

**[6714-01-P]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 370**

**RIN 3064-AD37**

**Expiration of the Issuance Period for the Debt Guarantee Program; Establishment of Emergency Guarantee Facility.**

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

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The FDIC is issuing this Notice of Proposed Rulemaking to present two alternatives for phasing out the Debt Guarantee Program (DGP), a component of the Temporary Liquidity Guarantee Program (TLGP).

Under the first alternative, the DGP would conclude as provided in the current regulation. Thus, insured depository institutions (IDIs) and certain other participating entities would be permitted to issue FDIC-guaranteed debt no later than October 31, 2009, with the FDIC's guarantee for such debt expiring no later than December 31, 2012.

Under the second alternative, the DGP would expire as indicated above; however, the FDIC would establish a limited six-month emergency guarantee facility to be made available in emergency circumstances to insured depository institutions (IDIs) and certain other entities participating in the DGP upon application to and with the prior approval of the FDIC. Under the proposed emergency guarantee facility, the FDIC would guarantee senior unsecured debt issued on or before April 30, 2010. The emergency guarantee facility would be available on a limited, case-by-case basis to (i) insured depository institutions (IDIs) participating in the DGP and to (ii) other entities participating in the

DGP that have issued FDIC-guaranteed debt under the DGP by September 9, 2009. Entities seeking to participate in the emergency guarantee facility would be required to submit an application to the FDIC on or before April 30, 2010, and demonstrate an inability to issue non-guaranteed debt to replace maturing senior unsecured debt as a result of market disruptions or other circumstances beyond the entity's control. If approved by the FDIC, senior unsecured debt issued under the emergency guarantee facility would be guaranteed by the FDIC until a date no later than December 31, 2012, and would be subject to an annualized participation fee of at least 300 basis points.

**DATES:** Written comments must be received by the FDIC by [INSERT DATE 15 DAYS AFTER THE DATE THE NPR IS PUBLISHED IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on the Notice of Proposed Rulemaking, by any of the following methods:

- Agency Web Site: <http://www.FDIC.gov/regulations/laws/federal/notices.html>. Follow instructions for submitting comments on the Agency Web Site.
- E-mail: [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include RIN # 3064-AD37 on the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17<sup>th</sup> Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

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

**FOR FURTHER INFORMATION CONTACT:** *(for questions or comments related to applications)* [Lisa D Arquette, Associate Director, Division of Supervision and Consumer Protection, \(202\) 898-8633 or larquette@fdic.gov](#); Serena L. Owens,

Associate Director, Supervision and Applications Branch, Division of Supervision and Consumer Protection, (202) 898-8996 or [sowens@fdic.gov](mailto:sowens@fdic.gov); Gail Patelunas, Deputy Director, Division of Resolutions and Receiverships, (202) 898-6779 or [gpatelunas@fdic.gov](mailto:gpatelunas@fdic.gov); Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562-6167 or [dsaulnier@fdic.gov](mailto:dsaulnier@fdic.gov); Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898-8967 or [mstclair@fdic.gov](mailto:mstclair@fdic.gov); Robert C. Fick, Counsel, Legal Division, (202) 898-8962 or [rfick@fdic.gov](mailto:rfick@fdic.gov); or A. Ann Johnson, Counsel, Legal Division, (202) 898-3573 or [aajohnson@fdic.gov](mailto:aajohnson@fdic.gov).

## **SUPPLEMENTARY INFORMATION**

### **I. Background**

The FDIC adopted 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 difficulty of many financial institutions to obtain funds and to 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 DGP and the Transaction Account Guarantee Program (TAG program). The DGP initially permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the

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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 triggered the FDIC's authority – “in its sole discretion and upon such terms and conditions as the [FDIC's] Board of Directors may prescribe -- to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability. See also Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth. The FDIC implemented the TLGP in response.

<sup>2</sup> 73 FR 64179 (October 29, 2008). This interim rule was finalized and a final rule was published in the *Federal Register* on November 26, 2008. 73 FR 72244 (November 26, 2008).

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.<sup>3</sup> Under this rule, all IDIs and those other participating entities that had issued FDIC-guaranteed debt on or before April 1, 2009 are permitted to participate in the extended DGP without application to the FDIC. Other participating entities that receive approval from the FDIC also may participate in the extended DGP. The rule also 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, where the FDIC's guarantee expires on the earliest of the debt's mandatory conversion date, the stated maturity date, or December 31, 2012.

