Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #1109
February 2009
12 USC 24(7)
12 CFR 1

January 8, 2009

Subject: FDIC Temporary Liquidity Guarantee Program

Dear **[ ]**:

You have asked whether the guarantee of a qualifying debt security by the FDIC under its Temporary Liquidity Guarantee Program ("TLGP") would transform the security into a Type I security for purposes of the OCC's investment securities regulations at 12 CFR Part 1. We conclude that in cases where the security's tenor is coextensive with the term of the guarantee, the security will qualify as a Type I security. In cases where the security's tenor exceeds the term of the FDIC guarantee, the security will not qualify as a Type I security.

Background

On November 21, 2008, the FDIC adopted a final rule implementing its TLGP.[1] The program covers all newly issued senior unsecured debt issued by eligible entities after Oct. 13, 2008, and before July 1, 2009. For banks that do not opt out of the program, the new debt issued before July 2009 will be protected to maturity or June 30, 2012, whichever is earlier. In no event would the guarantee extend beyond June 30, 2012.[2] This leads to the possibility that some newly issued, eligible debt will carry the FDIC guarantee for its entire tenor and other eligible debt will be protected only for a portion of its tenor. The final rule states that the FDIC intends that its guarantee will cover the timely payment of principal and interest on eligible debt. Moreover, the disclosure required for debt issued under the TLGP includes the statement that the debt is backed

[1] *See* 73 Fed Reg 72244.

[2] *See* 73 Fed Reg 72245.

by the full faith and credit of the United States pursuant to section 15(d) of the Federal Deposit Insurance Act.[3]

OCC regulations define a Type I security to include obligations issued, insured or guaranteed by a department or an agency of the United States Government, if the obligation, insurance or guarantee commits the full faith and credit if the United States for the repayment of the obligation.[4] Subject to the safety and soundness restrictions of 12 CFR 1.5(a), a national bank's purchase and holding of Type I securities is not limited to a specified percentage of the bank's capital and surplus.[5]

Discussion

OCC regulations support a conclusion that an FDIC guarantee can transform a debt security into a Type I security when the guarantee and the security's tenor are coextensive. The plain language of section 1.2(j)(2) includes within Type I securities obligations guaranteed by an agency of the United States in cases where the "guarantee commits the full faith and credit of the United States." The FDIC has announced that qualifying debt under the TLGP will be backed by the full faith and credit of the U.S. government. Accordingly, qualifying debt will qualify as a Type I security in cases where the guarantee is coextensive with the qualifying debt's maturity.

However, as a matter of safety and soundness, banks should avoid acquiring excessive concentrations in TLGP qualifying debt, even though it may qualify as a Type I security.[6] For example, a bank with excessive holdings of such debt may experience greater difficulty in selling its position promptly than it would with a sale of a U.S. government security. In this vein, the federal banking agencies in their risk-based capital rules have decided to apply a 20% risk weight to debt that is guaranteed by the FDIC, rather than a zero risk weight applicable to U.S. government securities.[7]

A separate question is whether a debt security whose tenor exceeds the term of the FDIC's guarantee can qualify as a Type I security for the period during which the guarantee is effective. We conclude that such a security does not qualify as a Type I security as defined in section 1.2(j)(2), since the U.S. Government does not guarantee payment of *all* interest and principal of the debt obligation for the life of the security, but only the principal and interest that would accrue during the term of the guarantee. Reading the definition of a Type I security to include securities that receive, in effect, a partial guarantee would lead to a host of supervisory issues. For example, a bank that holds a security with a tenor that exceeds the duration of the

[3] 12 USC 1825(d). *See* 73 Fed Reg 72250.

[4] *See* 12 CFR 1.2(j)(2).

[5] *See* 12 CFR 1.3(a).

[6] *See* 12 CFR 1.5(a).

[7] *See* 12 Fed. Reg. 72255-6.

FDIC guarantee would need a plan to dispose of the security, perhaps at a loss, before the security reverts from Type I status.

Conclusion

We conclude that in cases where a debt security is covered by the TLGP and the security's tenor is coextensive with the term of the guarantee, the security will qualify as a Type I security. In cases where the security's tenor exceeds the term of the FDIC guarantee, the security will not qualify as a Type I security. If you have any questions about this matter, please contact Donald N. Lamson, Assistant Director, Securities and Corporate Practices Division at 202-874-5210.

Sincerely,

signed

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel