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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 211

RIN 3206–AL33

Veterans' Preference

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as a final rule an interim rule that implemented a change to the definition of ''active duty'' for veterans' preference entitlement contained in § 211.102(f) of title 5, Code of Federal Regulations.

DATES: Final rule effective October 29, 2008.

FOR FURTHER INFORMATION CONTACT: Scott A. Wilander, Ed.D., by telephone at (202) 606–0960; by fax at (202) 606–0390; TTY at (202) 606–3134; or by e-mail at *Scott.Wilander@opm.gov*.

SUPPLEMENTARY INFORMATION: On July 27, 2007, OPM issued an interim rule with request for comments at 72 FR 41215, to amend its regulations regarding veterans' preference. This rule expanded the definition of ''active duty'' contained in 211.102(f) of title 5, Code of Federal Regulations, for a ''disabled veteran'' as defined by 5 U.S.C. 2108(2), to include active duty for training.

OPM received two written comments pertinent to the interim changes. A discussion of these comments is provided below.

One individual asked OPM to consider changing the definition of ''active duty'' to include active duty for training for a ''veteran,'' defined by 5 U.S.C. 2108(1)(A), who ''served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955.'' The commenter noted that such a change was necessary because both 5 U.S.C. 2108(2) and 2108(1)(A) use the term ''active duty'' without modification. We agree and have revised the regulation accordingly.

Another commenter noted that some individuals who are eligible under these provisions may not have received the documentation (e.g., DD–214) required to claim veterans' preference due to the relatively short duration of their service. We understand it may be difficult for these individuals to claim veterans' preference without a DD–214 but we note that OPM provides guidance (e.g., the Delegated Examining Operations Handbook) to agencies for accepting alternatives to the DD–214. We will consider adding similar guidance in VetGuide and VetsInfo Guide to better help job-seeking veterans.

OPM received one written comment from an individual that went beyond the scope of the amendments contained in the interim rule. Because this comment was not pertinent to the interim amendments, OPM is not responding to it. The commenter asked OPM to require agencies, by regulation, to notify job-seeking veterans of the status of their job applications and whether their veterans' preference was considered in the selection process.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because it affects only Federal employees.

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by OMB under 3206–AL33. This final regulation does not modify this approved collection.

List of Subjects in 5 CFR Part 211

Government employees, Veterans.

U.S. Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, the interim rule amending part 211 of title 5, Code of Federal Regulations, which was published at 72 FR 41215 on July 27, 2007, is adopted as a final rule with the following changes:

PART 211—VETERAN PREFERENCE

■ 1. The authority citation for part 211 continues to read as follows:

Authority: 5 U.S.C. 1302.

■ 2. In § 211.102, revise paragraph (f) to read as follows:

§ 211.102 Definitions.

* * * * *

(f) *Active duty or active military duty*—(1) *Active duty or active military duty* for veterans defined in paragraphs (a)(1) through (3) and disabled veterans defined in paragraph (b) of this section means active duty with military pay and allowances in the armed forces, including training or for determining physical fitness and including service in the Reserves or National Guard.

(2) Active duty or active military duty for a veteran defined in paragraph (a)(4) through (6) of this section means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guard.

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[FR Doc. E8–25753 Filed 10–28–08; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Temporary Liquidity Guarantee Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is issuing this Interim Rule following a determination of systemic risk pursuant to section 13(c)(4)(G) of the Federal Deposit Insurance Act. As a result of this

systemic risk determination, and in an effort to avoid or mitigate serious adverse effects on economic conditions or financial stability, the FDIC is establishing the Temporary Liquidity Guarantee Program. As further described in the Interim Rule, the Temporary Liquidity Guarantee Program has two primary components: the Debt Guarantee Program, by which the FDIC will guarantee the payment of certain newly-issued senior unsecured debt, and the Transaction Account Guarantee Program, by which the FDIC will guarantee certain noninterest-bearing transaction accounts.

DATES: The Interim Rule becomes effective on October 23, 2008, except for paragraphs (h)(2) and (h)(3) of § 370.5 which will become effective December 1, 2008. Coverage under the Temporary Liquidity Guarantee Program was established by the Board of Directors of the FDIC as of October 14, 2008. Comments on the rule must be received by November 13, 2008.

ADDRESSES: You may submit comments on the Interim 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.* Include RIN # 3064–AD37 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/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Diane Ellis, Associate Director, Financial Risk Management, Division of Insurance and Research, (202) 898–8978 or *dellis@fdic.gov;* William V. Farrell, Manager, Assessment Operations Section, Division of Finance, (703) 562–6168 or *wfarrell@fdic.gov;* Donna Saulnier. Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or *dsaulnier@fdic.gov;* Richard Bogue, Counsel, Legal Division, (202) 898–3726 or *rbogue@fdic.gov;* Robert Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@fdic.gov;* A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov;* Gail Patelunas, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6779 or *gpatelunas@fdic.gov;* John Corston, Associate Director (Large Bank Supervision), Division of Supervision and Consumer Protection, (202) 898–6548 or *jcorston@fdic.gov;* Serena L. Owens, Associate Director, Supervision and Applications Branch, Division of Supervision and Consumer Protection, (202) 898–8996 or *sowens@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In light of the unprecedented disruption in the nation's credit markets, the Congress, the Department of the Treasury, and the Federal Deposit Insurance Corporation (FDIC), along with other federal banking regulators, have taken steps to preserve the nation's confidence in its financial institutions and in the American and global economy. Congress recently passed the Emergency Economic Stabilization Act of 2008; [1] the Department of the Treasury provided for capital injections into banks; the Board of Governors of the Federal Reserve System made available commercial paper facilities; Congress temporarily raised deposit insurance limits and the FDIC issued interim regulations accordingly.[2] Nonetheless, many insured depository institutions have responded to the market turmoil by retaining cash and severely tightening their lending standards. Disruptions in money markets have significantly impaired the ability of creditworthy companies to issue commercial paper, particularly at longer maturities. Interest rates on commercial paper continue to be extremely high. Issuances of residential and commercial mortgage-backed securities in the first half of 2008 have fallen by more than 90 percent from levels one year ago, and issuances of asset-backed securities have fallen 68 percent over the same period. As a result of this market volatility, economic concern has intensified, and short-term funding markets have slowed significantly.

FDIC analysis suggests that a five percent reduction in uninsured deposits would reduce Gross Domestic Product growth by 1.2 percent per year in a normal economy and 2.0 percent per year in a stressed economy. With U.S. economic growth currently stressed, a run of this magnitude could result in, or deepen and prolong, recession. FDIC data indicate rapid and substantial outflows of uninsured deposits from institutions that are perceived to be stressed. The systemic nature of this threat is further evidenced by the increasing number of bank failures.

II. Systemic Risk Determination

The severity of today's financial conditions affects more than just a single insured depository institution: the financial stability of a significant number of financial institutions is being threatened, and the nation's entire financial system appears to be at risk.

Section 141 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) [3] added section 13(c)(4)(G) to the Federal Deposit Insurance Act (FDI Act). 12 U.S.C. 1823(c)(4)(G). That section provides a blueprint that authorizes action by the Federal government in circumstances involving such systemic risk. This provision permits the FDIC to take action or provide assistance as necessary to avoid or mitigate the effects of the perceived risks, following a recommendation of the existence of systemic risk by the Board, with the written concurrence of the Board of Governors of the Federal Reserve System (FRB) and an eventual determination of systemic risk by the Secretary of the Treasury (after consultation with the President).

The Secretary of the Treasury (after consultation with the President) made a determination of systemic risk following receipt of the written recommendation of the Board on October 13, 2008, along with the written recommendation of the FRB, in accordance with section 13(c)(4)(G) to the FDI Act. 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk allowed the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions and financial stability. The FDIC announced a number of initiatives aimed at reducing the systemic risks that exist in the market, specifically relating to noninterest-bearing transaction accounts at insured depository institutions and senior unsecured debt of insured depository institutions and most U.S. holding companies of such insured depository institutions. Collectively these initiatives are described more fully in the Interim Rule that follows, and are referred to as the FDIC's Temporary Liquidity Guarantee Program (TLG Program).

In making its written recommendation regarding systemic risk and providing for the TLG Program, the Board reviewed a number of factors concerning current economic conditions and the nation's troubled financial

[1] Public Law No. 110–343 (Oct. 3, 2008).

[2] 73 FR 61658 (Oct. 17, 2008).

