

[6714-01-P]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 370**

**RIN 3064-AD37**

**Final Rule regarding Limited Amendment of the Temporary Liquidity Guarantee Program to Extend the Transaction Account Guarantee Program with Modified Fee Structure**

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

**ACTION:** Final Rule.

**SUMMARY:** To assure an orderly phase out of the Transaction Account Guarantee (TAG) component of the Temporary Liquidity Guarantee Program (TLGP), the FDIC is extending the TAG program for six months until June 30, 2010. Each insured depository institution (IDI) that participates in the extended TAG program will be subject to increased fees during the extension period for the FDIC's guarantee of qualifying noninterest-bearing transaction accounts. However, each IDI that is currently participating in the TAG program will have an opportunity to opt out of the extended TAG program. Each IDI that is currently participating in the TAG program must review and update its disclosure postings and notices to accurately reflect whether it is participating in the extended TAG program.

**DATES:** The Final Rule becomes effective on October 1, 2009.

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## **SUPPLEMENTARY INFORMATION**

### **I. Background**

The FDIC established the TLGP in October 2008 following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve).<sup>1</sup> The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

On October 23, 2008, the FDIC's Board of Directors (Board) authorized the publication in the *Federal Register* of an interim rule that outlined the structure of the TLGP.<sup>2</sup> Designed to assist in the stabilization of the nation's financial system, the FDIC's TLGP is composed of two distinct components: the Debt Guarantee Program (DGP) and the TAG program. Pursuant to the DGP the FDIC guarantees certain senior unsecured debt issued by participating entities. Pursuant to the TAG program the FDIC guarantees all funds held in qualifying noninterest-bearing transaction accounts at participating IDIs.

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<sup>1</sup> See Section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability, and the FDIC implemented the TLGP in response. Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth, provides additional authority for the establishment of the TLGP.

<sup>2</sup> 73 FR 64179 (October 29, 2008). The Final Rule was published in the *Federal Register* on November 26, 2008. 73 FR 72244 (November 26, 2008).

The TAG program was originally scheduled to expire on December 31, 2009.<sup>3</sup> Over 7,100 IDIs participate in the TAG program, and the FDIC has guaranteed an estimated \$700 billion of deposits in noninterest-bearing transaction accounts that would not otherwise be insured. Under the TAG program each IDI that offers noninterest-bearing transaction accounts is required to post a conspicuous notice in the lobby of its main office and each branch office, and on its website, if applicable, that discloses whether the IDI is participating in the TAG program.<sup>4</sup> Disclosures for participating IDIs must contain a statement that indicates that all noninterest-bearing transaction accounts are fully guaranteed by the FDIC.<sup>5</sup> In addition, even those IDIs that are not participating in the TAG program are required to disclose that deposits in noninterest-bearing transaction accounts continue to be insured for up to \$250,000, pursuant to the FDIC's general deposit insurance rules.<sup>6</sup> At this time, IDIs participating in the TAG program pay quarterly an annualized 10 basis point assessment on any deposit amounts that exceed the existing deposit insurance limit.<sup>7</sup>

## II. The Notice of Proposed Rulemaking

As with those entities participating in the DGP, the FDIC is committed to providing an orderly phase-out of the TAG program for participating IDIs and their depositors. To that end, the Board authorized publication in the *Federal Register* of a

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<sup>3</sup> The other component of the TLGP, the DGP, initially permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the FDIC's guarantee for such debt to expire on the earlier of the maturity of the debt (or the conversion date, for mandatory convertible debt) or June 30, 2012. To reduce market disruption at the conclusion of the DGP and to facilitate the orderly phase-out of the program, the Board issued a final rule that generally extended for four-months the period during which participating entities could issue FDIC-guaranteed debt. 74 FR 26521 (June 3, 2009). All IDIs and those other participating entities that had issued FDIC-guaranteed debt on or before April 1, 2009, were permitted to participate in the extended DGP without application to the FDIC. Other participating entities that were specifically approved by the FDIC also could participate in the extended DGP. At the same time, the FDIC extended the expiration of the guarantee period from June 30, 2012 to December 31, 2012. As a result, participating entities may issue FDIC-guaranteed, debt through and including October 31, 2009, and the FDIC's guarantee for such debt expires on the earliest of the mandatory convertible debt, the stated date of maturity, or December 31, 2012.

<sup>4</sup> 12 C.F.R. §370.5(h)(5).

