




September 13, 2010

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson   
Director, Division of Supervision and  
Consumer Protection

 Richard J. Osterman, Jr.  
Acting General Counsel 

SUBJECT: NPR on Deposit Insurance of  
Noninterest-Bearing Transaction Accounts

RECOMMENDATION:

We recommend that the Board of Directors authorize the Executive Secretary to publish in the *Federal Register* a Notice of Proposed Rulemaking that would amend the FDIC's deposit insurance regulations to provide for the full deposit insurance of noninterest-bearing transaction accounts from December 31, 2010 through December 31, 2012 ("Proposed Rule"), as provided for in section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" Act).<sup>1</sup>

DISCUSSION:

The Dodd-Frank Act and the FDIC's TAGP

Section 343 of the Dodd-Frank Act amends the Federal Deposit Insurance Act to provide full deposit insurance coverage (beyond the Standard Maximum Deposit Insurance Amount ("SMDIA") of \$250,000) for the net amount held in a noninterest-bearing transaction account by any depositor at an insured depository institution ("IDI"). Section 343 of the Dodd-Frank Act is similar to the FDIC's Transaction Account Guaranty Program ("TAGP") (which is scheduled to terminate at year-end), but differs from it in three significant ways. First, unlike under the TAGP, section 343 applies to all IDIs. IDIs are not required to take any action (*i.e.*, opt in or opt out) to obtain coverage provided under section 343. Second, section 343 covers only traditional, noninterest-bearing demand deposit accounts. Unlike the TAGP, section 343 does not include within the definition of noninterest-bearing transaction account either low-interest NOW accounts or Interest on Lawyers Trust Accounts ("IOLTAs"). And, third, unlike under the TAGP, there is no separate FDIC assessment for the insurance of noninterest-bearing transaction accounts under section 343. Section 343 of the Dodd-Frank Act is effective from December 31, 2010, through December 31, 2012.<sup>2</sup>

<sup>1</sup> Pub. L. No. 111-203 (July 21, 2010).

<sup>2</sup> Because of overlapping termination and effective dates, on December 31, 2010, there will be overlapping coverage of the TAGP and section 343 of the Dodd-Frank Act. On January 1, 2011, coverage under the TAGP will have

The TAGP was originally set to expire on December 31, 2009. The Board extended the TAGP, first, through June 30, 2010, and then through December 31, 2010. The rule implementing this final extension also provided for the possibility of an additional extension not to exceed December 31, 2011, at the discretion of the FDIC Board of Directors upon a finding of continued need for the TAGP.<sup>3</sup> The rule also provided that the Board would announce any decision to implement such a further extension no later than October 29, 2010. The Proposed Rule would serve as a vehicle for the Corporation to announce that it will not continue the TAGP beyond December 31, 2010. Staff proposes that this announcement also be included in the Financial Institution Letter issued when the Proposed Rule is published.

### The Proposed Rule

The Proposed Rule would revise the Corporation's deposit insurance regulations to include noninterest-bearing transaction accounts as a new temporary deposit insurance account category. The Proposed Rule would explain that all funds held in noninterest-bearing transaction accounts would be fully insured, without limit, and that this unlimited coverage would be separate from, and in addition to, the coverage provided to depositors with respect to other accounts held at an IDI.

#### *Definition of noninterest-bearing transaction account*

The Proposed Rule would follow the definition of noninterest-bearing transaction account in section 343 of the Dodd-Frank Act, which does not include any interest-bearing accounts. The section 343 definition of noninterest-bearing transaction account encompasses only traditional, noninterest-bearing demand deposit (or checking) accounts that allow for an unlimited number of deposits and withdrawals at any time, whether held by a business, an individual or other type of depositor.

The Proposed Rule would expressly state that low-interest NOW accounts and IOLTAs, which are covered under the TAGP, would not be covered under this definition of noninterest-bearing transaction account.