[3] Public Law No. 102–242 (Dec. 19, 1991).

stability. Among the economic factors that the Board considered in making its determination were unduly tightened lending standards and terms, decreased borrowing, rapid outflows of deposits, reduced issuances of commercial paper and asset- and mortgage-backed securities, decreased and costly alternative funding mechanisms, and a lack of confidence in financial institutions based on embedded and uncertain balance sheet losses.

III. Authority To Implement the TLG Program

In addition to the authority granted to the FDIC by the systemic risk determination made under Section 13(c)(4) of the FDI Act, 12 U.S.C. 1823(c)(4), as described above, the FDIC is authorized under Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth, to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act. The Board has determined that this Interim Rule is necessary to implement the TLG Program. Similarly the FDIC has authority to adopt regulations governing the operations of its receiverships pursuant to Section 11(d)(1) of the FDI Act, 12 U.S.C. 1821(d)(1) and the broad authority granted by 12 U.S.C. 1823(c)(1).

IV. The Interim Rule

The TLG Program described in the Interim Rule will address the systemic risk recognized by the FDIC and the other agencies. The TLG Program is designed to preserve confidence and encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers. The TLG Program is a voluntary and time-limited program that will be funded through special fees without reliance on taxpayer funding. Subject to the conditions set forth in the regulation, the program consists of two basic components: A temporary guarantee of newly-issued senior unsecured debt (the Debt Guarantee Program) and a temporary unlimited guarantee of funds in noninterest-bearing transaction accounts at FDIC-insured institutions (the Transaction Account Guarantee Program). At the expiration of the TLG Program, if funds remain after the FDIC has satisfied all eligible claims, the surplus funds will remain in the Deposit Insurance Fund and will be included in the future calculation of the reserve ratio.

The following entities are eligible to participate in the program subject to any restrictions that might be imposed by the FDIC in consultation with the primary regulator: FDIC-insured depository institutions, any U.S. bank holding company or financial holding company, and any U.S. savings and loan holding company that either engages only in activities that are permissible for financial holding companies to conduct under section (4)(k) of the Bank Holding Company Act of 1956 (BHCA) or has at least one insured depository institution subsidiary that is the subject of an application that was pending on October 13, 2008, pursuant to section 4(c)(8) of the BHCA, or any affiliate of these entities approved by the FDIC after a written request made by, and the positive recommendation of, the appropriate Federal banking agency. (eligible entities). To be an eligible entity and issue guaranteed debt pursuant to the Debt Guarantee Program, a bank or savings and loan holding company must have at least one chartered, insured, and operating bank or savings association within its holding company structure.

The TLG Program became effective on October 14, 2008. For the first 30 days of the program, all eligible entities are covered under the TLG Program, and the guarantees provided by the TLG Program will be offered at no cost to eligible entities. On or before November 12, 2008, however, eligible entities must inform the FDIC whether they will opt-out of the TLG Program, and they may notify the FDIC on or before that date of their intent to participate in the program. If an eligible entity opts out of the TLG Program, the FDIC's guarantee of its newly-issued senior unsecured debt and noninterest-bearing transaction deposit accounts will expire at the earlier of 11:59 pm EST on November, 12, 2008, or at the time of the FDIC's receipt of the eligible entity's opt-out decision, regardless of the term of the instrument. An eligible entity that chooses not to opt out of either or both programs will become a participating entity in the program.

An eligible entity may elect to opt out of either the Debt Guarantee Program or the Transaction Account Guarantee Program or of both components of the TLG Program. All eligible entities within a U.S. Banking Holding Company or a U.S. Savings and Loan Holding Company structure must make the same decision regarding continued participation in each component of the TLG Program or none of the members of the holding company structure will be eligible for participation in that component of the TLG Program.

In order to notify depositors and lenders when they are dealing with an institution that is covered by the TLG Program, an eligible entity's decision to opt out of either component of the TLG Program will be made publicly available. The FDIC will maintain and will post on its Web site a list of those entities that have opted out of either or both components of the TLG Program. Each eligible entity must make clear to relevant parties whether or not it has chosen to participate in either or both components of the TLG Program. Eligible entities that do not opt out of the Debt Guarantee Program on or before November 12, 2008, will be unable to select which newly issued senior unsecured debt is guaranteed debt as they issue such debt. All senior unsecured debt issued during the initial 30-day period by the participating entity will become guaranteed debt as and when issued.

If an eligible entity remains in the Debt Guarantee Program of the TLG Program, it must clearly disclose to interested lenders and creditors, in writing and in a commercially reasonable manner, what debt it is offering and whether the debt is guaranteed under this program. Debt guaranteed by the FDIC under the Debt Guarantee Program, must be clearly identified as ''guaranteed by the FDIC'' and properly disclosed to creditors.

If an eligible entity remains in the Transaction Account Guarantee Program, the participating entity must prominently disclose in writing at its main office and at all branches at which deposits are taken its decision to participate in or opt-out of the Transaction Account Guarantee Program. These disclosures must be provided in simple, readily understandable text indicating the institution's participation or nonparticipation in the Transaction Account Guarantee Program. The disclosure must clearly state whether or not covered noninterest-bearing transaction accounts are fully insured by the FDIC. If the institution uses sweep arrangements or takes other actions that result in funds in a noninterest-bearing transaction account being transferred to or reclassified as an interest-bearing account or a non-transaction account, the institution also must disclose those actions to the affected customers and clearly advise them in writing that such actions will void the transaction account guarantee.

A. The Debt Guarantee Program

The Debt Guarantee Program temporarily will guarantee all newly-issued senior unsecured debt up to prescribed limits that is issued by participating entities on or after October 14, 2008, through and including June 30, 2009. As a result, the unpaid balance of this newly-issued senior unsecured debt will be paid by the FDIC upon the failure of the issuing institution or the filing of a bankruptcy petition with respect to the issuing holding company. As more fully explained in the interim rule, senior unsecured debt includes, without limitation, federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility (IBF) of an insured depository institution, and Eurodollar deposits standing to the credit of a bank. Senior unsecured debt may be denominated in foreign currency. The term ''bank'' means an insured depository institution or a depository institution regulated by a foreign bank supervisory agency. To be eligible for the Debt Guarantee Program, senior unsecured debt must be noncontingent. It must be evidenced by a written agreement, contain a specified and fixed principal amount to be paid on a date certain, and not be subordinated to another liability.

The primary purpose of the Debt Guarantee Program is to provide liquidity to the inter-bank lending market and promote stability in the unsecured funding market for banks. The purpose is not to encourage innovative, exotic or complex funding structures or to protect lenders who make high-risk loans in hopes of high returns. Thus, for purposes of the Debt Guarantee Program, senior unsecured debt excludes, for example, obligations from guarantees or other contingent liabilities, derivatives, derivative-linked products, debt paired with any other security, convertible debt, capital notes, the unsecured portion of otherwise secured debt, negotiable certificates of deposit, and deposits in foreign currency and Eurodollar deposits that represent funds swept from individual, partnership or corporate accounts held at insured depository institutions. Also excluded are loans to affiliates, including parents and subsidiaries, or to institution affiliated parties, including controlling shareholders, directors, and officers.

Eligible debt must be issued on or before June 30, 2009. For eligible debt issued by that date, the FDIC will provide the guarantee coverage for such debt until the earlier of the maturity date of the debt or until June 30, 2012. This final effective date for coverage is absolute; coverage will expire at 11:59 p.m. EST on June 30, 2012, regardless of whether the liability has matured at that time. If an eligible entity chooses to opt out of the Debt Guarantee Program, the FDIC's debt guarantee will terminate on the earlier of 11:59 p.m. EST p.m. on November 12, 2008, or at the time of the eligible entity's opt-out decision. In order for the newly-issued senior unsecured debt to be guaranteed, the debt instrument must be clearly identified in writing in a commercially reasonable manner on the face of any documentation as ''guaranteed by the FDIC,'' and this fact must be properly disclosed to the creditors. The Debt Guarantee Program will not apply to debt that is contractually subordinated to other debt of the entity.

The FDIC will temporarily guarantee newly issued unsubordinated debt in a total amount up to 125 percent of the par or face value of senior unsecured debt outstanding, excluding debt extended to affiliates, as of September 30, 2008, that is scheduled to mature on or before June 30, 2009. This maximum guaranteed amount will be calculated for each individual participating entity within a holding company structure. Under procedures to be detailed shortly, the FDIC will require that each participating entity calculate its outstanding senior unsecured debt as of September 30, 2008, and provide that information—even if the amount of the senior unsecured debt is zero—to the FDIC.