<sup>5</sup> *Id.*

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

<sup>7</sup> 12 C.F.R. §370.7(c).

notice of proposed rulemaking that presented two alternatives for phasing out the TAG program (the “Proposed Rule”).<sup>8</sup>

The first alternative described in the Proposed Rule, designated Alternative A, would preserve the original termination date for the TAG program. For those IDIs that had not opted-out of the TAG program, under this option, the FDIC’s guarantee of noninterest-bearing transaction accounts would expire on December 31, 2009.

The second alternative, designated Alternative B, proposed the extension of the TAG program through June 30, 2010, six months beyond the current expiration date of December 31, 2009. Under this option, IDIs are provided an opportunity to opt out of the extended TAG program; if an IDI that is currently participating in the program opts out, Alternative B provided that the FDIC’s guarantee would expire as scheduled on December 31, 2009. To balance the income generated from TAG fees with potential losses associated with the TAG program during the extension period, the FDIC proposed to increase the assessment rate to an annualized rate of 25 basis points (rather than the current 10 basis points) on the guaranteed deposits in noninterest-bearing transaction accounts. Under this option, the increased fee would be collected quarterly in the same manner provided in existing regulations. Finally, Alternative B recognized that some IDIs would have to revise their disclosures related to the TAG program. This would be required only if their current disclosures became inaccurate following extension of the TAG program. For example, under Alternative B, each IDI that is participating in the extension would need to revise its disclosures if its existing disclosures indicated that the FDIC’s guarantee will apply only through December 31, 2009. Such an IDI would need to revise its disclosures to indicate that the guarantee will apply through June 30, 2010.

### **III. Comment Summary and Discussion**

The FDIC requested comment on every aspect of the Proposed Rule. In addition, the FDIC posed specific questions relating to proposed Alternative B. The FDIC received 91 comments on the proposed rule. The commenters included 60 insured depository institutions, 13 industry associations, 5 holding companies, 7 state government

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<sup>8</sup> 74 FR 31217 (June 30, 2009).

entities, 3 bankers' banks, and 3 depositors. A summary of the comments, including a summary of the comments addressing the specific questions, follows.

#### A. Alternatives for Phasing Out TAG Program

The FDIC sought information on whether commenters preferred Alternative A or Alternative B (or some other alternative) as the most appropriate means of insuring an orderly phase-out of the FDIC's TAG program. The FDIC received 15 comments expressly supporting Alternative A and 44 comments expressly supporting Alternative B. A summary of the comments the FDIC received in both of those categories follows.

##### *Comments Favoring Alternative A*

The FDIC received 15 comments expressly supporting Alternative A. Commenters supporting Alternative A generally shared the opinion that financial market volatility and risk aversion have moderated since the FDIC implemented the TAG program in the fall of 2008. These commenters generally noted that recent economic and financial market improvements, such as greater access to debt and capital markets and increased depositor and consumer confidence in the banking system, have eliminated the need for the TAG program.

A small number of commenters supporting Alternative A expressed concern that an extension of the TAG program would burden healthy institutions that elect to opt out. An insured depository institution electing to opt out of the extended TAG program would be required to disclose to customers that balances in its non-interest-bearing transaction accounts exceeding the \$250,000 limit are no longer guaranteed under the TAG program. Several commenters expressed concern that such disclosures would result in a loss of depositor relationships. Similarly, a small number of the comments favoring Alternative A suggested that extending the TAG program with an opt-out election as proposed under Alternative B would effectively punish institutions electing to opt out and give an unfair competitive advantage to those institutions that elect to remain in the TAG program through the extended period. Specifically, these commenters expressed concern that customers would inaccurately perceive a bank's election to opt out of the TAG program

extension as an indication that the non-interest bearing transaction account balances exceeding \$250,000 at that bank are at risk. To avoid customer confusion and any unfair competitive advantage being created by an extension of the TAG program, these commenters recommended that the FDIC allow the TAG program to phase out under Alternative A.

#### *Comments Favoring Alternative B*

The FDIC received 44 comments expressly supporting Alternative B as the more appropriate method of phasing out the TAG program. Commenters that supported Alternative B generally expressed a belief that, despite vast improvement since the fall of 2008, the economy has not yet stabilized to the point that depositors would be comfortable having large uninsured or non-guaranteed transaction balances on deposit with smaller insured depository institutions or community banks. A number of comments the FDIC received from community banks and state and national banking industry associations expressed concerns that regions of the country most affected by the recent financial and economic turmoil would not see an improvement in depositor confidence within the phase-out time period proposed in Alternative A. These commenters also emphasized that an extension of the TAG program is important to the country's continuing economic recovery.

