remain in effect until June 30, 2012.
- d. Coverage expires at 11:59 p.m. (EST) on June 30, 2012, regardless of whether debt has matured at that time. Final effective date for coverage is absolute.

6. Newly issued senior unsecured debt includes senior unsecured debt that matures on or after October 13, 2008, and on or before June 30, 2009, and is renewed during that period.
7. Senior unsecured debt that is guaranteed under Debt Guarantee Program will have risk weight of 20%.

**D. Maximum Amount of Guaranteed Debt.**

1. Maximum amount of guaranteed debt for each participating entity at any time is limited to 125% of senior outstanding unsecured debt on books of participating entity at close of business on September 30, 2008, and scheduled to mature on or before June 30, 2009.
2. If participating entity is insured depository institution and either had no senior unsecured debt or only had federal funds purchased outstanding on September 30, 2008, its debt guarantee limit is calculated as follows:
  - a. 2% of its consolidated total liabilities as of September 30, 2008.
  - b. If participating entity other than insured depository institution had no senior unsecured debt outstanding on September 30, 2008, may seek from FDIC approval for some amount of debt. FDIC and appropriate federal banking agency will decide on case-by-case basis.
3. Participating entity that is both insured depository institution and subsidiary of parent participating entity may increase debt guaranteed limit above 125%:

- a. Provided amount of increase does not exceed debt guarantee limit of its parent participating entity.
  - b. Provided insured depository institution provides prior written notice to FDIC and to parent participating entity of amount of increase, name of contributing parent participating entity and starting and ending dates of such increase.
  - c. Provided for period insured depository institution's debt guarantee limit is increased by such amount, debt guarantee limit of parent participating entity is reduced by corresponding amount.
4. **Although obligations with stated maturity of 30 days or less are excluded from senior unsecured debt guaranteed under Debt Guarantee Program, participating entities will still include such amounts for purposes of determining maximum guaranteed amount under Debt Guarantee Program.**
- a. Amount reported in Item B on Election Form should include all senior unsecured debt regardless of maturity date.
  - b. Except FDIC insured depository institution which only had federal funds purchased and no other senior unsecured debt as of September 30, 2008, report zero for amount outstanding on September 30, 2008. Such FDIC insured depository institutions will be assigned alternative maximum guaranteed amount of 2% of total liabilities as reported on September 30, 2008, call reports or thrift financial reports, as applicable.
5. FDIC requires reports regarding amount of senior unsecured debt as of September 30, 2008.

- a. FDIC requires that each participating entity that does not opt-out calculate its outstanding senior unsecured debt as of September 30, 2008, and report calculated amount to FDIC (even if that amount is zero) on FDIC Election Form via *FDICconnect* no later than 11:59 p.m. Eastern Standard Time December 5, 2008.
  - b. Make sure opt-in box is checked and identify total amount of outstanding senior unsecured debt as of September 30, 2008, that is scheduled to mature on or before June 30, 2009.
  - c. All reports require certification from chief financial officer certifying accuracy of information reported.
6. Participating entities prohibited from issuing non-guaranteed debt until issues maximum allowable amount of guaranteed debt.
- a. Participating entities that do not opt-out are unable to select which newly issued senior unsecured debt is guaranteed debt as they issue such debt.
  - b. However, for additional assessment fee participating entity may elect on or before 11:59 p.m. EST December 5, 2008, to issue long-term non-guaranteed debt by notifying FDIC that it elects to issue senior unsecured non-guaranteed debt with maturities beyond June 30, 2012, at any time, in any amount, and without regard to guaranty limit. Will pay additional assessment fee.

**E. Disclosures and Related Issues.**

1. Each participating entity must clearly disclose in writing and in commercially reasonable manner to interested lenders and creditors whether or not debt it offers is guaranteed under this program.
  - a. Effective December 19, 2008.
  - b. Prior to December 19, 2008, **should** provide adequate disclosures meeting substance of this requirement.
  
2. Disclosures by eligible entities that do not opt-out of the Debt Guarantee Program:
  - a. Must include disclosure statement set forth in FDIC final rules in all written materials underlying any guaranteed senior unsecured debt issued on or after December 19, 2008, through June 30, 2009.
  - b. Debt guaranteed by FDIC under Debt Guarantee Program will state debt is guaranteed under FDIC Temporary Liquidity Guaranty Program and "is backed by the full faith and credit of the United States."
  - c. Must include disclosure statement set forth in FDIC final rules in all written materials underlying any senior unsecured debt issued on or after December 19, 2008, through June 30, 2009, that is **not** covered under Debt Guarantee Program.
  - d. Debt not guaranteed by FDIC under Debt Guarantee Program will state that debt is not guaranteed under FDIC Temporary Liquidity Guarantee Program.

