

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 330**

**RIN [insert]**

**Deposit Insurance Regulations; Unlimited Coverage for Noninterest-bearing  
Transaction Accounts**

**AGENCY: Federal Deposit Insurance Corporation (FDIC)**

**ACTION:** Notice of Proposed Rulemaking

**SUMMARY:** The FDIC is proposing to amend its regulations to implement section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),<sup>1</sup> providing for unlimited deposit insurance for “noninterest-bearing transaction accounts” for two years starting December 31, 2010. This unlimited coverage for “noninterest-bearing transaction accounts” is similar but not identical to the protection provided for such account owners under the FDIC’s Transaction Account Guarantee Program (“TAGP”). The proposed rule serves as a vehicle for the FDIC Board of Directors to announce that it will not extend the TAGP beyond the scheduled expiration date of December 31, 2010. Because of the differences between the TAGP and the new statutory provision, changes to the rules are necessary.

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<sup>1</sup> Public Law 111-203 (July 21, 2010).

**DATES:** Written comments must be received by the FDIC no later than October 15, 2010.

**ADDRESSES:** You may submit comments on the proposed rule, by any of the following methods:

- *Agency Web Site:* <http://www.FDIC.gov/regulations/laws/federal/notices.html>. Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include RIN # [insert] on the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/final.html>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. DiNuzzo, Supervisory Counsel, Legal Division (202) 898-7349 or [jdinuzzo@fdic.gov](mailto:jdinuzzo@fdic.gov); Walter C. Siedentopf, Honors Attorney, Legal Division (703) 562-2744 or [wasedentopf@fdic.gov](mailto:wasedentopf@fdic.gov); or James V. Deveney, Chief, Deposit Insurance Section, Division of Supervision and Consumer protection (202) 898-6687 or [jdeveney@fdic.gov](mailto:jdeveney@fdic.gov).

## SUPPLEMENTARY INFORMATION:

### **I. Background**

#### *The TAGP*

In October 2008, the FDIC adopted the Temporary Liquidity Guarantee Program (“TLGP”) following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (“Federal Reserve”).<sup>2</sup> Designed to assist in the stabilization of the nation’s financial system, the TLGP is composed of two distinct components: the Debt Guarantee Program and the TAGP. While all insured depository institutions (“IDIs”) were initially participants in both programs, the FDIC gave all IDIs the option to opt out of each program separately.

Under the TAGP, the FDIC guarantees all funds held at participating IDIs in qualifying noninterest-bearing transaction accounts. This protection is in addition to and separate from the insurance of funds in all other types of deposit accounts. A noninterest-bearing transaction account is defined under the TAGP as a transaction account maintained at an IDI with respect to which interest is neither accrued nor paid and on which the IDI does

not reserve the right to require advance notice of an intended withdrawal.<sup>3</sup> The TAGP definition of noninterest-bearing transaction account specifically includes low-interest negotiable order of withdrawal (“NOW”) accounts and Interest on Lawyers Trust Accounts (“IOLTAs”).<sup>4</sup>

Under the TAGP, each IDI that offers noninterest-bearing transaction accounts is required to post a conspicuous notice in the lobby of its main office and each branch office, and on its Web site, if applicable, that discloses whether the IDI is participating in the TAGP.<sup>5</sup> Disclosures for participating IDIs must contain a statement that indicates that all noninterest-bearing transaction accounts are fully guaranteed by the FDIC.<sup>6</sup> IDIs are also required to disclose actions that cause funds to be transferred from accounts that are guaranteed under the TAGP.<sup>7</sup> IDIs pay a separate assessment, or premium, to the FDIC for participating in the TAGP. This assessment is in addition to the assessment IDIs pay under the FDIC’s risk-based assessment system.<sup>8</sup>

The TAGP was originally set to expire on December 31, 2009.<sup>9</sup> The FDIC recognized that the TAGP was contributing significantly to improvements in the financial sector, but it also noted that many parts of the country were still suffering from the effects of economic turmoil. As a result, the FDIC extended the TAGP, first, through June 30,

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<sup>2</sup> See 12 U.S.C. 1823(c)(4)(G) (amended 2010). The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability, and the FDIC implemented the TLGP in response.

<sup>3</sup> 12 CFR 370.2(h).

<sup>4</sup> 73 FR 72244 (Nov. 26, 2008).

<sup>5</sup> 12 CFR 370.5(h)(5).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 12 CFR 370.7(c).

2010,<sup>10</sup> and then through December 31, 2010.<sup>11</sup> The rule implementing this last extension also provided for the possibility of an additional extension not to exceed December 31, 2011, without further rulemaking, at the discretion of the FDIC Board of Directors upon a finding of continued need for the TAGP.<sup>12</sup> The rule also provided that the Board would announce any decision to implement such a further extension no later than October 29, 2010.<sup>13</sup> The FDIC is using this proposed rule as the vehicle for announcing that it will not continue the TAGP beyond December 31, 2010.

### *The Dodd-Frank Act*

Section 343 of the Dodd-Frank Act amends the Federal Deposit Insurance Act (“FDI Act”) to include full deposit insurance coverage (beyond the Standard Maximum Deposit Insurance Amount (“SMDIA”)<sup>14</sup>) for the net amount held in a noninterest-bearing transaction account by any depositor at an insured depository institution. As explained more fully below, section 343 of the Dodd-Frank Act is similar to the TAGP, 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 IOLTAs. And, third, unlike under the TAGP, there is no separate FDIC

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<sup>9</sup> 73 FR 64179, 64182 (Oct. 29, 2008).

<sup>10</sup> 74 FR 45093 (Sept. 1, 2009).

<sup>11</sup> 75 FR 36506 (June 28, 2010).

<sup>12</sup> *Id.*

assessment (or premium) 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>15</sup>

## **II. The Proposed Rule**

### *Amendments to deposit insurance rules*

Section 343 of the Dodd-Frank Act amends the deposit insurance provisions of the FDI Act (12 U.S.C. 1821(a)(1)) to provide separate insurance coverage for noninterest-bearing transaction accounts. As such, the FDIC is proposing to revise its deposit insurance regulations in 12 CFR Part 330 to include this new temporary deposit insurance account category.

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

The proposed rule follows the definition of noninterest-bearing transaction account in section 343 of the Dodd-Frank Act. Section 343 defines a noninterest-bearing transaction account as “a deposit or account maintained at an insured depository institution with

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<sup>13</sup> *Id.*

<sup>14</sup> The SMDIA is defined as \$250,000. 12 CFR 330.1(n).

<sup>15</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 ended, but the deposit insurance coverage under section 343 of the Dodd-Frank Act will remain through December 31, 2012.

respect to which interest is neither accrued nor paid; on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the IDI does not reserve the right to require advance notice of an intended withdrawal.” This definition of noninterest-bearing transaction account is similar to the base definition of that term in the TAGP, but it includes no 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.

Unlike the definition of noninterest-bearing transaction account in the TAGP, the section 343 definition of noninterest-bearing transaction account does not include NOW accounts (regardless of the interest rate paid on the account) or IOLTAs. Therefore, under the proposed rule, neither NOW accounts nor IOLTAs are within the definition of noninterest-bearing transaction account. Also, like the TAGP, the proposed rule does not include money market deposit accounts (“MMDAs”) within the definition of noninterest-bearing transaction account.

As under the TAGP, under the proposed rule, whether an account is noninterest-bearing is determined by the terms of the account agreement and not by the fact that the rate on

an account may be zero percent at a particular point in time. For example, an IDI might offer an account with a rate of zero percent except when the balance exceeds a prescribed threshold. Such an account would not qualify as a noninterest-bearing transaction account even though the balance is less than the prescribed threshold and the interest rate is zero percent. Under the proposed rule, at all times, the account would be treated as an interest-bearing account because the account agreement provides for the payment of interest under certain circumstances. On the other hand, as under the TAGP, the waiving of fees would not be treated as the earning of interest. For example, IDIs sometimes waive fees or provide fee-reducing credits for customers with checking accounts. Under the proposed rule, such account features would not prevent an account from qualifying as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

This same principle for determining whether a deposit account qualifies as a noninterest-bearing transaction account will apply when IDIs no longer are prohibited from paying interest on demand deposit accounts. Pursuant to section 627 of the Dodd-Frank Act, as of July 21, 2011 (one year after the enactment date of the Dodd-Frank Act), IDIs no longer will be restricted from paying interest on demand deposit accounts. At that time, demand deposit accounts offered by IDIs that allow for the payment of interest will not satisfy the definition of a noninterest-bearing transaction account. As discussed below, under the proposed rule, IDIs would be required to inform depositors of any changes in the terms of an account that will affect their deposit insurance coverage under this new provision of the deposit insurance rules.