#### *Disclosure and notice requirements*

The Proposed Rule would impose three notice and disclosure requirements to ensure that IDIs and depositors are aware of and understand what types of accounts will be covered by this temporary deposit insurance coverage for noninterest-bearing transaction accounts. As explained in more detail below: (1) IDIs must post a prescribed notice in their main office, each branch and, if applicable, on their Website; (2) IDIs currently participating in the TAGP must notify individual NOW account depositors (that are currently protected under the TAGP) and

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ended, but the deposit insurance coverage under section 343 of the Dodd-Frank Act will remain through December 31, 2012.

<sup>3</sup> *Id.*

IOLTA depositors that, beginning January 1, 2011, those accounts no longer will be eligible for unlimited protection; and (3) IDIs must notify customers individually of any action they take to affect the deposit insurance coverage of funds held in noninterest-bearing transaction accounts.

1. Posted notice

The Proposed Rule would require each IDI to post, prominently, a copy of the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Website:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE  
FOR TRANSACTION ACCOUNTS

In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act, from December 31, 2010, through December 31, 2012, all funds in “noninterest-bearing transaction accounts” are insured in full by the Federal Deposit Insurance Corporation. This unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to depositors under the FDIC’s general deposit insurance rules.

The term “noninterest-bearing transaction account” includes a traditional checking account (or demand deposit account) on which the insured depository institution pays no interest. **It does not include any transaction account that may earn interest**, such as a negotiable order of withdrawal (“NOW”) account, money-market deposit account, or Interest on Lawyers Trust Account (“IOLTA”), even if checks may be drawn on the account.

The temporary full insurance coverage of “noninterest-bearing transaction accounts” expires on December 31, 2012. After December 31, 2012, funds in noninterest-bearing transaction accounts will be insured under the FDIC’s general deposit insurance rules, subject to the Standard Maximum Deposit Insurance Amount of \$250,000.

For more information about FDIC insurance coverage of transaction accounts, visit [www.fdic.gov](http://www.fdic.gov).

2. Notice to depositors protected under the TAGP but not under the Dodd-Frank provision

As discussed above, low-interest NOW accounts and all IOLTAs are protected in full under the TAGP. These accounts, however, are not eligible for unlimited deposit insurance coverage under the Dodd-Frank provision. Thus, starting January 1, 2011, all NOW accounts and IOLTAs

will be insured under the general deposit insurance rules and no longer will be eligible for unlimited protection. Because of the potential depositor confusion about this change in the FDIC's treatment of NOWs and IOLTAs, the Proposed Rule would require IDIs currently participating in the TAGP to provide individual notices to depositors with NOW accounts (which due to their interest rate restrictions are currently protected in full under the TAGP) and IOLTAs that those accounts will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts, but instead will be insured under the general insurance rules up to the SMDIA of \$250,000. IDIs would be required to provide such notice to applicable depositors by mail no later than December 31, 2010.

3. Notice to sweep account and other depositors whose coverage on noninterest-bearing transaction accounts is affected by an IDI action.

Under the TAGP regulations, if an IDI offers an account product in which funds are automatically transferred, or "swept," from a noninterest-bearing transaction account to another account (such as a savings account) or bank product that does not qualify as a noninterest-bearing transaction account, it must inform those customers that, upon such transfer, the funds will no longer be fully protected under the TAGP. The Proposed Rule contains a similar, though somewhat more expansive, requirement, mandating that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts. This notice requirement is intended primarily to apply when IDIs begin paying interest on demand deposit accounts, as will be permitted beginning July 22, 2011, under section 627 of the Dodd-Frank Act. Thus, under the proposed notice requirements, if an IDI modifies the terms of its demand deposit account agreement so that the account may pay interest, the IDI must notify affected customers that the account no longer will be eligible for full deposit insurance coverage as a noninterest-bearing transaction account.

#### Comment Period

The Proposed Rule would provide for a 15-day comment period. This limited time is necessitated by section 343's year-end effective date and the consequent need to publish a final rule as close as possible to November 1, 2010, so insured depository institutions will have adequate time to comply with the notice and disclosure requirements by December 31, 2010.

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