The 125 percent limit may be adjusted for certain participating entities if the FDIC, in consultation with any appropriate Federal banking agency, determines it is necessary. Additionally, after written request and positive recommendation by the appropriate Federal banking agency, the FDIC, in its sole discretion and on a case-by-case basis, may allow an affiliate of a participating entity to take part in the Debt Guarantee Program. The FDIC may grant a participating entity authority to temporarily exceed the 125 percent limitation or limit a participating entity to less than 125 percent. These decisions will be made on a case-by-case basis.

A participating entity may not represent that its debt is guaranteed by the FDIC if it does not comply with the rules governing the Debt Guarantee Program. If the issuing entity has opted out of the Debt Guarantee Program, it may no longer represent that its newly-issued debt is guaranteed by the FDIC. Similarly, once an entity has reached its 125 percent limit, it may not represent that any additional debt is guaranteed by the FDIC, and must specifically disclose that such debt is not guaranteed.

After consultation with a participating entity's appropriate Federal banking agency, the FDIC may determine in its discretion that the entity shall not be permitted to participate in the TLG Program. Termination of participation will have only a prospective effect, and the entity must notify its customers and creditors that it is no longer issuing guaranteed debt.

Entities who choose to participate in the Debt Guarantee Program and who issue guaranteed debt agree to supply information requested by the FDIC, as well as to be subject to FDIC on-site reviews as needed after consultation with the appropriate Federal banking agency to determine compliance with the terms and requirements of the Debt Guarantee Program. Participating entities also agree that they will be bound by the FDIC's decisions, in consultation with the appropriate federal banking agency, regarding the management of the TLG Program.

The FDIC's agreement arising from the Debt Guarantee Program in no way exempts any participating entity from complying with federal and state securities laws and with any other applicable laws.

B. The Transaction Account Guarantee Program

Under the Transaction Account Guarantee Program, the FDIC has provided a temporary full guarantee for funds held at FDIC-insured depository institutions in noninterest-bearing transaction accounts above the existing deposit insurance limit. The FDIC anticipates that these accounts will include payment-processing accounts, such as payroll accounts, frequently used by an insured depository institution's business customers, and further anticipates that the Transaction Account Guarantee Program will stabilize these and other similar accounts. This coverage became effective on October 14, 2008, and will continue through December 31, 2009 (assuming that the insured depository institution does not opt out of this component of the TLG Program).

Under the Interim Rule, a ''noninterest-bearing transaction account'' is defined as a transaction account with respect to which interest is neither accrued nor paid and on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal. This definition encompasses traditional demand deposit checking accounts that allow for an unlimited number of deposits and withdrawals at any time. It also encompasses official checks issued by an insured depository institution. This definition, however, does not encompass negotiable order of withdrawal (NOW) accounts or money market deposit accounts (MMDAs).

Depository institutions sometimes waive fees or provide fee-reducing credits for customers with checking accounts. Such account features do not prevent an account from qualifying under the Transaction Account Guarantee Program as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition.

The guarantee provided for noninterest-bearing transaction accounts is in addition to and separate from the coverage provided under the FDIC's general deposit insurance regulations at 12 CFR Part 330. Although the unlimited coverage for noninterest-bearing transaction accounts under the TLG Program is intended primarily to apply to transaction accounts held by businesses, it applies to all such accounts held by any depositor. Thus, for example, if a consumer has a $250,000 certificate of deposit and a noninterest-bearing checking account for $50,000, he or she would be fully insured for $300,000 (assuming the depositor has no other funds at the same institution). First, coverage of $250,000 would be provided for the certificate of deposit under the FDIC's general rules for deposit insurance coverage. *See* 12 CFR 330.1(n) (providing that the standard maximum deposit insurance amount is $250,000 through December 31, 2009). Separately, full coverage of the $50,000 checking account would be provided under the Transaction Account Guarantee Program.

The Interim Rule includes a provision relating to sweep accounts. Under this provision, the FDIC will treat funds in sweep accounts in accordance with the usual rules and procedures for determining sweep balances at a failed depository institution. Under these procedures, funds may be swept or transferred from a noninterest-bearing transaction account to another type of deposit or nondeposit account. The FDIC will treat the funds as being in the account to which the funds were transferred. An exception will exist, however, for funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings account. Such swept funds will be treated as being in a noninterest-bearing transaction account. As a result of this treatment funds swept into a noninterest-bearing savings account will be guaranteed by the Transaction Account Guarantee Program.

C. Fees for the TLG Program

Beginning on November 13, 2008, any eligible entity that has not chosen to opt out of the debt guarantee program will be assessed fees for continued coverage. All eligible debt issued from October 14, 2008 (and still outstanding on November 13, 2008), through June 30, 2009, will be charged an annualized fee equal to 75 basis points multiplied by the amount of debt issued, and calculated for the maturity period of that debt or June 30, 2012, whichever is earlier. The fee charged will take into account that no fees will be charged during the first 30 days of the program. If any participating entity issues eligible debt guaranteed by the Debt Guarantee Program, the participating entity's assessment will be based on the total amount of debt issued and the maturity date at issuance. If the guaranteed debt is ultimately retired before its scheduled maturity, fees will not be refunded.

If an eligible entity does not opt out, all newly-issued senior unsecured debt up to the maximum amount will become guaranteed as and when issued. Participating entities are prohibited from issuing guaranteed debt in excess of the maximum amount for the institution. Participating entities are also prohibited from issuing non-guaranteed debt until the maximum allowable amount of guaranteed debt has been issued. A participating entity can then issue non-guaranteed debt in any amount and for any maturity. If a participating entity nonetheless issues debt identified as "guaranteed by the FDIC" in excess of the limit established by the FDIC, it will have its assessment rate for guaranteed debt increased to 150 basis points on all outstanding guaranteed debt, and the participating entity and its institution-affiliated parties will be subject to enforcement actions including the assessment of civil money penalties, as appropriate.

Participating entities can take part in the guaranteed debt program as outlined above without any further action on their part. If a participating entity wants to have the option of issuing certain non-guaranteed senior unsecured debt before issuing the maximum amount of guaranteed debt, it must elect to do so through FDIC*connect* on or before 11:59 p.m. EST on November 12, 2008. Election of this option would require a participating entity to pay a nonrefundable fee in exchange for which it will be able to issue, at any time and without regard to the cap, non-guaranteed senior unsecured debt with a maturity date after June 30, 2012. The fee would be applied to the par or face value of senior unsecured debt, excluding debt extended to affiliates, outstanding as of September 30, 2008, that is scheduled to mature on or before June 30, 2009. The fee will equal the 75 basis point annual rate charged for six months (or 37.5 basis points). The six-month period is based upon estimates of the weighted average remaining maturity of existing debt that matures on or before June 30, 2009. It recognizes that much of the outstanding debt as of September 30, 2008, which is not guaranteed, will be rolled over into guaranteed debt only when the outstanding debt matures. The nonrefundable fee will be collected in six equal monthly installments. An entity electing the nonrefundable fee option will also be billed as it issues guaranteed debt under the Debt Guarantee Program, and the amounts paid as a nonrefundable fee will be applied to offset these bills until the nonrefundable fee is exhausted. Thereafter, the institution will have to pay additional assessments on guaranteed debt as it issues the debt.

Under the Transaction Account Guarantee Program, the FDIC provides a full guarantee for deposits held at FDIC-insured institutions in noninterest-bearing transaction accounts. This coverage became effective on October 14, 2008, and will expire at 11:59 p.m. EST on December 31, 2009 (assuming the insured depository institution does not opt out of the Transaction Account Guarantee Program). The Interim Rule provides that all insured depository institutions are automatically enrolled in the Transaction Account Guarantee Program for an initial thirty-day period (from October 14, 2008, through November 12, 2008). Insured depository institutions are not required to pay any assessments for participating in the Transaction Account Guarantee Program for this initial 30-day period.

Beginning on November 13, 2008, insured depository institutions that have not opted out of the Transaction Account Guarantee Program will be assessed on a quarterly basis an annualized 10 basis point assessment on balances in noninterest-bearing transaction accounts that exceed the existing deposit insurance limit of $250,000. Under the Interim Rule, the FDIC will collect such assessments at the same time and in the same manner as it collects an institution's quarterly deposit insurance assessments under Part 327 of the FDIC's rules and regulations. Assessments associated with the Transaction Account Guarantee Program will be in addition to an institution's risk-based assessment imposed under Part 327 of the FDIC's rules and regulations.

The Interim Rule requires the FDIC to impose an emergency systemic risk assessment on insured depository institutions if the fees and assessments collected under the TLG Program are insufficient to cover any loss incurred as a result of the TLG Program. In addition, if at the conclusion of these programs there are any excess funds collected from the fees associated with the TLG Program, the funds will remain as part of the Deposit Insurance Fund.