As under the TAGP, the proposed rule's definition of noninterest-bearing transaction account would encompass "official checks" issued by IDIs. Official checks, such as cashier's checks and money orders issued by IDIs, are "deposits" as defined under the FDI Act (12 U.S.C. 1813(l)) and Part 330 of the FDIC's regulations. The payee of the official check (the party to whom the check is payable) is the insured party. Because these checks meet the definition of a noninterest-bearing transaction account, the payee (or the party to whom the payee has endorsed the check) would be insured for the full amount of the check upon the failure of the IDI that issued the official check.

Under the FDIC's rules and procedures for determining account balances at a failed IDI (12 CFR Section 360.8), funds swept (or transferred) from a deposit account to either another type of deposit account or a non-deposit account are treated as being in the account to which the funds were transferred prior to the time of failure. So, for example, if pursuant to an agreement between an IDI and its customer, funds are swept daily from a noninterest-bearing transaction account to an account or product (such as a repurchase agreement) that is not a noninterest-bearing transaction account, the funds in the resulting account or product would not be eligible for full insurance coverage. This is how sweep account products are treated under the TAGP and under the proposed rule.

As under the TAGP, however, the proposed rule would include an exception from the treatment of swept funds in situations where funds are swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, notably a MMDA. Often

referred to as “reserve sweeps,” these products entail an arrangement in which a single deposit account is divided into two sub-accounts, a transaction account and an MMDA. The amount and frequency of sweeps are determined by an algorithm designed to minimize required reserves. In some situations customers may be unaware that this sweep mechanism is in place. Under the proposed rule, such accounts would be considered noninterest-bearing transaction accounts.<sup>16</sup> Apart from this exception for “reserve sweeps,” MMDAs and noninterest-bearing savings accounts do not qualify as noninterest-bearing transaction accounts.

#### *Insurance coverage*

As noted, pursuant to section 343 of the Dodd-Frank Act, all funds held in noninterest-bearing transaction accounts will be fully insured, without limit. As also specifically provided for in section 343 of the Dodd-Frank Act, this unlimited coverage is separate from, and in addition to, the coverage provided to depositors with respect to other accounts held at an insured depository institution. This means that funds held in noninterest-bearing transaction accounts will not be counted for purposes of determining the amount of deposit insurance on deposits held in other accounts, and in other rights and capacities, at the same IDI. Thus, for example, if a depositor has a \$225,000 certificate of deposit and a no-interest checking account with a balance of \$300,000, both held in a single ownership capacity, he or she would be fully insured for \$525,000 (plus interest accrued on the CD), assuming the depositor has no other single-ownership funds

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<sup>16</sup> See 12 CFR 360.8.

at the same institution. First, coverage of \$225,000 (plus accrued interest) would be provided for the certificate of deposit as a single ownership account (12 CFR 330.6) up to the SMDIA of \$250,000. Second, full coverage of the \$300,000 checking account would be provided separately, despite the checking account also being held as a single ownership account, because the account qualifies for unlimited separate coverage as a noninterest-bearing transaction account.

#### *No opting out*

Under the TAGP, IDIs could choose not to participate in the program. Because section 343 of the Dodd-Frank Act provides Congressionally mandated deposit insurance coverage, IDIs are not required to take any action (i.e., opt in or opt out) to obtain separate coverage for noninterest-bearing transaction accounts. From December 31, 2010, through December 31, 2012, noninterest-bearing transaction accounts at *all* IDIs will receive this temporary deposit insurance coverage.

#### *No separate assessment*

The FDIC imposes a separate assessment, or premium, on IDIs that participate in the TAGP.<sup>17</sup> The FDIC does not plan to charge a separate assessment for the insurance of noninterest-bearing transaction accounts pursuant to section 343 of the Dodd-Frank Act. The FDIC will take into account the cost for this additional insurance coverage in

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<sup>17</sup> 12 CFR 370.7

determining the amount of the general assessment the FDIC charges IDIs under its risk-based assessment system.<sup>18</sup>

### *Disclosure and notice requirements*

The FDIC is proposing notice and disclosure requirements to ensure that depositors are aware of and understand what types of accounts will be covered by this temporary deposit insurance coverage for noninterest-bearing transaction accounts. There are three such requirements. As explained in 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 NOW account depositors (that are currently protected under the TAGP because of interest rate restrictions on those accounts) and 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:

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<sup>18</sup> 12 CFR Part 327.