The FDIC also received several comments expressing concern that expiration of the TAG program under Alternative A would result in a significant shift in large business deposits and public deposits away from community banks. Given the current economic environment, depositors with large balances in non-interest bearing transaction accounts could be motivated to move their deposits away from smaller insured depository institutions for the perceived security of a larger "too big to fail" insured depository institution if the TAG program were to expire. A depletion of large noninterest-bearing transaction account balances would significantly harm community banks and smaller insured depository institutions by putting them at risk of becoming troubled, especially in those regions of the country still recovering economically.

In addition, the FDIC received several comments concerning the effect that recent media coverage has had on the public's perception of the banking industry. As one

community bank noted, news stories covering the current problems with commercial real estate and bank failures have caused the business community and many depositors to be very concerned about the safety of their money. The commenter recommended adopting Alternative B as an appropriate phase out for the TAG program because it would counter such negative media coverage and would help alleviate the concerns of large businesses and public entities about the safety of their non-interest bearing transaction accounts that exceed \$250,000.

For several reasons the FDIC believes that the better alternative is to extend the TAG program beyond December 31, 2009. The FDIC, like some commenters, has observed that significant improvement in the financial markets has been made since last fall. However, the FDIC believes that there are still significant portions of the banking industry, particularly in regions still suffering the most from recent economic turmoil, that will benefit of the TAG program beyond the end of this year. Progress toward a stable, fully-functioning financial marketplace has been made, and the FDIC believes that the TAG program, as well as the DGP, was instrumental in achieving these improvements. However, terminating the TAG program too quickly could significantly impair or erase that progress. Moreover, all currently participating entities can choose whether they will participate in the extension of the TAG program. The FDIC believes that any competitive disadvantage that may be incurred by choosing not to participate is outweighed by the help the program provides in stabilizing the financial markets and restoring public confidence in the economy and the banking industry.

#### B. Specific Questions Presented in the NPR

In addition to requesting information on whether commenters preferred Alternative A or Alternative B as the most appropriate means of ensuring an orderly phase out of the FDIC's TAG program, the FDIC also posed specific questions relating to proposed Alternative B. The specific questions, as well as a summary and discussion of the comments the FDIC received addressing each question, follows.

Question #1.

*If the TAG program is extended, is six months an appropriate time for the extension? If not, what would be considered an appropriate extension period for the TAG program?*

The FDIC received 72 comments supporting an extension of the TAG program for at least six months. Commenters supporting a six-month extension of the TAG program generally indicated that a six-month period presented an appropriate timetable for phasing out the TAG program. One industry association noted that certain risk spreads have returned to pre-crisis levels, suggesting that the worst of the market turmoil has passed. However, that commenter also noted that some areas of the country continue to be affected by high unemployment rates, a decline in business activity, and increases in bank credit delinquencies and losses. The commenter supported a six-month extension as appropriate given the lingering financial threats in many local markets.

The FDIC also received 45 comments (including some of the comments that also expressly favored Alternative B) that recommended extending the TAG program for one-year (through December 31, 2010). A number of community banks cited various forecasts predicting that the U.S. economy will continue to face significant financial and economic pressures through 2009. Several of the comments noted that the TAG program has helped preserve the franchise values of banking institutions both through customer retention and reduction of the likelihood of bank deposit runs. A number of community banks also commented that the proposed six-month extension would be too short a time period to be of value for many insured depository institutions given the proposed 25 basis point fee.

Additionally, several commenters recommended extending the TAG program through the year 2013. Generally, these commenters advocated extending the TAG program to December 31, 2013 because it would match the TAG program's non-interest bearing transaction account guarantee time period with the time period established for the FDIC's \$250,000 deposit insurance limit for individual accounts.

The FDIC does not disagree with projections that the economy will continue to face pressures through the remainder of this year. In fact, that premise is one of the bases for the decision to extend the TAG program. However, the FDIC does not agree that the

TAG program should be extended for one year or longer. The TAG program, like the DGP, was always intended to be temporary. The FDIC believes that a six-month extension of the TAG program will provide the optimum balance between continuing to provide support to those institutions most affected by the recent financial and economic turmoil and phasing out the program in an orderly manner.

Question #2.

*In order to balance the income generated from TAG fees with potential losses associated with the TAG program during the extension period, the FDIC has proposed to charge an annualized rate of 25 basis points (rather than the current 10 basis points) on deposits in non-interest-bearing transaction accounts. Is this increase in fees appropriate? If not, what fee should be charged by the FDIC to cover potential losses caused by an extension of the TAG program?*

A large number of commenters addressed the issue of whether a participation fee of 25 basis points on deposits in non-interest-bearing transaction accounts is appropriate for the proposed TAG program extension under Alternative B. While a few commenters were in favor of the proposed 25 basis point fee, a majority of the comments favored a fee less than 25 basis points.

The FDIC received 20 comments supporting the extension of the current fee structure (10 basis points) to cover the six-month extension of the TAG program as proposed in Alternative B. Some of these commenters raised concerns that a 25 basis-point fee for a six-month extension period is too high. One community bank expressed the belief that increasing the fees charged for the TAG program would decrease profitability and capital levels of FDIC member banks at a time when all banks are struggling to improve profitability. One commenter noted that while the assessment needs to be priced fairly, it is also important not to make the fee so expensive that some financial institutions cannot participate. One community bank commented that maintaining the 10 basis-point fee would encourage greater participation from healthier banks and could potentially generate greater revenue if collected during a time of a strengthening economy.

The FDIC also received 16 comments supporting a participation fee between 10 basis points and 25 basis points. These commenters generally shared the concerns of those who supported extending the current 10 basis-point fee, that is, they felt that a fee of 25 basis points is too high. However, commenters supporting a fee between 10 basis points and 25 basis points also recognized the increased costs the TAG program poses to the FDIC. Several of these commenters noted that the fee associated with the extension of the TAG program should be based on the costs of the program for the FDIC. A majority of these comments recommended that an appropriate participation fee for the TAG program extension would fall within the range of 15 to 20 basis points based on the costs of the TAG program to the FDIC. A small number of comments from insured depository institutions stated that they would still participate in the TAG extension program if the participation fee were increased to 25 basis points.

The FDIC received 23 comments recommending that the FDIC adopt a risk-based approach to establish the participation fee for the TAG program extension. Specifically, these commenters suggested establishing fees that are commensurate with the risk profile of the participating bank as determined under the FDIC's risk-based assessment system for deposit insurance. One community bank commented that implementing a risk-based approach would encourage broader participation in the TAG program extension by the vast majority of banks that fall within Risk Category I and II, but more fully assess the cost per deposit at banks placed in higher Risk Categories. A second community bank commented that a risk-based approach to assessing the fee for participation in the TAG program extension would ensure that the banks that pose the most risk to the fund would pay the most for participation in the TAG program extension.

The cost of providing guarantees for noninterest-bearing transaction accounts at failed IDIs since the inception of the TAG program already has exceeded projected total TAG program revenue through the end of December 2009. Further, the FDIC projects additional failures of IDIs through the end of the year that will result in overall TAG losses that are expected to considerably exceed revenues. (Revenues generated from fees associated with the DGP are expected to cover TAG losses as well as losses incurred by the FDIC under the DGP.) In an effort to balance the income generated from TAG fees

with potential losses associated with the TAG program during the extension period, the FDIC believes that the base fee for the guarantee should be increased.

The FDIC finds merit in the proposals that a risk-based system be implemented. Switching to a risk-based fee system will allow the FDIC to align the fees charged under the TAG program to the risks posed by the institutions that participate in the program. Those institutions that pose greater risk will be charged higher fees to reflect that risk and will thus bear more fully the cost from the extension of the program. Additionally, the higher overall fees will better cover the potential costs of the program.

Given the short duration of the TAG extension and the limited timeframe for implementing a risk-based fee system, the FDIC will rely on the general framework it has in place for the quarterly, risk-based premium system. Participants in the extended program will be charged a fee based on the risk category to which they are assigned for purposes of the risk-based premium system. The minimum annualized fee will be 15 basis points (rather than the current 10 basis points) on deposits in noninterest-bearing transaction accounts.

### Question #3.

*Should the FDIC reduce the maximum interest rate for NOW accounts that qualify for the FDIC's guarantee under the TAG program? Would placing an interest rate limit on NOW accounts of no higher than 0.25 percent be appropriate? If not, what would be considered an appropriate rate limitation for NOW accounts?*

The FDIC received 28 comments addressing the question of whether to reduce the maximum interest rate for NOW accounts that qualify for the TAG program during the proposed extension period under Alternative B. The FDIC received 12 comments expressly supporting a reduction of the maximum interest rate and 16 comments opposing a reduction.