D. Payment of Claims by the FDIC Pursuant to the Transaction Account Guarantee Program

The Interim Rule sets forth the process for payment and recovery of FDIC guarantees of ''noninterest-bearing transaction accounts,'' as that term is defined in the Interim Rule. Under the rule, the FDIC's obligation to make payment, in its capacity as guarantor of deposits held in noninterest-bearing transaction accounts, arises upon the failure of a participating federally insured depository institution. The payment and claims process for satisfying claims under the Transaction Account Guarantee Program generally will follow the procedures prescribed for deposit insurance claims pursuant to section 11(f) of the FDI Act (12 U.S.C. 1821(f)), and the FDIC will be subrogated to the rights of depositors against the institution pursuant to section 11(g) of the FDI Act (12 U.S.C. 1821(g)).

The FDIC will make payment to the depositor for the guaranteed amount under the Transaction Account Guarantee Program or will make such guaranteed amount available in an account at another insured depository institution at the same time it fulfills its deposit insurance obligation under Part 330. The payment made pursuant to the Transaction Account Guarantee Program will be made as soon as possible after the FDIC, in its sole discretion, determines whether the deposit is eligible and what amount is ultimately guaranteed. In most cases, the FDIC will make the entire amount of a qualifying transaction account available to the depositor on the next business day following the failure of an institution that participates in the Transaction Account Guarantee Program. If there is no acquiring institution for a transaction account guaranteed by the Transaction Account Guarantee Program, the FDIC will mail a check to the depositor for the full amount of the guaranteed account within days of the insured depository institution's failure.

As a result of assuming the receiver's responsibility for making payment on the transaction account, the FDIC will be subrogated to all rights of the depositor against the institution with respect to noninterest-bearing transaction accounts guaranteed by the Transaction Account Guarantee Program. This subrogation right includes the right of the FDIC to receive dividends from the proceeds of the receivership estate of the institution. As is currently the case, the FDIC as manager of the Deposit Insurance Fund, will be entitled to receive dividends in the deposit class for that portion of the account. (See 12 U.S.C. 1821(d)(11)(A)(ii)). Similarly, the FDIC would be entitled to receive dividends from the receiver for assuming its obligation with regard to the uninsured portion of the guaranteed transactional deposit accounts.

As it does in satisfying claims for insured deposits, the FDIC will rely on the books and records of the insured depository institution to establish ownership and coverage for payment of deposits subject to the Transaction Account Guarantee Program. In making its determination about what amounts are guaranteed, the FDIC will be entitled to the same discretion it has under section 11(f)(2) of the FDI Act (12 U.S.C. 1821(f)(2)), in requiring the depositor to file a proof of claim (POC). The FDIC does not anticipate that a POC will be required during the normal course of guarantee determination and payment pursuant to the Transaction Account Guarantee Program, but situations requiring a POC to be filed may arise. The FDIC's determination of the guaranteed amount will be final and will be considered a final administrative determination subject to judicial review in accordance with Chapter 7 of Title 5, similar to that provided for in sections 11(f)(4) and (5) of the FDI Act (12 U.S.C. 1821(f)(4) and (5)), regarding judicial review of insured deposit claims. A noninterest-bearing transaction account depositor may seek judicial review of the FDIC's determination on payment of the guaranteed amount in the United States district court for the federal judicial district where the principal place of business of the depository institution is located within 60 days of the date on which the FDIC's final determination is issued.

E. Payment of Claims by the FDIC Pursuant to the Debt Guarantee Program: Insured Depository Institution Debt

Pursuant to the Debt Guarantee Program the FDIC will guarantee senior unsecured debt, as that term is defined, for institutions that have chosen to participate in the Debt Guarantee Program. The FDIC's obligation to make payment, in its capacity as guarantor of senior unsecured debt issued by participating insured depository institutions, arises upon the failure of a participating insured depository institution. The FDIC will use the well-established receivership claims process to process guarantee requests. The FDIC will not consider any evidence provided by the debt holder that is not presented to the FDIC within 90 days of the publication of the claims notice by the receiver for the failed institution. The FDIC anticipates that many debt holders, particularly sellers of federal funds, will be paid on the next business day immediately following the failure of an insured depository institution. In all instances, the FDIC commits to pay claims related to its debt guarantee expeditiously and will strive to make payment on the next business day after the claim is determined to be valid. .

The FDIC will be subrogated to the rights of any creditor it pays under the program.

F. Payment of Claims by the FDIC Pursuant to the Debt Guarantee Program: Holding Company Debt

With respect to senior unsecured debt of holding companies eligible for payment based on the Debt Guarantee Program, when the holding company files for bankruptcy protection, the FDIC will make payment to the debt holder for the principal amount of the debt and interest to the date of the filing of a bankruptcy petition by the issuing institution. As with claims for debt issued by insured depository institutions, the FDIC will strive to expedite the claims payment process, but the FDIC generally will not make payment on the guaranteed amount for a debt asserted against a bankruptcy estate, unless and until the claim for the unsecured senior debt has been determined to be an allowed claim against the bankruptcy estate and such claim in not subject to reconsideration under 11 U.S.C. 502(j). If the FDIC does not pay eligible guaranteed debt within one business day of the filing of a bankruptcy petition with respect to a participating bank or savings and loan holding company, the FDIC will pay interest until payment is made on the eligible debt at the 90-day T-bill rate in effect when the bankruptcy petition was filed.

To properly establish ownership and coverage under this aspect of the TLG Program, the FDIC normally will require the holder to file a POC within 90 days of the published bar date of the bankruptcy proceeding. The FDIC may also consider the books and records of the holding company and its affiliates to determine the holder of the unsecured senior debt and the amount eligible for payment under the Debt Guarantee Program. The holder of the unsecured senior debt of a holding company will also be required to timely file a bankruptcy POC against the holding company's bankruptcy estate and to present evidence of such timely filed bankruptcy POC in order to be eligible for a debt guarantee payment under the TLG Program.

To receive payment under the Debt Guarantee Program, the holder of the unsecured senior debt shall be required to assign its rights, title and interest in the unsecured senior debt to the FDIC and to transfer its validated claim in bankruptcy to the FDIC. This assignment shall include the right of the FDIC to receive principal and interest payments on the unsecured senior debt from the proceeds of the bankruptcy estate of the holding company. If the holder of the unsecured senior debt receives any distribution from the bankruptcy estate prior to the FDIC's payment under the guarantee, the guaranteed amount paid by the FDIC shall be reduced by the amount the holder has received in the distribution from the bankruptcy estate. In the case of a bankruptcy estate, the FDIC as assignee of the unsecured senior debt shall be entitled to receive distributions from the liquidation or other resolution of the bankruptcy estate in accordance with 11 U.S.C. 726 or a confirmed plan of reorganization or liquidation in accordance with 11 U.S.C. 1129. The POC must be filed with the FDIC within 90 days of the published bar date of the bankruptcy proceeding.

Request for Comments

The FDIC invites comments on all aspects of the Temporary Liquidity Guarantee Program as described in the Interim Rule and suggestions for its implementation.

In particular, the FDIC specifically requests suggestions on ways in which the claims process for the Debt Guarantee Program may be modified to speed payment to eligible claimants without putting at risk the funds administered by the FDIC.

Negotiable order of withdrawal (NOW) accounts are excepted from the definition of definition of ''noninterest-bearing transaction account'' in the Interim Rule. Should the definition be modified and the FDIC's transaction guarantee be extended to include coverage for NOW accounts held by sole proprietorships, non-profit religious, philanthropic, charitable organizations and the like, or governmental units for the deposit of public funds if the interest paid is de minimis?

The Interim Rule provides for a number of disclosures relative to the FDIC's Debt Guarantee Program. Does the certainty of payment provided by the required disclosures to lenders and creditors outweigh the burden on participating entities in providing the disclosures? Are there alternative, less burdensome ways to achieve the same result and foster creditor confidence in the Debt Guarantee Program?

Regulatory Analysis and Procedure

A. Administrative Procedure Act

Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), notice and comment are not required prior to the issuance of a final rule if an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 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 requirements that a final rule be published not less than 30 days before its effective date. The FDIC finds good cause to adopt this Interim Rule without prior notice and comment and without the 30-day delayed effective date.

