

**6714-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 330**

**12 CFR Part 370**

**RIN 3064-AE34**

**Temporary Liquidity Guarantee Program; Unlimited Deposit Insurance Coverage for Noninterest-bearing Transaction Accounts**

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

**ACTION:** Final rule.

**SUMMARY:** The FDIC is rescinding and removing its regulations implementing the Temporary Liquidity Guarantee Program (TLGP) and the unlimited deposit insurance coverage for “noninterest-bearing transaction accounts” provided by section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and related definitions. Because these programs have expired by their terms, the regulations implementing them are unnecessary and obsolete.

**DATES:** Effective Date: The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In October 2008, acting in response to unprecedented disruptions to the nation's credit markets and pursuant to section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act),<sup>1</sup> the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System (FRB) recommended that the Secretary of the Treasury, following consultation with the President, make a determination that systemic risk existed in the nation's financial system. After the Treasury Secretary's determination of systemic risk, the FDIC was authorized to take action or to provide assistance as necessary to avoid or to mitigate the effects of the perceived risks to the financial system. Pursuant to this authority, the FDIC issued part 370 of Title 12 of the Code of Federal Regulations (part 370) which established the TLGP. The TLGP was composed of two distinct components: the Debt Guarantee Program (DGP) and the Transaction Account Guarantee Program (TAGP). The DGP provided a temporary FDIC guarantee for all newly issued senior unsecured debt issued by participating entities up to prescribed limits; the TAGP provided a temporary FDIC guarantee for all funds held at FDIC-insured depository institutions in noninterest-bearing transaction accounts above the existing deposit insurance limit.

From its inception, the TLGP was intended to be a time-limited program. The FDIC's initial guarantee under the DGP expired on the earlier of the maturity date of the debt or June 30, 2012, for newly issued senior unsecured debt issued through June 30, 2009, by entities that opted into the DGP.<sup>2</sup> To reduce market disruption at the conclusion of the DGP and to facilitate the

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<sup>1</sup> 12 U.S.C. §1823(c)(4)(G).

<sup>2</sup> 73 FR 72244 (Nov. 26, 2008).

orderly phase-out of the program, in 2009, the FDIC extended the issuance period for senior unsecured debt through October 31, 2009, and similarly extended the FDIC's guarantee on such obligations to the earlier of the stated maturity date of the debt or December 31, 2012.<sup>3</sup> Later in 2009, the FDIC established a limited six-month emergency guarantee facility, available to participating entities on an application basis. Although no entities applied to avail themselves of the FDIC's emergency guarantee facility, the FDIC would have permitted approved entities to issue FDIC-guaranteed debt through April 30, 2010, for which the FDIC's guarantee would have expired on the earlier of the stated maturity date of the debt or December 31, 2012.<sup>4</sup>

Under the TAGP, the FDIC's guarantee of all noninterest-bearing transaction accounts originally was scheduled to expire on December 31, 2009.<sup>5</sup> In recognition of the continuing effects of economic turmoil, the FDIC twice extended the expiration deadline for the TAGP: first, until June 30, 2010,<sup>6</sup> and, later, until December 31, 2010, "unless the Board, for good cause, extends the program for an additional period of time not to exceed one year."<sup>7</sup> On September 30, 2010, the FDIC indicated that the TAGP would not be extended beyond December 31, 2010.<sup>8</sup>

Over the course of the DGP's existence, 122 entities issued TLGP debt. At its peak, the DGP guaranteed \$345.8 billion of outstanding debt. The DGP guarantee on all TLGP debt that had not already matured expired on December 31, 2012. Therefore, at the end of 2012, no debt guaranteed by the FDIC under the DGP remained.

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<sup>3</sup> 74 FR 26521 (Jun. 3, 2009).

<sup>4</sup> 74 FR 54743 (Oct. 23, 2009).

<sup>5</sup> 73 FR 72244 (Nov. 26, 2008).

<sup>6</sup> 74 FR 45093 (Sept. 1, 2009).

<sup>7</sup> 75 FR 36506 (Jun. 28, 2010).

<sup>8</sup> 75 FR 60341 (Sept. 30, 2010).

The FDIC collected \$10.4 billion in fees and surcharges under the DGP. As of December 31, 2012, the FDIC had paid \$153 million in losses resulting from six participating entities defaulting on debt issued under the DGP. The majority of these losses (\$113 million) arose from banks with outstanding DGP notes that failed in 2011 and were placed into receivership.

The FDIC collected \$1.2 billion in fees under the TAGP. Cumulative estimated TAGP losses on failures as of December 31, 2012, totaled \$2.1 billion.

Overall, TLGP fees exceeded the losses from the program. From the inception of the TLGP, it was the FDIC's policy to recognize revenue to the Deposit Insurance Fund (DIF) for any portion of guarantee fees in excess of amounts needed to cover potential losses upon expiration of the TLGP guarantee period (December 31, 2012) or earlier. In total, \$9.3 billion in TLGP fees were deposited into the DIF.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was enacted.<sup>9</sup> Section 343 of the Dodd-Frank Act provided for unlimited deposit insurance for noninterest-bearing transaction accounts for two years starting December 31, 2010, after which, by its terms, the section was repealed. This unlimited coverage for “noninterest-bearing transaction accounts” as defined in the Dodd-Frank Act was similar to, but not identical to, the protection provided for such account owners under the FDIC's TAGP. On November 15, 2010, the FDIC published a final rule in the Federal Register amending 12 CFR part 330 to implement section 343 of the Dodd-Frank Act, providing for unlimited deposit insurance for “noninterest-bearing transaction accounts” for two years starting December 31, 2010.<sup>10</sup> The

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<sup>9</sup> Public Law 111-203 (July 21, 2010).

