

FDIC Issues Final Rules for the Temporary Liquidity Guarantee Program

On November 21, 2008, the FDIC issued a final rule on the Temporary Liquidity Guarantee Program. The final rule requires that financial institutions comply with certain disclosure requirements by December 19, 2008 and the FDIC provided model language for some of these required disclosures.

Metavante Regulatory Services
(407) 831-3001

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Transaction Account Guarantee Program Disclosures

The first type of disclosure required is for non-interest bearing transaction accounts.

Every financial institution that offers non-interest bearing transaction accounts must post a lobby notice in its main office and in each of its branches indicating whether the institution participates in the transaction account guarantee program. In addition, if the institution offers Internet deposit services, the notice must also be posted on its website.

If you participate in this program, your lobby and website notice could state:

[Institution Name] is participating in the FDIC's Transaction Account Guarantee Program. Under that program, through December 31, 2009, all noninterest-bearing transaction accounts are fully guaranteed by the FDIC for the entire amount in the account. Coverage under the Transaction Account Guarantee Program is in addition to and separate from coverage available under the FDIC's general deposit insurance rules.

If you are not participating in the program, your lobby and website notice could state:

[Institution Name] has chosen not to participate in the FDIC's Transaction Account Guarantee Program. Customers of [Institution Name] with noninterest-bearing transaction accounts will continue to be insured through December 31, 2009 for up to \$250,000 under the FDIC's general deposit insurance rules.

The final rule does not require the use of this specific language. However, we recommend that you use it as it complies with all of the FDIC's requirements.

Sweep Accounts Disclosures

The second type of disclosure required by the final rule is for sweep accounts.

Financial institutions sometimes offer sweep arrangements or other types of arrangements where the funds are transferred or "swept" from one account to another account or product. A sweep arrangement can include many different types of transfer arrangements, whether between two insured products like a non-interest bearing transaction account and a money market account, or from a non-interest bearing transaction account to an uninsured product, like a repurchase agreement or a securities account.

Regardless how the sweep arrangement is structured, the customer's funds, once swept out of the non-interest bearing transaction account, will lose the unlimited protection. The new rules require special sweep disclosures whenever funds are transferred "to an account that is not guaranteed under the transaction account guarantee program." As a result, financial institutions that opt into the FDIC's program and participate in these kinds of arrangements should disclose in writing to customers that fall under these types of arrangements that such transfers will leave their funds exposed while the funds are out of the non-interest bearing transaction account. Financial institutions that opt out of the FDIC program do not have to provide the disclosure, even if they offer sweep or other types of transfer arrangements.

The FDIC did not provide sample language for these types of arrangements. Nevertheless, we suggest that you consider using language such as:

**NOTICE TO CUSTOMERS
WITH TRANSFER OR SWEEP ARRANGEMENTS**

This is to advise you that FURST Bank participates in the FDIC's Transaction Account Guarantee Program. Under that program, your noninterest-bearing transaction accounts with FURST Bank have unlimited FDIC deposit insurance. This insurance is in addition to the FDIC's normal deposit insurance coverage of \$250,000. However, if you have noninterest-bearing transaction accounts with a transfer or sweep arrangement to an interest-bearing transaction account or product, that transfer could decrease your FDIC deposit insurance coverage.

You should, of course, adjust the above wording to accurately reflect the type of sweep arrangement offered by your institution. If you opt in to the FDIC program, remember to deliver this disclosure to each customer who has this type of arrangement with your institution.

Additional Disclosures

Disclosures are also required when there are special situations in which the Transaction Account Guarantee Program may or may not apply. The example provided by the FDIC is that of a financial institution that issues official checks drawn on another insured depository institution. If that other institution is participating in the Transaction Account Guarantee Program, then the payee of the official check would be fully covered. However, if the other institution is not participating in the program, then the amount of insurance would depend on the FDIC's general rules. If you are an institution that provides official checks to customers drawn on another financial institution, or you have any other special circumstances where the unlimited insurance coverage could be affected, you must disclose this information to those customers buying those products. No model language has been provided by the FDIC but here is what we suggest:

**NOTICE TO CUSTOMERS
PURCHASING OFFICIAL CHECKS (if the other institution participates)**

This official check is issued through another institution that participates in the FDIC's Transaction Account Guaranty Program. This means that the payee of the check is fully insured until December 31, 2009.

NOTICE TO CUSTOMERS***PURCHASING OFFICIAL CHECKS (if the other institution does NOT participate)***

This official check is issued through another institution that does not participate in the FDIC's Transaction Account Guaranty Program. This means that whether the payee on the check is insured for the amount of the check will be based on the FDIC's general deposit insurance rules.

You can get more information in the FDIC's new final rule on the Temporary Liquidity Guarantee, which you can find at <http://www.fdic.gov/news/board/08BODtlgp.pdf>.