The FDIC's finding is based upon the severe financial conditions that threaten the stability of the nation's economy generally and the banking system in particular, the serious adverse effects on economic conditions and financial stability that would result from any delay of the effective date of the Interim Rule, and the fact that the Temporary Liquidity Guarantee Program became effective on October 14, 2008. Nevertheless, the FDIC desires to have the benefit of public comment before adopting a permanent final rule and thus invites interested parties to submit comments during a 15-day comment period. The 15-day comment period will allow the FDIC to receive comments in a timely manner and provide the industry with a final rule as quickly as possible, given the Interim Rule's October 23, 2008, effective date. In adopting the final regulation, the FDIC will revise the Interim Rule, if appropriate, in light of the comments received on the Interim Rule.

B. Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act requires that any new rule prescribed by a Federal banking agency that imposes additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.[4] Based upon the severe financial conditions that threaten the stability of the nation's economy generally and the banking system in particular, the serious adverse effects on economic conditions and financial stability that would result from any delay of the effective date of the Interim Rule, and the fact that the Temporary Liquidity Guarantee Program has been in effect since October 14, 2008, the FDIC invokes the good cause exception to make the Interim Rule effective on October 23, 2008.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Interim Rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.* As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the rule may be reviewed.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. Because this rulemaking does not involve the issuance of a notice of proposed rulemaking, the requirements of the RFA do not apply.

E. Paperwork Reduction Act

This interim rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The FDIC has submitted a request for review and approval of a collection of information under the emergency processing procedures in Office of Management and Budget (OMB) regulation, 5 CFR 1320.13. The FDIC is requesting approval by October 23, 2008, of reporting requirements on amounts of senior unsecured debt, decisions to opt in or opt out of the TLG Program or either of its components, issuance of guaranteed debt and debt holder guarantee claims against a receivership; disclosure requirements regarding participation in the debt guarantee component, participation in the transaction account guarantee component, and termination of participation in the TLG Program.

These reporting and disclosure requirements are needed immediately to facilitate the FDIC's administration of

[4] 12 U.S.C. 4802.

the Temporary Liquidity Guarantee Program and to ensure notice to the public about which entities are participating in the program. The use of emergency clearance procedures is necessary because of the sudden, unanticipated systemic risks posed to the nation's financial system by recent economic conditions and because public harm is reasonably likely to result if liquidity is not restored to financial markets. The burden for reporting requirements on the amount of uninsured deposits and reporting and recordkeeping requirements will be accounted for, as appropriate, by an amendment to Consolidated Reports of Condition and Income (OMB No. 3064–0052) and Thrift Financial Reports or by adjustments to the information collection for this interim rule.

The proposed burden estimate is as follows:

Title: Temporary Liquidity Guarantee Program.

OMB Number: New collection.

Frequency of Response:

Initial report of amount of senior unsecured debt—once.

Subsequent reports on amount of senior unsecured debt—4.

Opt-out/opt-in notice—once.

Notice of debt guarantee—once.

Notice of transaction account guarantee—once.

Notice of issuance of debt guarantee—26 to 250.

Notice of termination of participation—once.

Debt-holder guarantee claims—once.

Bankruptcy POC/evidence of POC—once.

Affected Public: FDIC-insured depository institutions, thrift holding companies, bank and financial holding companies.

Estimated Number of Respondents:

Initial report of amount of senior unsecured debt—14,400.

Subsequent reports on amount of senior unsecured debt—14,400.

Opt-out/opt-in notice—1,600.

Notice of debt guarantee—9,150.

Notice of transaction account guarantee—8,000.

Notice of issuance of debt guarantee—13,650.

Notice of termination of participation—300.

Debt-holder guarantee claims—2,300.

Bankruptcy POC/evidence of POC—300.

Average time per response:

Initial report of amount of senior unsecured debt—1 hour.

Subsequent reports on amount of senior unsecured debt hour—1.

Opt-out/opt-in notice—0.5 hour.

Notice of debt guarantee—1 to 2 hours.

Notice of transaction account guarantee—2 hours.

Notice of issuance of debt guarantee—0.5 to 3 hours.

Notice of termination of participation—3 hours.

Debt-holder guarantee claims—3 hours.

Bankruptcy POC/evidence of POC—1 hour.

Estimated Annual Burden:

Initial report of amount of senior unsecured debt—14,400 hours.

Subsequent reports on amount of senior unsecured debt—57,600 hours.

Opt-out/opt-in notice—800 hours.

Notice of debt guarantee—15,300 hours.

Notice of transaction account guarantee—16,000 hours.

Notice of issuance of debt guarantee—2,086,900 hours.

Notice of termination of participation—900 hours.

Debt-holder guarantee claims—6,900 hours.

Bankruptcy POC/evidence of POC—300 hours.

Total annual burden—2,199,100 hours.

The FDIC plans to follow this emergency request with a request for standard 3-year approval. Although this program, including most of the burden on participating entities, will be largely ended by the end of 2009, a few elements will be ongoing until 2012. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To facilitate processing of the emergency and normal clearance submissions to OMB, the FDIC invites the general public to comment on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) 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 (5) estimates of capital or start up costs, and costs of operation, maintenance and purchase of services to provide the information.

List of Subjects in 12 CFR Part 370

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

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends title 12 of the Code of Federal Regulations by adding new Part 370 as follows:

PART 370—TEMPORARY LIQUIDITY GUARANTEE PROGRAM

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818, 1819(a)(Tenth); 1820(f), 1821(a); 1821(c); 1821(d); 1823(c)(4).

§ 370.1 Scope.

■ This part sets forth the eligibility, limitations, procedures, requirements, and other provisions related to participation in the FDIC's temporary liquidity guarantee program.

§ 370.2 Definitions.

As used in this part, the terms listed in this section are defined as indicated below. Other terms used in this part that are defined in the Federal Deposit Insurance Act (FDI Act) have the meanings given them in the FDI Act except as otherwise provided herein.

(a) *Eligible entity.* The term ''eligible entity'' means any of the following:

(1) An insured depository institution;

(2) A U.S. bank holding company, provided that it has at least one chartered and operating insured depository institution within its holding company structure;

(3) A U.S. savings and loan holding company, provided that it has at least one chartered and operating insured depository institution within its holding company structure or

(4) Other affiliates of insured depository institutions that the FDIC after consultation with the appropriate Federal banking agency, designates as eligible entities which affiliates, by seeking and obtaining such designation, will have opted in to the debt guarantee program.

(b) *Insured Depository Institution.* The term ''insured depository institution'' means an insured depository institution as defined in section 3(c)(2) of the FDI

Act, 12 U.S.C. 1813(c)(2), except that it does not include an ''insured branch'' of a foreign bank as defined in section 3(s)(3) of the FDI Act, 12 U.S.C. 1813(s)(3), for purposes of the debt guarantee program.

(c) *U.S. Bank Holding Company.* The term ''U.S. Bank Holding Company'' means a ''bank holding company'' as defined in section 2(a) of the Bank Holding Company Act of 1956 (''BHCA''), 12 U.S.C. 1841(a), that is organized under the laws of any State or the District of Columbia.

(d) *U.S. Savings and Loan Holding Company.* The term ''U.S. Savings and Loan Holding Company'' means a ''savings and loan holding company'' as defined in section 10(a)(1)(D) of the Home Owners' Loan Act of 1933 (''HOLA''), 12 U.S.C. 1467a(a)(1)(D), that is organized under the laws of any State or the District of Columbia and either:

(1) Engages only in activities that are permissible for financial holding companies under section 4(k) of the BHCA, 12 U.S.C.1843(k), or

(2) Has at least one insured depository institution subsidiary that is the subject of an application under section 4(c)(8) of the BHCA, 12 U.S.C. 1843(c)(8), that was pending on October 13, 2008.

(e) *Senior unsecured debt.* The term ''senior unsecured debt'' means unsecured borrowing that: Is evidenced by a written agreement; has a specified and fixed principal amount to be paid in full on demand or on a date certain; is noncontingent; and is not, by its terms, subordinated to any other liability.

(1) Senior unsecured debt includes, for example, federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility (IBF) of an insured depository institution, and Eurodollar deposits standing to the credit of a bank. For purposes of this paragraph, the term ''bank'' means an insured depository institution or a depository institution regulated by a foreign bank supervisory agency.

(2) Senior unsecured debt may be denominated in foreign currency.

(3) Senior unsecured debt excludes, for example, obligations from guarantees or other contingent liabilities, derivatives, derivative-linked products, debt paired with any other security, convertible debt, capital notes, the unsecured portion of otherwise secured debt, negotiable certificates of deposit, and deposits in foreign currency and Eurodollar deposits that represent funds swept from individual, partnership or corporate accounts held at insured depository institutions. Also excluded are loans to affiliates, including parents and subsidiaries, and institution affiliated parties.

(f) *Newly issued senior unsecured debt.* The term ''newly issued senior unsecured debt'' means senior unsecured debt issued by a participating entity on or after October 14, 2008, and on or before:

(1) The earlier of November 12, 2008 or the date an eligible entity opts out, for an eligible entity that opts out of the debt guarantee program; or

(2) June 30, 2009, for an eligible entity that does not opt out of the debt guarantee program.

(g) *Participating entity.* The term ''participating entity'' means:

(1) For the period from October 14, 2008, through November 12, 2008, any eligible entity that has not opted out; or

(2) For the period from November 13, 2008 through June 30, 2012, an eligible entity that has not opted out of the debt guarantee program; or

(3) For the period from November 13, 2008 through December 31, 2009, an eligible entity that has not opted out of the transaction account guarantee program.

(h) *Noninterest-bearing transaction account.* (1) The term ''noninterest-bearing transaction account'' means a transaction account as defined in 12 CFR 204.2 that is

(i) Maintained at an insured depository institution;

(ii) With respect to which interest is neither accrued nor paid; and

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

(2) A noninterest-bearing transaction account does not include, for example, a negotiable order of withdrawal (NOW) account or money market deposit account (MMDA) as those accounts are defined in 12 CFR 204.2.

(i) *FDIC-Guaranteed debt.* The term ''FDIC-guaranteed debt'' means senior unsecured debt issued by a participating entity that meets the requirements of this part for debt that is guaranteed under the debt guarantee program, and is clearly identified as ''guaranteed by the FDIC.''

(j) *Debt guarantee program.* The term ''debt guarantee program'' refers to the protections afforded newly issued senior unsecured debt as described in this part.

(k) *Transaction account guarantee program.* The term ''transaction account guarantee program'' refers to the protections afforded funds in noninterest-bearing transaction accounts as described in this part.

(l) *Temporary liquidity guarantee program.* The term ''temporary liquidity guarantee program'' includes both the debt guarantee program and the transaction account guarantee program.

§ 370.3 Debt Guarantee Program.

(a) Upon the failure of a participating entity that is an insured depository institution or the filing of a petition in bankruptcy with respect to any other participating entity, and subject to the other provisions of this part, the FDIC guarantees payment of the unpaid principal and contract interest accrued to the date of failure or bankruptcy, as appropriate, of all FDIC-guaranteed debt issued by the participating entity during the period from October 14, 2008, through June 30, 2009, provided that the FDIC will pay interest at the 90-day T-Bill bill rate if there is a delay in payment beyond the next business day after the failure of the institution or the date of filing of the bankruptcy petition, respectively.

(b) Absent action by the FDIC, the maximum amount of debt to be issued under the guarantee is 125 percent of the par value of the participating entity's senior unsecured debt, excluding debt extended to affiliates or institution affiliated parties, outstanding as of September 30, 2008 that was scheduled to mature on or before June 30, 2009. Under certain circumstances and subject to certain conditions, including disclosure requirements, a participating entity may issue senior unsecured debt that is not subject to the guarantee. If the participating entity issues debt identified as ''guaranteed by the FDIC'' in excess of its maximum amount, it will become subject to assessment increases as provided in § 370.6(e). The FDIC may make exceptions to this guarantee limit, for example, allow a participating entity to exceed the 125 percent guarantee limit, restrict a participating entity to less than 125 percent, and/or impose other limits or requirements. If a participating entity had no senior unsecured debt on September 30, 2008, the entity may seek to have some amount of debt covered by the debt guarantee program. The FDIC, after consultation with the appropriate Federal banking agency, will decide whether, and to what extent, such requests will be granted on a case-by-case basis.

(1) Each participating entity shall calculate the amount of its senior unsecured debt outstanding as of September 30, 2008 excluding debt extended to affiliates, that was scheduled to mature on or before June 30, 2009, using the definitions described in this regulation.

(2) Each participating entity will report the calculated amount to the FDIC, even if such amount is zero, in an approved format via FDIC*connect* no later than November 12, 2008.

(3) Each subsequent report to the FDIC concerning debt issuances or balances outstanding will state whether the eligible institution has issued guaranteed debt that exceeded its limits at any time since the previous reporting period.

(4) All reports subject to this section will contain a certification from the eligible institution's Chief Financial Officer (CFO) or equivalent certifying the accuracy of the information reported.

(c) For FDIC-guaranteed debt issued on or before June 30, 2009, the FDIC's guarantee will terminate on the earlier of the maturity of the debt or June 30, 2012.

(d) Debt cannot be issued and identified as guaranteed by the FDIC if:

(1) The proceeds are used to prepay debt that is not FDIC-guaranteed;

(2) The issuing entity has previously opted out of the debt guarantee program;

(3) The issuing entity has had its participation in the debt guarantee program terminated by the FDIC;

(4) The issuing entity has exceeded its authorized limit for issuing guaranteed debt as specified in paragraph (b) of this section,

(5) The debt does not otherwise meet the requirements of this part; or

(6) The debt is extended to an affiliate, an insider of the participating entity, or an insider of an affiliate without FDIC approval of the guarantee.

(e) The FDIC's agreement to include a participating entity's senior unsecured debt in the debt guarantee program does not exempt the entity from complying with any applicable law including, without limitation, Securities and Exchange Commission registration or disclosure requirements that would be applicable if the entity or liability were not included in the program.

(f) *Long term non-guaranteed debt option*. On or before 11:59 p.m., Eastern Standard Time, November 12, 2008 a participating entity may also notify the FDIC that it has elected to issue non-guaranteed debt with maturities beyond June 30, 2012, at any time, in any amount, and without regard to the guarantee limit. By making this election the participating entity agrees to pay to the FDIC the nonrefundable fee as provided in § 370.6(f).

§ 370.4 Transaction Account Guarantee Program.

(a) In addition to the coverage afforded to depositors under 12 CFR Part 330, a depositor's funds in a noninterest-bearing transaction account maintained at a participating entity that is an insured depository institution are insured in full (irrespective of the standard maximum deposit insurance amount defined in 12 CFR 330.1(n)) from October 14, 2008, through the earlier of:

(1) The date of opt-out, if the entity opted out, or

(2) December 31, 2009.

(b) In determining whether funds are in a noninterest-bearing transaction account for purposes of this section, the FDIC will apply its normal rules and procedures under § 360.8 (12 CFR 360.8) for determining account balances at a failed insured depository institution. Under these procedures, funds may be swept or transferred from a noninterest-bearing transaction account to another type of deposit or nondeposit account. Unless the funds are in a noninterest-bearing transaction account after the completion of a sweep under § 360.8, the funds will not be guaranteed under the transaction account guarantee program.

(c) Notwithstanding paragraph (b) of this section, in the case of funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account, the FDIC will treat the swept funds as being in a noninterest-bearing transaction account. As a result of this treatment, the funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings account will be guaranteed under the transaction account guarantee program.

§ 370.5 Participation.

(a) *Initial period*. All eligible entities are covered under the temporary liquidity guarantee program for the period from October 14, 2008 through November 12, 2008, unless they opt out on or before November 12, 2008 in which case the coverage ends on the date of the opt-out.

(b) The issuance of FDIC-guaranteed debt subject to the protections of the debt guarantee program is an affirmative action by a participating entity that constitutes its agreement to be:

(1) Bound by the terms and conditions of the program, including without limitation, being subject to the assessments provided herein;

(2) Subject to and to comply with any FDIC request to provide information relevant to participation in the debt guarantee program and to be subject to FDIC on-site reviews as needed after consultation with the appropriate Federal banking agency to determine compliance with the terms and requirements of the debt guarantee program; and

(3) Bound by the FDIC's decisions, in consultation with the appropriate Federal banking agency, regarding the management of the temporary liquidity guarantee program.

(c) *Opt-out and Opt-In Options*. From October 14, 2008 through November 12, 2008 each eligible entity is a participating entity in both the debt guarantee program and the transaction account guarantee program, unless the entity opts out. No later than 11:59 p.m., Eastern Standard Time, November 12, 2008, each eligible entity must inform the FDIC if it desires to opt out of the debt guarantee program or the transaction account guarantee program, or both. Failure to opt out by 11:59 p.m., Eastern Standard Time, November 12, 2008 constitutes a decision to continue in the program after that date. Prior to November 12, 2008 an eligible entity may inform the FDIC that it will not opt out of either or both programs (opt in).