<sup>10</sup> 75 FR 69577 (Nov. 15, 2010) (adding 12 CFR 303.1(r), 303.16). The FDIC used its proposed rule implementing the Dodd-Frank coverage for noninterest-bearing transaction accounts as a vehicle for the FDIC's Board of Directors to announce that it would not continue the TAGP beyond December 31, 2010. 75 FR 60341 (Sept. 30, 2010).

final rule added a new definition of noninterest-bearing transaction account to the FDIC's regulations at §330.1(r) (now §330.1(s)). The final rule also added new §330.16 to provide for full insurance coverage, regardless of the standard maximum deposit insurance limit, to noninterest-bearing transaction accounts from December 31, 2010, through December 31, 2012.

On January 27, 2011, the FDIC published a final rule in the Federal Register (1) amending the definition of "noninterest-bearing transaction account" to include IOLTA accounts; (2) requiring that notice be posted regarding the scope of coverage of the Dodd-Frank Act transaction account guarantee program at the bank's main office, in branch lobbies, and on its web site; and (3) requiring that notice be provided to holders of NOW accounts that such accounts are no longer covered.<sup>11</sup>

The expiration dates for the DGP and the TAGP were stated clearly in the FDIC's TLGP regulation. Because December 31, 2010 (the expiration date of the TAGP) and December 31, 2012 (the expiration of the DGP) have passed, all of the FDIC's obligations under either component of the TLGP have expired. With the expiration of both the DGP and the TAGP, part 370 is unnecessary and obsolete.

Similarly, §330.16(a) clearly provides that the unlimited deposit insurance for noninterest-bearing transaction accounts under the Dodd-Frank Act expired on December 31, 2012. After that date, by its terms, the section was repealed. As such, §330.16 and the definition of "noninterest-bearing transaction account" at §330.1(s) are unnecessary and obsolete.

## **II. The Final Rule**

For the reasons set forth in the preceding section, the FDIC is issuing the final rule, which will rescind part 370, §330.16, and §330.1(s) and remove them from the FDIC's regulations.

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<sup>11</sup> 76 FR 4813 (Jan. 27, 2011) (amending 12 CFR 303.1(r), 303.16).

### **III. Regulatory Analysis**

#### **A. Administrative Procedure Act**

##### **1. Notice and Opportunity for Public Comment**

Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act (APA), providing notice and an opportunity for public comment is not required prior to the issuance of a substantive rule if an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In this instance, the FDIC invokes this good cause exception to Section 553 of the APA.

The FDIC believes that good cause exists for issuing a final rule without providing notice and an opportunity for public comment because such an exercise is “unnecessary.” By the express terms of both regulations, the underlying programs described in part 370 and §330.16 have expired, and, because of that, the rescission of these rules can have no effect on the banking industry or the public. Moreover, the rescission of part 370, §330.1(s), and §330.16 is not “substantive” as the programs that these regulations implemented have expired and they affect no substantive rights or obligations.

##### **2. Effective Date**

In addition, section 553(d)(3) of the APA provides that an agency, for good cause found and published with the rule, does not have to comply with the requirement that a substantive rule be published not less than 30 days before its effective date. The FDIC invokes this good cause exception because the rescission of part 370, §330.1(s), and §330.16 is not “substantive” as the

programs that these regulations implemented have expired and they affect no substantive rights or obligations.<sup>12</sup>

### **B. The Economic Growth and Regulatory Paperwork Reduction Act**

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),<sup>13</sup> the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions. The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and has commenced the next decennial review. Rescission of part 370 and §330.16 is consistent with the required regulatory response to the EGRPRA review process: to eliminate unnecessary regulations to the extent such action is appropriate.

### **C. Small Business Regulatory Enforcement Fairness Act**

The Office of Management and Budget has determined that the Final Rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA).<sup>14</sup> As required by law, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Final Rule may be reviewed.

### **D. Paperwork Reduction Act**

Existing collections of information shall be discontinued or modified, as appropriate, to the extent that this rule obviates or alters any collection of information.

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<sup>12</sup> 5 U.S.C. §553(d)(3).

<sup>13</sup> 12 U.S.C. §3311.

<sup>14</sup> Public Law No. 104-121 (Mar. 29, 1996), as amended by Public Law No. 110-28 (May 25, 2007).

## **E. Regulatory Flexibility Act**

The Regulatory Flexibility Act<sup>15</sup> (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b), or any other law.<sup>16</sup> As discussed above, consistent with section 553(b)(3)(B) of the APA, the FDIC has determined for good cause that general notice and opportunity for public comment would be unnecessary. Therefore, pursuant to 5 U.S.C. 601(2), the RFA does not apply.

### **List of Subjects**

#### **12 CFR Part 330**

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

#### **12 CFR Part 370**

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations

### **Authority and Issuance:**

For the reasons set forth in the preamble above, the Board of Directors of the Federal Deposit Insurance Corporation amends chapter III 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(*I*), 1813(*m*), 1817(*i*), 1818(*q*), 1819(*a*)(Tenth), 1820(*f*), 1820(*g*), 1821(*a*), 1821(*d*), 1822(*c*).
2. Remove and reserve section 330.1(*s*).
3. Remove and reserve section 330.16.

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<sup>15</sup> Public Law No. 96-354 (Sept. 19, 1980).

<sup>16</sup> 5 U.S.C. §601(2).

**PART 370 – TEMPORARY LIQUIDITY GUARANTEE PROGRAM**

4. Remove and reserve part 370.

Dated at Washington, D.C., this \_\_\_\_ day of June 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

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Robert E. Feldman,

Executive Secretary.