Garland W. Binns, Jr.
Dover Dixon Horne PLLC
Attorneys at Law
425 West Capitol, Suite 3700
Little Rock, Arkansas 72201
Telephone: (501) 375-9151
Facsimile: (501) 372-7142
Email: gbinns@ddh-ar.com
Web Site: www.GWBinns.com

FEBRUARY 2009

U P D A T E

News of Developments in the Financial Sector and Related Areas

* IN THIS ISSUE *

FDIC Temporary Liquidity Guarantee Program

The Federal Deposit Insurance Corporation ("FDIC") has adopted a final rule to implement its Temporary Liquidity Guarantee Program. The final rule is designed to avoid or mitigate adverse effects on economic conditions or financial stability and has two primary components. The first component is the Debt Guarantee Program by which the FDIC guarantees the payment of certain newly-issued senior unsecured debt. The second component is the Transaction Account Guarantee Program ("TAGP") by which the FDIC guarantees in total certain noninterest-bearing transaction accounts.

Each institution that elects to participate in the Debt Guarantee Program must include the following disclosure statement it provides to lenders or creditors regarding any senior unsecured debt issued by it on or after December 19, 2008 through June 30, 2009, that is guaranteed under the program: *This debt is guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The expiration date of the FDIC's guarantee is the earlier of the maturity of the debt or June 30, 2012.*

For all written materials that each institution provides to lenders or creditors regarding any senior unsecured debt issued by it on or after December 19, 2008 through June 30, 2009, that is *not* guaranteed under the Debt Guarantee Program, the institution must include the following disclosure statement: *This debt is not guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program.*

Each institution must also predominantly disclose in writing in the lobby of its main office, at each branch and on its website (if the institution offers internet deposit services) whether it has elected to participate in the Temporary Liquidity Guarantee Program. For participating institutions, the final rule provides the following sample disclosure: *[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.*

For institutions not participating in the Transaction Account Guarantee Program, the final rule offers the following sample disclosure: *[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.* In addition, each entity which participates in the Transaction Account Guarantee Program that sweeps funds from noninterest-bearing transaction accounts into interest-bearing accounts or non-transaction accounts must disclosure this to affected customers and must clearly advise them in writing that such sweeps will void the FDIC's guarantee. However, a sweep from noninterest-bearing transaction accounts to noninterest-bearing savings accounts will be treated as fully insured.

The Debt Guarantee Program will guarantee all newly-issued senior unsecured debt, subject to applicable limits, that is issued by a participating institution on or after October 14, 2008 through June 30, 2009. Debt guaranteed under this program is guaranteed until the earlier of the maturity date of the debt or June 30, 2012. The limitation on the guarantee by the FDIC is limited in a total amount not to exceed 125% of the par value of the participating institution's senior unsecured debt outstanding, excluding debt extended to affiliates, as of September 30, 2008 and which scheduled to mature before June 30, 2009. For those participating institutions which had no senior unsecured debt outstanding or only had federal funds purchased as of September 30, 2008, the guarantee limit is 2% of the participating institution's consolidated total liabilities as of September 30, 2008.

A number of institutions erroneously elected that portion of the Debt Guarantee Program in which the institution could choose which senior unsecured debt was to be guaranteed believing that there would be no assessment by the FDIC if the institution had no senior unsecured debt outstanding as of September 30, 2008. These institutions did not realize that the FDIC would assess an extra charge on 2% of an institution's consolidated total liabilities in those situations where an institution had no senior unsecured debt. Subsequently, the FDIC has allowed institutions to correct this error in their election.

An institution that did *not* opt out of either the Debt Guarantee Program or the Transaction Account Guarantee Program will be required to pay those assessments as prescribed by the final rule.

Troubled Asset Relief Program

The Emergency Economic Stabilization Act which was signed into law on October 3, 2008 creates the Trouble Asset Relief Program ("TARP") giving the Treasury Department the authority to spend up to $700 billion for making loans and assisting financial institutions to help stimulate the economy. Of the original $350 billion allocated for distribution by the Treasury, a portion was utilized to support General Motors Corp., Chrysler and GMAC LLC, the financing arm of General Motors Corp. The U.S. Treasury is completing its investments in publically owned bank holding companies. Once the investments in publically held bank holding companies is completed, the Treasury will proceed with investments in privately owned bank holding companies. In order for the Treasury to make investments in private bank holding companies and for other purposes, approval of Congress will have to be obtained for utilization of the remaining $350 billion. Congress may impose additional restrictions on those institutions receiving TARP funds in the future.