(d) An eligible entity may elect to opt out of either the guaranteed debt program or the transaction account guarantee program or both. The choice to opt out, once made, is irrevocable. Similarly, the choice to affirmatively opt in, as provided in § 370.5(c), once made, is irrevocable.

(e) All eligible entities within a U.S. bank holding company group or U.S. savings and loan holding company group must make the same decision regarding continued participation in each guarantee program; failure to do so constitutes an opt out by all members of the group.

(f) Eligible entities that do not opt out on or before November 12, 2008 will not be able to select which newly issued senior unsecured debt is guaranteed debt; all senior unsecured debt issued by a participating entity up to the guarantee limit will become guaranteed debt as and when issued, subject to § 370.3(f).

(g) *Procedures for Opting Out*. The FDIC will provide procedures for opting out and for making an affirmative decision to opt in using FDIC's secure e-business Web site, FDIC*connect*. Entities that are not insured depository institutions will select and solely use an affiliated insured depository institution to submit their opt-out election and to make any assessment payments required under the temporary liquidity guarantee program.

(h) *Disclosures regarding participation in the temporary liquidity guarantee program*.

(1) The FDIC will publish on its Web site:

(i) A list of the eligible entities that have opted out of the debt guarantee program and

(ii) A list of the eligible entities that have opted out of the transaction account guarantee program.

(2) If an eligible entity does not opt out of the debt guarantee program, it must clearly identify, in writing and in a commercially reasonable manner, to any interested lender or creditor whether the newly issued debt it is offering is guaranteed or not.

(3) Each eligible entity that is an insured depository institution must post a prominent notice in the lobby of its main office and each branch clearly indicating whether the entity is participating in the transaction account guarantee program, *i.e.*, whether it has opted out. If the entity is participating in the transaction account guarantee program, the notice must also state that funds held in noninterest-bearing transactions accounts at the entity are insured in full by the FDIC.

(i) These disclosures must be provided in simple, readily understandable text.

(ii) If the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an interest-bearing account or nontransaction account, the institution must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee.

(4) *Effective date for paragraph (2) and (3) of paragraph (h).* Paragraphs (h)(2) and (h)(3) of this section are effective December 1, 2008. Prior to that date, eligible entities should provide adequate disclosures of the substance of paragraphs (h)(2) and (h)(3) in a commercially reasonable manner.

(i) *Continued Eligibility.* The FDIC will determine eligibility in consultation with the eligible entity's appropriate Federal banking agency.

(1) Participation by an entity organized after the expiration of the opt-out period will be considered by the FDIC on a case-by-case basis in consultation with the entity's appropriate Federal banking agency.

(2) An eligible entity that is not an insured depository institution will no longer be eligible to participate in the debt guarantee program once it is no longer affiliated with a chartered and operating insured depository institution.

(j) *Duration*—(1) *Coverage for guaranteed debt.* The ability of participating entities to issue guaranteed debt under the debt guarantee program expires on June 30, 2009. For guaranteed debt issued on or before June 30, 2009, coverage would only be provided until the earlier of the maturity of the liability or June 30, 2012.

(2) *Coverage for noninterest-bearing transaction accounts.* Funds held in noninterest-bearing transaction accounts at eligible entities will be guaranteed from October 14, 2008 through November 12, 2008. If the eligible entity does not opt-out of the transaction account guarantee program, the coverage will exist through December 31, 2009.

§ 370.6 Assessments under the Debt Guarantee Program.

(a) *Waiver of assessment for initial period.* No eligible entity shall pay any assessment associated with the debt guarantee program for the period from October 14, 2008, through November 12, 2008.

(b) *Notice to the FDIC.* No debt shall be considered guaranteed under the FDIC's debt guarantee program unless notice of the issuance of such debt and payment of associated assessments is provided to the FDIC as required in paragraph (d) of this section.

(1) Any eligible entity that does not opt out of the Debt Guarantee Program by November 12, 2008, as provided in § 370.5, and issued any guaranteed debt during the period from October 14, 2008 through November 12, 2008 that was still outstanding on November 12, 2008, shall notify the FDIC of that issuance via the FDIC's e-business Web site FDIC*connect* by December 1, 2008, and the eligible entity's Chief Financial Officer or equivalent shall certify that the issuances outstanding at each point of time did not exceed the guaranteed amount limit as set forth in § 370.3.

(2) Any eligible entity that does not opt out of the program and that issues guaranteed debt after November 12, 2008, shall notify the FDIC of that issuance via the FDIC's e-business Web site FDIC*connect* within the time period specified by the FDIC. The eligible entity's Chief Financial Officer or equivalent shall certify that the issuance of guaranteed debt does not exceed the guarantee limit as set forth in § 370.3.

(3) The eligible entity shall be required to provide certification that the issuance does not exceed the guaranteed amount limit as set forth in § 370.3.

(4) The FDIC will provide procedures governing notice to the FDIC and certification of guaranteed amount limits for purposes of this section.

(c) *Initiation of assessments.* Beginning on November 13, 2008, any eligible entity that has chosen not to opt out of the debt guarantee program as provided in this part, will be charged assessments as set forth in this section.

(d) *Amount of assessments for debt within the guarantee limit*—(1) *Calculation of assessment.* The amount of assessment will be determined by multiplying the amount of eligible guaranteed debt times the term of the debt times an annualized 75 basis points. If the debt matures after June 30, 2012, June 30, 2012 will be used as the maturity date.

(2) *Assessment invoicing.* Once the participating entity provides notice as required in paragraphs (b)(1) and (b)(2) of this section, the invoice for the appropriate fee will be automatically generated and posted on *FDICconnect* for the account associated with the participating entity, and the time limits for providing payment in paragraph (e)(1) of this section will apply.

(3) *No assessment reduction for early retirement of guaranteed debt.* A participating entity's assessment shall not be reduced if guaranteed debt is retired prior to its scheduled maturity date.

(e) *Increased assessments for debt exceeding the Guarantee Limit.* Any participating entity that issues guaranteed debt represented as being ''guaranteed by the FDIC'' exceeding its guaranteed amount limit as set forth in § 370.3(b) shall have its assessment rate for all outstanding guaranteed debt increased to 150 basis points for purposes of the calculations in paragraphs (d)(1) of this section. In addition, any entity making such a misrepresentation may also be subject to enforcement action including civil money penalties under 12 U.S.C. 1818.

(f) *Long term non-guaranteed debt fee.* Each participating entity that elects to issue long term non-guaranteed debt pursuant to § 370.3(f) must pay the FDIC a nonrefundable fee equal to 37.5 basis points times the amount of the entity's senior unsecured debt (other than debt owed to affiliates) with a maturity date on or before June 30, 2009, outstanding as of September 30, 2008.

(1) The nonrefundable fee will be collected in six equal monthly installments.

(2) An entity electing the nonrefundable fee option will also be billed as it issues guaranteed debt under the debt guarantee program, and the amounts paid as a nonrefundable fee will be applied to offset these bills until the nonrefundable fee is exhausted.

(3) Thereafter, the institution will have to pay additional assessments on guaranteed debt as it issues the debt

(g) *Collection of assessments—ACH Debit.* Each participating entity shall take all actions necessary to allow the Corporation to debit assessments from the participating entity's designated deposit account as provided for in § 327.3(a)(2). Each participating entity shall ensure that funds in an amount at least equal to the amount of the assessment are available in the designated account for direct debit by the Corporation on the first business day after posting of the invoice on *FDICconnect*. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment, and such failure by any participating entity will be subject to the penalties for failure to timely pay assessments as provided for at § 308.132(c)(3)(v).

§ 370.7 Assessment for the Transaction Account Guarantee Program.

(a) *Waiver of assessment for initial period.* No eligible entity shall pay any assessment associated with the transaction account guarantee program for the period from October 14, 2008, through November 12, 2008.

(b) *Initiation of assessment.* For the period beginning on November 13, 2008, and continuing through December 31, 2009, any eligible entity that has not notified the FDIC that it has opted out of the transaction account guarantee program as provided in § 370.5, will be subject to an assessment that will be reflected on its quarterly certified statement invoices.

(c) *Amount of assessment.* Any eligible entity that does not opt out of the transaction account guarantee program shall pay quarterly an annualized 10 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of $250,000, as reported on its quarterly Reports of Condition and Income or Thrift Financial Report in any noninterest-bearing transaction accounts (as defined in § 370.2(h), including any such amounts swept from a noninterest bearing transaction account into an noninterest bearing savings deposit account as provided in § 370.4(c). This assessment shall be in addition to an institution's risk-based assessment imposed under Part 327.