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 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. To comply with this requirement, IDIs may use electronic mail for depositors who ordinarily receive account information in this manner. The notice may be in the form of a copy of the notice required to be posted in IDI main offices, branches and on Websites.

### 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 (discussed above). 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. Though such notifications would be mandatory, the proposed rule does not impose specific requirements regarding the form of the notice. Rather, the FDIC would expect IDIs to act in a commercially reasonable manner and to comply with applicable state and federal laws and regulations in informing depositors of changes to their account agreements.

### **III. Request for Comments**

The FDIC invites comments on all aspects of the proposed rulemaking. Written comments must be received by the FDIC no later than October 15, 2010.

### **IV. Regulatory Analysis and Procedure**

#### *A. Paperwork Reduction Act*

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (“OMB”) control number. This Notice of Proposed Rulemaking (“NPR”) contains disclosure requirements, some of which implicate PRA as

more fully explained below. The NPR also announces that the TAG program will not continue beyond December 31, 2010, thereby eliminating the need for an associated, currently approved information collection.

The proposed new disclosure requirements are contained in sections 330.16(c)(1), section 330.16(2) and 330.16(c)(3). More specifically, section 330.16(c)(1) would require that each IDI post a “Notice of Changes In Temporary FDIC Insurance Coverage For Transaction Accounts” in the lobby of its main office and domestic branches and, if it offers Internet deposit services, on its Website; section 330.16(2) would require IDIs currently participating in the TAG program to provide individual notices to depositors alerting them to the fact that low-interest NOWs and IOLTAs will not be eligible for unlimited coverage under the new temporary insurance category for noninterest-bearing transaction accounts, but will instead be insured under the general insurance rules up to the SMDIA of \$250,000; and section 330.16(c)(3) would require that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts.

The disclosure requirement in section 330.16(c)(1) would normally be subject to PRA. However, because the FDIC has provided the specific text for the notice and allows for no variance in the language, the disclosure is excluded from coverage under PRA because “the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included” within the



definition of “collection of information. 5 CFR 1320.3(c)(2). Therefore, the FDIC is not submitting the section 330.16(c)(1) disclosure to OMB for review.

The disclosure requirement in section 330.16(c)(2) provides that IDIs currently participating in the TAG program provide individual notices to depositors alerting them to the fact that low-interest NOWs and IOLTAs will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts, but will instead be insured under the general insurance rules up to the SMDIA of \$250,000. The estimated burden for this new disclosure requirement will be added to the burden for an existing information collection, OMB No. 3064-0168, currently entitled SWEEP Accounts: Disclosure of Deposit Status. In conjunction with the revision of OMB No. 3064-0168, the FDIC will also seek to modify the title of the collection as more fully explained below.

The disclosure requirement in section 330.16(c)(3) would expand upon a similar, pre-existing requirement for sweep accounts offered by IDIs participating in the TAG program. The existing disclosure requirement is approved under OMB No. 3064-0168. The expanded disclosure requirement would be mandatory for all IDIs, although institutions would retain flexibility regarding the form of the notice. Therefore, in conjunction with publication of this NPR, the FDIC is submitting to OMB a request to revise OMB No. 3064-0168 to reflect the estimated burden associated with the expanded disclosure requirement and to modify the title of the collection to “Disclosure of Deposit Status” to more accurately reflect the broader application of the requirement.

Finally, the FDIC is using this NPR as a vehicle to announce that the TAG program will not be extended beyond December 31, 2010. Therefore, the FDIC will, simultaneous with publication of the NPR, request that OMB discontinue its existing “Transaction Account Guarantee Program Extension” information collection, OMB No. 3064-0170, as of that date.

The estimated burden for the proposed new disclosure under sections 330.16(c)(2) 330.16(3) is as follows:

*Title:* “Disclosure of Deposit Status”.

*Affected Public:* Insured depository institutions.

*OMB Number:* 3064-0168.

*Estimated Number of Respondents:*

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—7,830.

Disclosure to NOW account and IOLTA depositors of change in insurance category—6,249.

*Frequency of Response:*

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—on occasion (average of once per year per bank).

Disclosure to NOW account and IOLTA depositors of change in insurance category—once.

*Average Time per Response:*

Disclosure of action affecting deposit insurance *coverage* of funds in noninterest-bearing transaction accounts—8 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—8 hours.

*Estimated Annual Burden:*

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—62,640 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—49,992 hours.

*Total Annual Burden*—112,632 hours.

Comments are invited on:

(a) whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments may be submitted to the FDIC by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/propose.html>.