One community bank that favored a reduction in the maximum interest rate for NOW accounts stated that dropping the maximum interest rate to a range of 35 to 40 basis points would more closely match current market alternatives. However, the commenter also raised concerns that a reduction of the interest rate ceiling to 25 basis

points might encourage larger institutions to grab market share by pricing at higher levels with the implied security of government backing. On the other hand, another community bank expressed the opinion that reducing the interest rate ceiling on qualifying NOW accounts under the extended TAG program to 25 basis points would have no effect on the bank's customers. Similarly, a different community bank argued that a reduction in the maximum interest rate for NOW accounts is reasonable given that most money market rates have moved lower since the TAG program was introduced in the fall of 2008. However, this commenter also pointed out that NOW account customers are concerned with safety of principal and immediate funds availability rather than the maximum interest rate of the account.

In opposition to a reduction in the maximum interest rate limit for NOW accounts, the FDIC received several comments that expressed concern that a reduction in the maximum interest rate would confuse customers about the guarantees available under the TAG program extension.

A number of other commenters pointed out that a reduction in the maximum interest limit for NOW accounts would require participating banks in the TAG program extension to make costly disclosures to existing customers. Similarly, one national banking industry association commented that the potential disruption to NOW account customers and the cost of adjusting bank systems and customer agreements argues against altering the maximum interest rate limitation. A second national banking industry association supported not changing the maximum interest rate on NOW accounts because many institutions do not consider the interest rates on NOW accounts to be as sensitive as other deposit rates, and NOW account rates do not vary as the market fluctuates. The cost and confusion that could potentially accompany such a reduction would be disruptive for both participating banks and NOW account customers.

The FDIC agrees with many of the concerns raised by commenters who support no change to the maximum permissible interest rate for qualifying NOW accounts. The FDIC believes that there would be a potential for customer confusion about the availability of the guarantee if the maximum interest rate is changed for the remainder of the program. Each participating institution would also have to revise or adjust its banking systems, customer agreements, and disclosures to reflect the change. The burden

of making these changes, the potential for customer confusion, and the relatively short period of time of the extension (i.e., six months) argue against making such a change. Therefore, the FDIC has decided not to change the maximum interest rate limit for NOW accounts. The term “noninterest-bearing transaction account” will continue to include only those NOW accounts with interest rates that are no higher than 0.50 per cent as further described in 12 C.F.R. § 370.2(h).

#### **IV. The Final Rule**

In general, the final rule amends various provisions in 12 CFR Part 370 to (1) extend for six months the expiration date of the TAG program, (2) increase the assessment fee that applies during that six month period from 10 basis points to either 15 basis points, 20 basis points, or 25 basis points depending on the entity’s Risk Category, (3) provide an opportunity for currently participating entities to opt out of the TAG program effective on January 1, 2010, and (4) provide a sample disclosure statement for those entities that elect to opt out.

##### Six-Month Extension

The final rule extends the TAG program for six months; the TAG program will now expire on June 30, 2010. However, each participating entity will have an opportunity to opt out of the extension. While there is evidence that confidence in the banking system and the economy in general is improving, some additional time is needed in order to provide an orderly phase-out of the program.

##### Increased Assessment.

The final rule imposes an increased assessment and a risk-based fee system on those entities participating in the extension of the TAG program. Beginning on January 1, 2010, a participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly an annualized fee in accordance with its respective Risk Category rating. All institutions that are assigned to Risk Category I of the risk-based premium system will be charged an annualized fee of 15 basis points on their deposits in noninterest-bearing transactions accounts for the

portion of the quarter in which they are assigned to Risk Category I. Likewise, institutions in Risk Category II will be charged an annualized fee of 20 basis points, and institutions in either Risk Category III or Risk Category IV will be charged an annualized fee of 25 basis points for those portions of the quarter in which they are assigned to the various risk categories. The fee will continue to be collected quarterly in the same manner as provided for in existing regulations.

The fee will apply only to deposit amounts that exceed the existing deposit insurance limit of \$250,000, as reported on the quarterly Call 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 a noninterest bearing savings deposit account as provided in § 370.4(c).