3. Master Agreement executed by each participating entity with FDIC also requires that certain standard provisions be included in governing documents for issuance of any senior unsecured debt subject to FDIC's guarantee.
  - a. No document governing issuance of senior unsecured debt subject to FDIC's guarantee shall contain any provision that would result in automatic acceleration of debt upon default by issuing participating entity at any time during which FDIC's guarantee in effect or during which guaranteed payments are made in accordance with final rules.
  - b. If particular issue of senior unsecured debt is evidenced solely by trade confirmation, participating entity must use commercially reasonable efforts to cause holder of such debt to execute written instruments setting forth holder's agreement to be bound by standard provisions required to be included.
4. Once participating entity reaches 125% limit, may not represent that any additional debt is guaranteed by FDIC and must specifically disclose that such debt is not guaranteed.
5. Participating entity may not represent that its debt is guaranteed by FDIC if it does not comply with rules governing Debt Guarantee Program.
6. Debt cannot be issued and identified as guaranteed by FDIC if:
  - a. Proceeds are used to prepay debt that is not FDIC-guaranteed.
  - b. Issuing entity previously opted-out of Debt Guarantee Program.

- c. Issuing entity had its participation in Debt Guarantee Program terminated by FDIC.
- d. Issuing entity exceeded its authorized limit for issuing guaranteed debt.
- e. Debt does not otherwise meet requirements of Debt Guarantee Program.
- f. Debt extended to affiliate, insider of participating entity, or insider of affiliate without FDIC approval.

**F. Assessment Fees.**

- 1. No assessment fees paid for period from October 14, 2008, through November 12, 2008.
- 2. Any eligible entity that opts-out on or before December 5, 2008, will not pay any assessment fee.
- 3. Any eligible entity that has not opted-out on or before December 5, 2008, will be assessed fees for continued coverage under Debt Guarantee Program on following senior unsecured debt:
  - a. Beginning November 13, 2008, on all senior, unsecured debt (other than overnight debt) issued on or after October 14, 2008, and on or before December 5, 2008, that is still outstanding on December 5, 2008.

- b. Beginning December 6, 2008, on all senior, unsecured debt with maturity greater than 30 days issued on or after December 6, 2008.
4. If participating entity stays in Debt Guarantee Program but doesn't have outstanding debt, there will be no fee charged.
  5. All senior, unsecured debt issued by a participating entity will be charged an annualized assessment as follows:
    - a. Amount of assessment determined by multiplying amount of FDIC guaranteed debt times term of debt (expressed in years) times annualized assessment rate.

b. Annualized assessment rates:

i.

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

- ii. Rates increased by 10 basis points for senior unsecured debt issued by holding company or other non-insured depository institution affiliate where assets of holding company's combined insured depository institution subsidiaries as of September 30, 2008, constitute less than 50% of consolidated holding company assets.

- c. If participating entity issues debt identified as "guaranteed by the FDIC" in excess of 125% limit established by FDIC, assessment rate for guaranteed debt is **doubled** on all outstanding guaranteed debt **and financial institution and its institution-affiliated parties may be subject to enforcement actions.**
  
- d. If participating entity wants option of issuing certain long-term non-guaranteed senior unsecured debt before issuing maximum amount of guaranteed debt, must elect to do so on Election Form through *FDICconnect* on or before 11:59 p.m. (EST) on December 5, 2008.
  - i. Election will require payment of nonrefundable fee in exchange for which it will be able to issue at any time without regard to cap non-guaranteed senior unsecured debt with maturity date after June 30, 2012.
  
  - ii. Participating entity making election will pay nonrefundable fee equal to 37.5 basis points times amount of senior unsecured debt that had maturity date on or before June 30, 2009, and was outstanding as of September 30, 2008.
  
  - iii. If such participating entity had no such debt outstanding at that time, fee will equal 37.5 basis points times amount of entity's debt guaranty limit.
  
- 6. Invoice for appropriate fee will be posted on *FDICconnect* for account associated with participating entity.
  - a. Once participating entity provides notice to FDIC that it has issued guaranteed debt (discussed in paragraph 8 below), invoice for appropriate fee is automatically generated and posted on *FDICconnect*.

- b. Each participating entity must insure that sufficient funds to pay fee are available in designated ACH account for direct debit by FDIC on first business day after posting invoice on *FDICconnect*.
  - c. Assessment payments of participating entity that is not insured depository institution must be debited from designated account of affiliated insured depository institution.
- 7. If assessments are insufficient to cover losses or expenses arising under Temporary Liquidity Program, including Debt Guarantee Program, FDIC will impose emergency special assessment on all insured depository institutions as provided under applicable federal law.
- 8. Notice to FDIC.
  - a. No guaranteed debt may be issued by participating entity under Debt Guaranty Program unless notice of issuance of such debt and payment of associated assessments is provided to FDIC as required by final rules.
  - b. For guaranteed debt issued after November 21, 2008, participating entity must agree to be bound by terms of Master Agreement with FDIC. A copy of Master Agreement is included in these materials.
  - c. Any participating entity that issues guaranteed debt during period from October 14, through December 5, 2008, which is still outstanding on December 5, 2008, must notify FDIC of that issuance via *FDICconnect* on or before December 19, 2008, certified by chief financial officer or equivalent.

- d. Each participating entity that issues guaranteed debt after December 5, 2008, must notify FDIC of that issuance via *FDICconnect* within time period specified by FDIC certified by chief financial officer or equivalent.
  
- e. FDIC will provide procedures governing notice to FDIC and certification

**G. Election.**

1. In Financial Institution Letter 125-2008, dated November 3, 2008, FDIC provided details of opt-out and opt-in procedures of Temporary Liquidity Guarantee Program, including Debt Guarantee Program.
  
2. FDIC procedures for opting-out and for making affirmative decisions to opt-in are also provided on FDIC's secure e-business website, *FDICconnect*.
  
3. All eligible entities must complete Election Form on or before December 5, 2008, to opt-out of Debt Guarantee Program and/or Transaction Account Guarantee Program or, for those entities remaining in Debt Guarantee Program, to provide data to determine its debt guarantee limit and to agree to terms in Master Agreement.
  
4. Entities that remain in Debt Guarantee Program must execute and submit signed Master Agreement to FDIC.
  
5. To opt-out eligible entity must complete and submit FDIC Temporary Liquidity Guarantee Program Election Form via *FDICconnect* on or before December 5, 2008.

- a. Election must be attested by chief financial officer or equivalent.
  - b. No paper submissions will be accepted.
  - c. Copy of Election Form and instructions included with these materials.
6. **All eligible entities within U.S. bank or savings and loan holding company must make same decision or none of members will be eligible. Failure to do so constitutes opt-out by all members of group.**
- a. Means each eligible entity, including holding company and all of its insured depository institutions, must made same election.
  - b. Entities are encouraged to coordinate their election decisions with other members of their consolidated groups as all members of holding company must made same election with respect to each component of Temporary Liquidity Guarantee Program, including Debt Guarantee Program.
  - c. A decision by one member of group to opt-out is irrevocable and binding on all other group members.
7. Prior to December 5, 2008, eligible entity **may** inform FDIC that it will not opt-out of either or both programs.
8. Failure to opt-out by 11:59 p.m. (EST) on December 5, 2008, constitutes decision to continue in program after that date and will be required to pay assessments retroactive to November 13, 2008.

9. Once Election Form submitted via *FDICconnect* entity will receive a confirmation page that submission has been received and confirmation number. This confirmation page must be displayed via *FDICconnect* in order for election to be effective.
10. Upon receipt of completed Election Form FDIC will make available via *FDICconnect* a copy of executed form. Entity can download copy of executed form.
11. Signed copy of Election Form and related work papers and supporting documentation including supporting financial records must be retained in records of reporting entity and available for regulatory review upon request.
12. If eligible entity opts-out of Debt Guarantee Program FDIC's guarantee of newly issued senior unsecured debt expires at earlier of 11:59 p.m. (EST) on December 5, 2008, or at time of FDIC's receipt of eligible entity's opt-out decision.
13. If eligible entity opts-out of Debt Guarantee Program it may no longer represent that its newly-issued debt is guaranteed by FDIC.
14. FDIC will post a list of those entities that opt-out of either or both programs on its website.
15. Choice to affirmatively opt-in, once made, is irrevocable.
16. Choice to opt-out, once made, is irrevocable.

17. According to FDIC there is no express requirement that funds guaranteed under Debt Guarantee Program be used to grant loans. However, as set forth in Interagency Statement on Meeting Needs of Creditworthy Borrowers, eligible entities encouraged to use these funds to grant new loans.

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