- *E-mail:* [comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.

- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the “Deposit Insurance Regulations—Unlimited Coverage for Noninterest-Bearing Transaction Accounts.”

#### *B. Regulatory Flexibility Act*

In accordance with section 3(a) of the Regulatory Flexibility Act (“RFA”), 5 U.S.C. 603(a), the FDIC must publish an initial regulatory flexibility analysis with this proposed rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA

analysis or certification, financial institutions with total assets of \$175 million or less are considered to be “small entities.” The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2010 there were 4,294 IDIs that were considered small entities. A total of 1,121 of these institutions do not participate in the TAGP and would receive additional insurance coverage under the proposed rule. Currently 3,173 small IDIs participate in the TAGP. Within this group of small institutions, 618, or 19.5 percent, did not have TAGP eligible deposits as of the June 2010 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, “June 2010 Call Reports”); thus, they were not required to pay the fee currently assessed for participation in the TAGP. As to the remaining 2,555 small entities that had TAG eligible deposits as of the June 2010 Call Reports, they would no longer be assessed a fee after the termination of the TAGP, and they would not be charged a separate assessment for the new deposit insurance coverage.

The FDIC has determined that were the proposed rule to be adopted, the economic impact on small entities would not be significant for the following reasons. Because there is no separate FDIC assessment for the insurance of noninterest-bearing transaction accounts under section 343 of the Dodd-Frank Act, small entities currently assessed fees for participation in the TAGP will realize an average annual cost savings of \$2,373 per institution. All other small entities, whether they are currently in the TAGP or not, will gain additional insurance coverage with no direct cost. The FDIC asserts that the

economic benefit of additional insurance coverage and coverage extension until 2013 would outweigh any future costs associated with the temporary insurance of noninterest-bearing transaction accounts.

With respect to amending the disclosures related to section 343, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they currently pay a fee) would be de minimis in nature and would be outweighed by the economic benefit of additional insurance coverage.

Accordingly, if adopted in final form, the proposed rule would not have a significant economic impact on a substantial number of small entities.

*C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

*D. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the FDIC to use “plain language” in all proposed and final rules published after January 1, 2000. The FDIC

invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposed text easier to understand.

### **List of Subjects in 12 CFR Part 330**

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 330 of title 12 of the Code of Federal Regulations as follows:

### **PART 330 – DEPOSIT INSURANCE COVERAGE**

■ 1. The authority citation for part 330 continues to read as follows:

AUTHORITY: 12 U.S.C. 1813(1), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. Amend section 330.1 by adding new paragraph (r) as follows:

#### **§ 330.1 Definitions.**

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(r) noninterest-bearing transaction account means a deposit or account maintained at an insured depository institution—

(I) with respect to which interest is neither accrued nor paid;

(II) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other

electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(III) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.

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■ 3. Amend part 330 by adding new section 330.16 as follows:

**§ 330.16 Noninterest-bearing transaction accounts.**

(a) Separate insurance coverage. From December 31, 2010, through December 31, 2012, a depositor's funds in a "noninterest-bearing transaction account" (as defined in § 330.1(r)) are fully insured, irrespective of the SMDIA. Such insurance coverage shall be separate from the coverage provided for other accounts maintained at the same insured depository institution.

(b) Certain swept funds. Notwithstanding its normal rules and procedures regarding sweep accounts under 12 CFR § 360.8, the FDIC will treat funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account as being in a noninterest-bearing transaction account.

(c) Disclosure and notice requirements —

(1) Each depository institution that offers noninterest-bearing transaction accounts must post prominently 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) Institutions participating in the FDIC’s Transaction Account Guarantee Program on December 31, 2010, must provide a notice by mail to depositors with negotiable order of withdrawal accounts that are protected in full as of that date under the Transaction Account Guarantee Program and to depositors with Interest on Lawyer Trust Accounts that, as of January 1, 2011, such accounts no longer will be eligible for unlimited protection, but instead will be insured under the general insurance rules up to the SMDIA of \$250,000. This notice must be provided to such depositors no later than December 31, 2010.

(3) If an institution uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage under

this section, the institution must notify affected customers and clearly advise them, in writing, that such actions will affect their deposit insurance coverage.

By order of the Board of Directors.

Dated at Washington D.C., this 27th day of September, 2010.

FEDERAL DEPOSIT INSURANCE CORPORATION

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Robert E. Feldman  
Executive Secretary

(SEAL)