#### Opt-Out.

Although the final rule extends the expiration date of the TAG program for six months, it also provides each participating entity the opportunity to opt out of the program effective on January 1, 2010. The option to opt out is a one-time option, and any decision to opt out is irrevocable. In order to exercise the option to opt out, a participating entity must submit an email to [dcas@fdic.gov](mailto:dcas@fdic.gov) no later than November 2, 2009 that meets all of the requirements of 12 CFR 370.5(g)(2). The opt-out provision allows each participating entity the opportunity to decide whether participation in the extension of the TAG program is desirable based upon on each entity's condition and business plan. In order to ensure that an institution's depositors and the public are aware of an entity's decision to opt out of the extension, the final rule also includes a sample disclosure statement for currently participating institutions that opt out of the extension.

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

### A. Regulatory Flexibility Act.

Under the Regulatory Flexibility Act (RFA), the FDIC must prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule,<sup>9</sup> or

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<sup>9</sup> 5 U.S.C. § 604.

certify that the final rule will not have a significant economic impact on a substantial number of small entities.<sup>10</sup> For purposes of the RFA analysis or certification, a “small entity” is any financial institution with total assets of \$175 million or less. For the reasons discussed below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Currently 7,063 IDIs participate in the TAG program, of which approximately 3,688, or 52.2 percent are small entities. Within the universe of small institutions, 1,011, or 27.4 percent did not have TAG eligible deposits as of the June 2009 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, “June 2009 Call Reports”); thus, they were not required to pay the 10 basis point fee currently assessed for participation in the TAG program. Assuming these IDIs do not change circumstances and do not opt out, there would be no impact on this group as a result of the fee increase. As to the remaining 2,677 small entities that had TAG eligible deposits as of the June 2009 Call Reports, they have the opportunity to opt out of the extended TAG program. However, assuming these 2,677 small entities remain in the TAG program, the fee increase could have some impact on a substantial number of the remaining participants in the TAG program during the extension period.

Nevertheless, the FDIC has determined that, the economic impact of the Rule on small entities will not be significant for the following reasons. With respect to the fee increase from 10 basis points to 15, 20 or 25 basis points depending upon the institution’s risk rating, based on figures from the June 2009 Call Reports, the average fee increase for IDIs participating in the extended TAG program would be \$681 for the 6 month extension period, representing 8.2 percent of the average net operating income before taxes for the six months through June 2009. Moreover, the FDIC asserts that the economic benefit of the six-month extension would outweigh the increased fee associated with participation in that the small entities would benefit from the extended time period within which to phase out the TAG program as financial markets continue to stabilize.

With respect to amending the disclosures related to the TAG program, the FDIC asserts that the economic impact on all small entities participating in the program

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<sup>10</sup> 5 U.S.C. § 605(b).

(regardless of whether they pay a fee) would be de minimis in nature and would be outweighed by the economic benefit of the six-month extension.

Accordingly, the Rule would not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Final Rule implements Alternative B of the Notice of Proposed Rulemaking, which extends the TAG program through June 30, 2010. Alternative B included disclosure and reporting requirements which are retained in the Final Rule. Specifically, section 370.5(c)(2) allows IDIs participating in the TAG program on October 31, 2009, to opt out of the program effective January 1, 2010. In addition, section 370.5(g)(2)(vi) requires institutions that opt out of the TAG program to disclose to customers that funds in excess of the standard maximum deposit insurance amount will no longer be guaranteed under the TAG program after December 31, 2009. Finally, pursuant to section 370.5(h)(5)(i), institutions participating in the TAG program extension would be required to update any existing disclosures regarding participation in the program to reflect the extension of coverage through June 30, 2010.

In the Notice of Proposed Rulemaking, the FDIC expressed an intention to amend its existing TLGP-related information collection (OMB No. 3064-0166) to incorporate the burden associated with the TAG program extension. However, a request for normal clearance of the TLGP information collection, which was initially approved under emergency clearance procedures, was pending before OMB at the time of publication of the Notice of Proposed Rulemaking. To avoid concurrent requests on the same information collection, the FDIC instead, on July 1, 2009, submitted to OMB a request for clearance of the reporting and disclosure requirements in Alternative B as a separate, new information collection. That request is still pending.

The proposed rule document for the TAG program extension requested comment on the estimated paperwork burden. Although, as previously discussed, a number of comments were received on substantive aspects of the proposal, none of the comments addressed the estimated paperwork burden. Therefore, the FDIC has not altered its initial burden estimates. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking and the Final Rule, is as follows:

*Title:* Temporary Liquidity Guarantee Program.

*OMB Number:* 3064-0166.

*Affected public:* Insured depository institutions.

*Estimated Number of Respondents:*

Opt out of TAG program/Disclosure to customers of discontinuation or TAG program guarantee – 3,555.

Disclosure to customers of TAG program extension — 3,554.