(d) *Collection of assessment.* Assessments for the transaction account guarantee program shall be collected along with a participating entity's quarterly deposit insurance payment as provided in § 327.3, and subject to penalties for failure to timely pay assessments as referenced in § 308.132(c)(3)(v).

§ 370.8 Systemic Risk Emergency Special Assessment to recover loss.

To the extent that the assessments provided under § 370.6 or § 370.7 are insufficient to cover any loss or expenses arising from the temporary liquidity guarantee program, the Corporation shall impose an emergency special assessment on insured depository institutions as provided under 12 U.S.C. 1823(c)(4)(G)(ii) of the FDI Act.

§ 370.9 Recordkeeping requirements.

The FDIC will establish procedures, require reports, and require participating entities to provide and preserve any information needed for the operation of this program.

§ 370.10 Oversight.

(a) *Oversight.* Participating entities availing themselves of the temporary liquidity guarantee program are subject to the FDIC's oversight regarding compliance with the terms of the temporary liquidity guarantee program.

(b) By issuing guaranteed debt, and not opting out of the temporary liquidity guarantee program, all participating entities agree, for the duration of the temporary liquidity guarantee program, to be subject to the FDIC's authority to determine compliance with the provisions and requirements of the program.

§ 370.11 Enforcement Mechanisms.

(a) *Termination of Participation.* If the FDIC, in its discretion, after consultation with the participating entity's appropriate Federal banking agency, determines that the participating entity should no longer be permitted to continue to participate in the temporary liquidity guarantee program, the FDIC will inform the entity that it will no longer be provided the protections of the temporary liquidity guarantee program.

(1) Termination of participation in the temporary liquidity guarantee program will solely have prospective effects. All previously issued guaranteed debt will continue to be guaranteed as set forth in this part.

(2) The FDIC will work with the participating entity and its appropriate Federal banking agency to assure that the entity notifies its customers and lenders or creditors that its participation in the temporary liquidity guarantee program has ended.

(b) *Enforcement Actions.* Violating the terms or requirements of the temporary liquidity guarantee program set forth in this part constitutes a violation of a regulation and subjects the participating entity to enforcement actions under Section 8 of the FDI Act (12 U.S.C. 1818), including the assessment of civil money penalties under section 8(i) of the FDI Act (12 U.S.C. 1818(i)). The appropriate Federal banking agency for the participating entity will consult with the FDIC in enforcing the provisions of this part. The appropriate Federal banking agency and the FDIC also have enforcement authority under 12 U.S.C. 1828(a)(4)(C) to pursue an enforcement action if a person knowingly misrepresents that any deposit liability, obligation, certificate, or share is insured when it is not in fact insured.

§ 370.12 Payment of Claims.

(a) *Claims for Deposits in Guaranteed Transaction Accounts.*

(1) *In general.* The FDIC will pay guaranteed claims of depositors who hold noninterest-bearing transaction deposit accounts in an insured depository institution that is a participating entity as soon as possible upon the failure of the entity. Unless otherwise provided for in this subsection, the guaranteed claims of depositors who hold noninterest-bearing transaction deposit accounts in such entities will be paid in accordance with 12 U.S.C. 1821(f) and 12 CFR 330.

(2) *Subrogation rights of FDIC.* Upon payment of such claims, the FDIC will be subrogated to the claims of depositors in accordance with 12 U.S.C. 1821(g).

(3) *Review of final determination.* The final determination of the amount guaranteed shall be considered a final agency action of the FDIC reviewable in accordance with Chapter 7 of Title 5, by the United States district court for the federal judicial district where the principal place of business of the depository institution is located. Any request for review of the final determination shall be filed with the appropriate district court not later than sixty (60) days of the date on which the final determination is issued.

(b) *Claims for Guaranteed Debt*—(1) *Guaranteed debt in receivership.*

(i) *Procedure for claims determination.* Holders of debt shall file a claim with the receiver of a failed insured depository institution that is a participating entity within ninety days after the FDIC publishes a notice to creditors of the failed financial institution to present claims pursuant to 12 U.S.C. 1821(d)(3)(B). The FDIC will consider the proof of claim, if timely filed, and will make a determination of the amount guaranteed within 180 days of the filing of the proof of claim, unless extended by written agreement between the claimant and the FDIC. The determination of the FDIC will be final. The FDIC will pay interest at the 90-day T-Bill bill rate if there is a delay in payment beyond the next business day after receivership.

(ii) *Subrogation rights of FDIC.* To receive payment under the debt guarantee program, the holder of the unsecured senior debt shall assign its rights, title and interest in the unsecured senior debt to the FDIC and to transfer its validated claim to the FDIC which will be subrogated to such rights.

(iii) *Review of final determination.* The debt holder shall have the right to seek judicial review of the FDIC's final determination of the amount guaranteed in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia. The debt holder must file suit on such claim before the end of the 60-day period beginning on the date of the FDIC's final determination or before the end of the 60-day period beginning on the 180th day after the debt holder filed the claim with the FDIC, unless extended by mutual agreement, if the FDIC has not made a final determination.

(2) *Guaranteed debt of a participating U.S. Bank Holding Company, or U.S. Savings and Loan Holding Company or Authorized Affiliates.*

(i) *Procedure for claims determination.* The holder of the unsecured senior debt of a holding company or authorized affiliate must timely file a bankruptcy proof of claim (POC) against the company's bankruptcy estate and present evidence of such timely filed bankruptcy POC in order to be eligible to participate in the TLG Program. The POC must be filed with the FDIC within 90 days of the published bar date of the bankruptcy proceeding. The claimant shall identify and describe the debt it believes is subject to the FDIC guarantee.

(ii) *Payment of claims.* The FDIC will make payment to the debt holder for the principal amount of the debt and contract interest to the date of the filing of a bankruptcy petition with respect to the company, provided that the FDIC will pay interest at the 90-day T-Bill bill rate if there is a delay in payment beyond the next business day after the date of filing of the bankruptcy petition. The FDIC is not required to make payment on the guaranteed amount for a debt asserted against a bankruptcy estate, unless and until the claim for the unsecured senior debt has been determined to be an allowed claim against the bankruptcy estate and such claim is not subject to reconsideration under 11 U.S.C. 502 (j).

(iii) *Assignment of rights to FDIC.* To receive payment under the debt guarantee program, the holder of the unsecured senior debt shall assign its rights, title and interest in the unsecured senior debt to the FDIC and to transfer its allowed claim in bankruptcy to the FDIC. This assignment shall include the right of the FDIC to receive principal and interest payments on the unsecured senior debt from the proceeds of the bankruptcy estate of the holding company. If the holder of the unsecured senior debt receives any distribution from the bankruptcy estate prior to the FDIC's payment under the guarantee, the guaranteed amount paid by the FDIC shall be reduced by the amount the holder has received in the distribution from the bankruptcy estate.

(iv) *Final determination.* The FDIC's determination of the guaranteed amount shall be a final administrative determination subject to judicial review.

(v) *Review of final determination.* The holder of an unsecured senior debt shall have the right to seek judicial review of the FDIC's final determination in the United States District Court for the District of Columbia or the United State District Court for the federal district where the holding company's principal place of business was located. Failure of the holder of the unsecured senior debt to seek such judicial review within sixty (60) days of the date of the rendering of the final determination will deprive the holder of the unsecured senior debt of all further rights and remedies with respect to the guarantee claim.

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of October, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–25739 Filed 10–24–08; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0555; Directorate Identifier 2008–NM–074–AD; Amendment 39–15705; AD 2005–13–02 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes and Model CL–600–2D24 (Regional Jet Series 900) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes and Model CL–600–2D24 (Regional Jet series 900) series airplanes. That AD currently requires revising the Airworthiness Limitations section of the Instructions of Continued Airworthiness by incorporating new repetitive inspections and an optional terminating action for the repetitive inspections, and repairing any crack. This new AD clarifies the applicability of the existing AD. This AD results from reports of hydraulic pressure loss in either the number 1 or number 2 hydraulic system due to breakage or leakage of hydraulic lines in the aft equipment bay and reports of cracks on the aft pressure bulkhead web around the feed-through holes. We are issuing this AD to prevent loss of hydraulic pressure, which could result in reduced controllability of the airplane, and to detect and correct cracks on the aft pressure bulkhead web, which could result in reduced structural integrity of the aft pressure bulkhead.

DATES: This AD is effective December 3, 2008.

On July 27, 2005 (70 FR 35987, June 22, 2005), the Director of the Federal Register approved the incorporation by reference of Bombardier CRJ 700/900 Series Temporary Revision MRM2–129, dated June 1, 2004.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Pong Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410,