

## BANKING & FINANCIAL SERVICES ECONOMIC RECOVERY

### FDIC Extends and Amends Transaction Account Guarantee Program

April 2010

At its board of directors meeting on April 13, the Federal Deposit Insurance Corporation ("FDIC") acted to extend the duration, and modify the terms, of the Transaction Account Guarantee Program ("TAG"). The TAG had been scheduled to expire on June 30, 2010. Participating insured depository institutions ("IDI") must decide by Friday, April 30, whether they wish to opt out of the extension of the TAG. All IDIs currently participating in TAG will need to revise their account disclosures, whether or not they choose to continue in the program. In addition to the extension of the term, the FDIC also amended certain account eligibility and reporting elements of the TAG.

#### Background

The TAG was established by the FDIC in October, 2008, as part of the Federal government's efforts to address the serious disruptions then afflicting the financial services sector. Under the TAG, the FDIC guarantees all funds held at participating IDIs (beyond the standard maximum deposit insurance limit) in qualifying non-interest bearing transaction accounts (and certain low interest rate NOW accounts). The TAG sought to address concerns that, in light of the economic uncertainty then prevailing, large numbers of account holders might withdraw balances in excess of the standard maximum deposit insurance limit. Such withdrawals could have further destabilized the financial markets and impaired the funding structure of smaller banks which rely on such deposits. Initially scheduled to expire on December 31, 2009, the TAG has already been extended once by the FDIC to its current expiry on June 30, 2010.

The FDIC indicates that the TAG has been widely accepted. Approximately 80% of IDIs have chosen to participate in the TAG. At the end of 2009, participating IDIs held an estimated \$266 billion in deposits above the insured deposit limit and guaranteed by the FDIC under TAG.

In taking this action, the FDIC indicated that despite overall improved economic conditions, it regarded extension of the TAG as necessary because lingering effects of the financial crisis have spread from large, systemically important banks to

IDIs of all sizes. Particular concern was expressed regarding community banks and savings institutions if the TAG were allowed to expire in the current economic circumstances.

#### New Extension and Amendments

The interim rule adopted by the FDIC extends the expiry date of TAG to December 31, 2010. It also contains authority for the FDIC to extend the expiry date for an additional 12-month period (that is, to December 31, 2011) without further rule-making, upon a finding by the FDIC of a continuing need for the program. Any such further extension, if authorized, would be announced by October 29, 2010.

In extending TAG, the FDIC chose not to alter the current risk-based, tiered-pricing assessment, ranging from 15 to 25 basis points. The FDIC did, however, change the reporting methodology for participating IDIs.

Under the existing program, participating IDIs report the total dollar amount and total number of TAG-qualifying accounts as of the end of each calendar quarter. Beginning with the September 30, 2010 report date for Reports of Condition, however, IDIs that do not opt out of the TAG extension will be required to report such information as an average daily balance. IDIs that do not opt out of the TAG extension must implement the procedures required to gather the necessary daily data beginning on July 1, 2010.

The amendments also change the treatment of NOW accounts under the TAG. Currently, the FDIC guarantee under the TAG is available for NOW accounts bearing interest at rates no higher than 50 basis points at participating IDIs which have committed to maintain the rate at or below 50 basis points through June 30, 2010. Under the TAG extension, a qualifying NOW account will be one bearing interest at a rate no higher than 25 basis points held at a participating IDI which has committed to maintain the rate at no higher than 25 basis points until the expiry of the TAG. This means that the commitment to hold the rate at 25 basis points or less would continue until December 31, 2011, if the FDIC exercises its discretion to extend the TAG expiry date for the further twelve-month period. These changes will require appropriate modifications to the NOW account documents and disclosures of IDIs participating in the extended TAG.



The FDIC has afforded IDIs a one-time, irrevocable election to opt out of the TAG extension. A bank or savings institution which chooses to remain in the TAG will be obligated to continue to participate through December 31, 2010 and for the additional twelve-month period (that is, until December 31, 2011) if the FDIC exercises its discretion so to extend the TAG.

An IDI wishing to remain in the TAG need not submit any election. An IDI wishing to opt out of the extension may do so by sending an email message containing information specified in the interim rule to a special email address at the FDIC on or before April 30, 2010. Once the message is received and processed, the FDIC will contact the IDI to confirm its decision to opt out.

Whether or not a participating IDI chooses to continue in the extended TAG, it is required to modify its customer disclosures. A participating IDI that continues in TAG must modify its disclosures on or before May 20, 2010, to reference December 31, 2010 as the TAG expiration date. The FDIC may require further disclosure changes by participating IDIs in the future if the FDIC chooses to extend further the TAG expiration date.

Each participating IDI that elects to opt out of the TAG extension is also required, on or before May 20, 2010, to amend its disclosures. The amended disclosures must inform its customers and depositors that, beginning on July 1, 2010, it will no longer participate in the TAG, and that deposits in noninterest-bearing transaction accounts will no longer be guaranteed in full by the FDIC, but will be insured up to \$250,000 under the FDIC's general deposit insurance rules.

The FDIC's interim rule contains sample forms of the general TAG disclosures to be made by participating IDIs, whether continuing in the TAG or electing to opt out of the extension. The FDIC has not, however, provided sample disclosures for NOW accounts.

## Conclusions

The extension and modification of the TAG by the FDIC presents participating banks and savings institutions with an important decision to make in a relatively short time. Each institution will want to consider the manner in which the revised program interacts with its own financial condition and business plans. Whether or not a participating institution decides to continue, conforming changes will be required promptly to existing account documentation and customer disclosures.

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