*Frequency of Response:*

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee – once.

Disclosure to customers of TAG program extension — once.

*Average time per response:*

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee – 1 hour.

Disclosure to customers of TAG program extension — 1 hour.

*Estimated Annual Burden:*

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee – 3,555 hours.

Disclosure to customers of TAG program extension — 3,554 hours.

*Total annual burden* – 7,109 hours.

*Comment Request:* The FDIC has an ongoing interest in public comments on its collections of information, including comments 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. Comments may be submitted to the FDIC by any of the following methods: by mail to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW, Washington, DC 20429; by FAX at (202) 898-8788; or by email to [comments@fdic.gov](mailto:comments@fdic.gov). All comments should refer to “Transaction Account Guarantee Program Extension.” Copies of comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

C. Use of Plain Language.

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. In issuing the proposed rule, the FDIC solicited comments on how to make the proposed regulation easier to understand. No comments addressing that issue were received.

D. The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families.

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

E. Small Business Regulatory Enforcement and Fairness Act.

The Office of Management and Budget (OMB) has determined that this Final Rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement and Fairness 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 Government Accountability Office so that the Rule may be reviewed.

**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 discussed in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR Part 370 as follows:

**PART 370—TEMPORARY LIQUIDITY GUARANTEE PROGRAM**

1. The authority citation for part 370 continues to read as follows:

**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).

2. Amend section 370.2 as follows:

a. Revise paragraph (g); and

b. Revise paragraph (h)(4); to read as follows:

**§ 370.2 Definitions.**

\* \* \* \* \*

(g) *Participating entity.* The term “participating entity” means with respect to each of the debt guarantee program and the transaction account guarantee program,

(1) An eligible entity that became an eligible entity on or before December 5, 2008 and that has not opted out, or

(2) An entity that becomes an eligible entity after December 5, 2008, and that the FDIC has allowed to participate in the program, except that a participating entity that opts out of the transaction account guarantee program in accordance with § 370.5(c)(2) ceases to be a participating entity in the transaction account guarantee program effective on January 1, 2010.

(h) \* \* \*

(4) Notwithstanding paragraph (h)(3) of this section, a NOW account with an interest rate above 0.50 percent as of November 21, 2008, may be treated as a noninterest-bearing transaction account for purposes of this part, if the insured depository institution at which the account is held reduces the interest rate on that account to 0.50 percent or lower before January 1, 2009, and commits to maintain that interest rate at no more than 0.50 percent at all times during the period in which the institution is participating in the transaction account guarantee program.

\* \* \* \* \*

3. Amend section 370.4 by revising paragraph (a) to read as follows:

**§ 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 guaranteed in full (irrespective of the standard maximum deposit insurance amount defined in 12 CFR 330.1(n)) from October 14, 2008 through:

- (1) The date of opt-out, in the case of an entity that opted out prior to December 5, 2008;
- (2) December 31, 2009, in the case of an entity that opts out effective on January 1, 2010; or
- (3) June 30, 2010, in the case of an entity that does not opt out.

\* \* \* \* \*

4. Amend section 370.5 as follows:

- a. Revise paragraph (c);
- b. Revise paragraph (g); and
- c. Revise paragraph (h)(5), to read as follows:

**§ 370.5 Participation.**

\* \* \* \* \*

(c) Opt-out and opt-in options.

- (1) From October 14, 2008 through December 5, 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, December 5, 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, December 5, 2008 constitutes a decision to continue in the program after that date. Prior to December 5, 2008 an eligible entity may opt in to either or both programs by informing the FDIC that it will not opt out of either or both programs.
- (2) Any insured depository institution that is participating in the transaction account guarantee program may elect to opt out of such program effective on January 1, 2010. Any such election to opt-out must be made in accordance with the procedures set forth in paragraph (g)(2) of this section. An election to opt out once made is irrevocable.

\* \* \* \* \*

(g) Procedures for opting out.

- (1) Except as provided in paragraph (g)(2) of this section, the FDIC will provide procedures for opting out and for making an affirmative decision to opt in using FDIC's secure e-business website, *FDICconnect*. Entities that are not insured depository institutions will select and solely use an affiliated insured depository institution to submit their opt-out election or their affirmative decision to opt in.
- (2) Pursuant to paragraph (c)(2) of this section a participating entity may opt out of the transaction account guarantee program effective on January 1, 2010 by submitting to the FDIC on or before 11:59 p.m., Eastern Standard Time, on November 2, 2009 an email conveying the entity's election to opt out. The subject line of the email must include: "TLGP Election to Opt Out – Cert. No.

\_\_\_\_\_.” The email must be addressed to [dcas@fdic.gov](mailto:dcas@fdic.gov) and must include the following:

- (i) Institution Name;
- (ii) FDIC Certificate number;
- (iii) City, State, ZIP;
- (iv) Name, Telephone Number and Email Address of a Contact Person;
- (v) A statement that the institution is opting out of the transaction account guarantee program effective January 1, 2010; and
- (vi) Confirmation that no later than November 16, 2009 the institution will post a prominent notice in the lobby of its main office and each domestic branch and, if it offers Internet deposit services, on its website clearly indicating that after December 31, 2009, funds held in noninterest-bearing transaction accounts will no longer be guaranteed in full under the Transaction Account Guarantee Program, but will be insured up to \$250,000 under the FDIC’s general deposit insurance rules.

(h) \* \* \*

(5) Each insured depository institution that offers noninterest-bearing transaction accounts must post a prominent notice in the lobby of its main office, each domestic branch and, if it offers Internet deposit services, on its website clearly indicating whether the institution is participating in the transaction account guarantee program. If the institution is participating in the transaction account guarantee program, the notice must state that funds held in noninterest-bearing transactions accounts at the entity are guaranteed in full by the FDIC.

- (i) These disclosures must be provided in simple, readily understandable text. Sample disclosures are as follows:

For Participating Institutions

*[Institution Name] is participating in the FDIC's Transaction Account Guarantee Program. Under that program, through June 30, 2010, all noninterest-bearing transaction accounts are fully guaranteed by the FDIC for the entire amount in the account. Coverage under the Transaction Account Guarantee Program is in addition to and separate from the coverage available under the FDIC's general deposit insurance rules.*

For Participating Institutions that Elect to Opt out of the Extended Transaction Account Guaranty Program Effective on January 1, 2010

*Beginning January 1, 2010 [Institution Name] will no longer participate in the FDIC's Transaction Account Guarantee Program. Thus, after December 31, 2009, funds held in noninterest-bearing transaction accounts will no longer be guaranteed in full under the Transaction Account Guarantee Program, but will be insured up to \$250,000 under the FDIC's general deposit insurance rules.*

For Non-Participating Institutions

*[Institution Name] has chosen not to participate in the FDIC's Transaction Account Guarantee Program. Customers of [Institution Name] with noninterest-bearing transaction accounts will continue to be insured for up to \$250,000 under the FDIC's general deposit insurance rules.*

- (ii) If the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the transaction account guarantee program, for example, an interest-bearing 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 with respect to the swept, transferred, or reclassified funds.

\* \* \* \* \*

5. Amend section 370.7 by revising paragraph (c) to read as follows:

**§ 370.7 Assessments for the Transaction Account Guarantee Program.**

\* \* \* \* \*

(c) *Amount of assessment.*

- (1) Except as provided in paragraph (c)(2) of this section 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 Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (each, a “Call 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 a noninterest bearing savings deposit account as provided in § 370.4(c).
- (2) Beginning on January 1, 2010, each participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly a fee based upon its Risk Category rating. An entity’s Risk Category is determined in accordance with the FDIC’s risk-based premium system described in 12 CFR Part 327. The amount of the fee for each such entity is equal to the annualized, TAG assessment rate for the entity multiplied by the amount of the deposits held in noninterest-bearing transaction accounts (as defined in § 370.2(h) and including any amounts swept from a noninterest bearing transaction account into a noninterest bearing savings deposit account as provided in § 370.4(c)) that exceed the existing deposit insurance limit of \$250,000, as reported on the entity’s most recent quarterly Call Report. The annualized TAG assessment rates are as follows:
  - (i) 15 basis points, for the portion of each quarter in which the entity is assigned to Risk Category I;
  - (ii) 20 basis points, for the portion of each quarter in which the entity is assigned to Risk Category II; and

(iii)25 basis points, for the portion of each quarter in which the entity is assigned to either Risk Category III or Risk Category IV.

(3) The assessments provided in this paragraph (c) shall be in addition to an institution's risk-based assessment imposed under Part 327.

\* \* \* \* \*

By order of the Board of Directors.

Dated at Washington, DC, this 26<sup>th</sup> day of August 2009.

FEDERAL DEPOSIT INSURANCE CORPORATION

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Robert E. Feldman,  
Executive Secretary

(SEAL)