On June 23, 2009, the Board proposed two alternatives for phasing out the TAG. The first proposed alternative provided that the TAG would expire on December 31, 2009, as required by the terms of the existing rule. The second proposed alternative provided for a limited six month extension to that program. Following consideration of the comments submitted in response to the two alternatives, on August 26, 2009, the Board adopted and approved for publication in the *Federal Register* a final rule providing for a six-month extension of the TAG program, through June 30, 2010.<sup>4</sup> The extended TAG program is available to any participating IDI that does not elect to opt-out of the extension, subject to an increased fee for the FDIC's guarantee of qualifying non-interest bearing transaction accounts during the extension period.

Recent data suggest that the TLGP and other federal efforts to restore liquidity to and confidence in the banking and financial services industries have had a positive impact. For example, only a few participating entities have issued FDIC-guaranteed debt under the extended DGP, and a number of banking organizations have conducted successful public offerings of non-FDIC-guaranteed debt and equity. A number of banking organizations also have repaid the preferred shares purchased by the U.S.

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

<sup>4</sup> 74 FR 45093 (September 1, 2009).

Treasury through its Capital Purchase Program. Funding costs have eased as the three-month Libor rate has reached record lows and related credit spreads have moderated substantially.

Since there is evidence that the domestic credit and liquidity markets are beginning to normalize and since there has been a decrease in the number of entities that now are issuing debt under the DGP, the current regulation may provide an appropriate means for concluding the DGP. On the other hand, however, it may be prudent for the FDIC to allow the DGP to expire by its terms, while establishing an emergency guarantee facility to be accessed on a limited, case-by-case basis by IDIs and certain other entities participating in the DGP if emergency circumstances warrant. This limited emergency guarantee facility could afford protection to entities participating in the DGP that are unable to issue non-guaranteed debt to replace maturing debt because of market disruptions or other circumstances beyond their control.<sup>5</sup>

## **II. Proposed Alternatives for Concluding the Debt Guarantee Program**

As it did when proposing alternatives for concluding the TAG, in this Notice of Proposed Rulemaking the FDIC presents two alternatives for concluding the FDIC's guarantee of senior unsecured debt under the DGP. In general, under Alternative A, IDIs and certain other participating entities would be permitted to issue FDIC-guaranteed debt under the DGP no later than October 31, 2009, with the FDIC's guarantee for such debt expiring no later than December 31, 2012, as provided for in the current regulation. Under Alternative B, although the DGP effectively would end as provided for in the current regulation, the FDIC would establish and make available on a limited, case-by-case basis, an emergency guarantee facility. The proposed emergency guarantee facility

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<sup>5</sup> Establishment of the emergency guarantee facility would be consistent with the rationale for establishing the existing TLGP and the determination of systemic risk made on October 14, 2008, pursuant to 12 U.S.C. section 1823(c)(4)(G), by the Secretary of the Treasury (after consultation with the President) following receipt of the written recommendation dated October 13, 2008, of the FDIC's Board of Directors (Board) and the similar written recommendation of the Board of Governors of the Federal Reserve System (Federal Reserve). In addition to the authority granted to the FDIC by the systemic risk determination, 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, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act.

would be made available only following FDIC approval of an application submitted by an IDI or other entity that issued FDIC-guaranteed senior unsecured debt on or before September 9, 2009. If approved by the FDIC, an applicant would be permitted to issue FDIC-guaranteed senior unsecured debt during the period between November 1, 2009 and April 30, 2010, subject to any other restrictions and conditions deemed appropriate by the FDIC, including limiting executive compensation, bonuses, or the payment of dividends.

*A. Alternative A*

Alternative A would preserve the current regulation regarding the duration of the FDIC's guarantee of senior unsecured debt under the DGP. Thus, all IDIs participating in the DGP (and other participating entities that had either issued guaranteed debt before April 1, 2009, or had not issued guaranteed debt before April 1, 2009, but had otherwise received the FDIC's permission to issue non-guaranteed debt) would be permitted to issue FDIC-guaranteed senior unsecured debt until October 31, 2009. The FDIC's guarantee for such debt issuances would expire no later than December 31, 2012.

*B Alternative B*

Under Alternative B, the DGP would expire as currently structured. In Alternative B, however, the FDIC proposes the establishment of a limited, six-month emergency guarantee facility upon expiration of the DGP on October 31, 2009, as currently structured.

This emergency guarantee facility would be designed to address an entity's inability to replace maturing debt through non-guaranteed sources as a result of a market disruption or other circumstance beyond the control of the participating entity. Under this emergency guarantee facility, the FDIC, after prior approval granted on a case-by-case basis, would guarantee senior unsecured debt (as defined in 12 CFR § 370.2(e)) issued by certain entities participating in the DGP after October 31, 2009, through and including April 30, 2010, subject to restrictions and conditions deemed appropriate by the FDIC. The FDIC's guarantee of principal and interest payments for senior unsecured debt issuances approved under the emergency guarantee facility would extend through

the earliest of the mandatory conversion date (for mandatory convertible debt), the stated maturity date, or December 31, 2012. If Alternative B were adopted, with the exception of the prior approval requirement and the increased participation fee, the terms of the FDIC guarantee would remain unchanged from the existing DGP. Further, should Alternative B be adopted, there would be no effect on any conditions that the FDIC may have placed on the issuance of debt by an IDI or other entity participating in the DGP.

Any IDI participating in the DGP and any other entity participating in the DGP that has issued FDIC-guaranteed debt by September 9, 2009, would be permitted to apply to use this emergency guarantee facility. Any use of the facility would require the prior approval of the FDIC which is expected to be provided on a limited basis following case-by-case consideration.

#### Application Requirements for Participation in the Emergency Guarantee Facility

Applications to participate in the emergency guarantee facility would be required to be submitted to the Director of the Division of Supervision and Consumer Protection on or before April 30, 2010. The application would be expected to include a projection of the sources and uses of funds through December 31, 2012; a summary of the entity's contingency plans; a description of any collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee; a description of the plans for retirement of the FDIC-guaranteed debt; a description of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt; a description of management's efforts to mitigate the effects of such disruptions or circumstances; conclusive evidence that demonstrates an entity's inability to issue non-guaranteed debt; and any other relevant information that the FDIC deems appropriate.

Participation in the emergency guarantee facility would be limited only to those entities that demonstrated the inability to issue non-guaranteed debt to replace maturing debt as a result of market disruptions or other circumstances beyond the entities' control. In order for an application to be accepted and considered by the FDIC, applicants would be required to describe the circumstances that gave rise to the request to participate in the

emergency guarantee facility and also must include an explanation of how and the extent to which such circumstances were unanticipated by the applicant and remain beyond its control. In addition, applicants would be expected to include an explanation of the actions taken by its management to mitigate such circumstances.

#### Participation fee

Under Alternative B, the FDIC would assess an annualized participation fee of at least 300 basis points on any FDIC-guaranteed debt issued by entities that are permitted to use the emergency guarantee facility. The FDIC would reserve the right to increase the participation fee on a case-by-case basis, depending upon the risks present in the issuing entity's organization. The FDIC notes that the participation fee may provide an appropriate deterrent to applications based on other, less severe circumstances or concerns. Consistent with the existing DGP, a participating entity may be required to pledge sufficient collateral to ensure the repayment of any principal and interest payments made by the FDIC under the guarantee facility, and also may be subject to other conditions and restrictions that the FDIC deems appropriate, including, for example, limiting executive compensation, bonuses, or the payment of dividends.

#### IV. Request for Comments

The FDIC requests comments on all aspects of this notice. Specifically, the FDIC notes that, upon approval of application, the emergency guarantee facility proposed in Alternative B would be available to all participating IDIs and to those other entities that had issued FDIC-guaranteed debt by September 9, 2009. The FDIC requests comment as to whether, if Alternative B is adopted, eligibility should be limited in this manner. Finally, the FDIC asks commenters to indicate a preference for either Alternative A or Alternative B as a means of providing the most appropriate phase out of the FDIC's DGP.

#### **V. Regulatory Analysis and Procedure**



## A. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603(a), the FDIC must publish an initial regulatory flexibility analysis with this proposed rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of \$175 million or less are considered to be “small entities.” The FDIC hereby certifies pursuant to 5 U.S.C. § 605(b) that the Alternative B of the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. (Alternative A, as described in the proposed rule, represents no change from the FDIC’s existing regulation. As such, Alternative A is not likely to have a significant economic impact on a substantial number of small entities.)

Currently, 4,424 IDIs participate in the DGP, of which approximately 2,136 (or approximately 48 percent) are small entities. If Alternative B is adopted, all 2,136 IDIs that are considered small entities for purposes of this analysis would be eligible to apply to access the emergency guarantee facility. As a result, the FDIC asserts that Alternative B could have some impact on a substantial number of IDIs that are small entities that participate in the DGP.

Nevertheless, the FDIC has determined that, were Alternative B of the proposed rule to be adopted, the economic impact on small entities will not be significant for the following reasons. The emergency guarantee facility as contemplated in Alternative B is designed to be accessed on an emergency case-by-case basis by IDIs (and other entities that issued debt under the DGP) only if such entities are unable to replace maturing debt as a result of market disruptions or other circumstances beyond the entities’ control. Eighty-one IDIs have issued FDIC-guaranteed debt through the DGP since the program’s inception. It appears unlikely that a significant number of IDIs (or other qualifying entities) would satisfy the requirements to issue FDIC-guaranteed debt during such emergency circumstances. Accordingly, if adopted in final form, neither Alternate A nor Alternate B of the proposed rule would 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. If Alternative B were adopted, the Proposed Rule would establish a new OMB-approved information collection, entitled the “Temporary Liquidity Guarantee Program -- Emergency Guarantee Facility ” (OMB No. 3064-NEW). (Should Alternative A be adopted, no change would occur in the existing regulation or the existing burden estimates.) Should Alternative B be adopted, the estimated burden for the proposed application process, described in Alternative B of the Proposed Rule, is as follows:

*Title:* “Temporary Liquidity Guarantee Program – Emergency Guarantee Facility”

*OMB Number:* 3064-NEW

*Estimated Number of Respondents:*

Application to access emergency guarantee facility submitted by IDIs --- 8.

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP --- 4

*Frequency of Response:*

Application to access emergency guarantee facility submitted by IDIs --- once.

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP --- once.

*Affected public:* IDIs; thrift holding companies, bank and financial holding companies, and affiliates of IDIs that issued debt under the DGP.

*Average time per response:*

Application to access emergency guarantee facility submitted by IDIs --- 4 hours.

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP --- 4 hours.

*Estimated annual burden:*

Application to access emergency guarantee facility submitted by IDIs --- 32 hours

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP --- 16 hours

*Total annual burden --- 48 hours*

The FDIC is requesting comment on the new TLGP-related information collection proposed in Alternative B. The FDIC is also giving notice that the proposed collection of information has been submitted to OMB for review and approval. Comments are invited 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. Interested parties are invited to submit written comments on the estimated burden by any of the following methods:

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

- *E-mail:* [comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202-898-3719), Counsel, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17<sup>th</sup> Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the name and number of the collection.

#### C. Solicitation of Comments on 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. The FDIC invites your comments on how to make this proposed regulation easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could the FDIC do to make the proposed rule easier to understand?

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

The FDIC has determined that the proposed rule will not affect family well-being within the measure 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).

**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 proposes to amend 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 by revising paragraph (n) to read as follows:

**§ 370.2 Definitions.**

\* \* \* \* \*

(n) *Issuance period.*

- (1) Except as provided in paragraph (n)(2) of this section, the term “issuance period” means

(i) With respect to the issuance, by a participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to § 370.3(h) to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, of:

(A) mandatory convertible debt, the period from February 27, 2009 to and including October 31, 2009, and

(B) all other senior unsecured debt, the period from October 14, 2008 to and including October 31, 2009; and

(ii) With respect to the issuance, by any other participating entity, of

(A) mandatory convertible debt, the period from February 27, 2009 to and including June 30, 2009, and

(B) all other senior unsecured debt, the period from October 14, 2008 to and including June 30, 2009.

(2) The “issuance period” for a participating entity that has been approved to issue FDIC-guaranteed debt pursuant to §370.3(k) of this part is the period after October 31, 2009 and on or before April 30, 2010.

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3. Amend section 370.3 as follows:

a. Revise paragraph (d)(2);

b. Revise paragraphs (h)(1) through (h)(3), (h)(5), and (h)(6); and

c. Add paragraph (k), to read as follows:

**§ 370.3 Debt Guarantee Program**

\* \* \* \* \*

(d) \* \* \*

(2) With respect to debt that is issued on or after April 1, 2009 by a participating entity that is either an insured depository institution, a participating entity that has issued guaranteed debt before April 1, 2009, a participating entity that has been approved pursuant to § 370.3(h) to issue guaranteed debt after June 30, 2009 and on or before October 31, 2009, or a participating entity that has been approved pursuant to § 370.3(k) to issue guaranteed debt after October 31,

2009, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or December 31, 2012.

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(h) Applications for exceptions, eligibility, and issuance of certain debt.

- (1) The following requests require written application to the FDIC and the appropriate Federal banking agency of the entity or the entity's lead affiliated insured depository institution:
  - (i) A request by a participating entity to establish, increase, or decrease its debt guarantee limit,
  - (ii) A request by an entity that becomes an eligible entity after October 13, 2008, for an increase in its presumptive debt guarantee limit of zero,
  - (iii) A request by a non-participating surviving entity in a merger transaction to opt in to either the debt guarantee program or the transaction account guarantee program,
  - (iv) A request by an affiliate of an insured depository institution to participate in the debt guarantee program,
  - (v) A request by a participating entity to issue FDIC-guaranteed mandatory convertible debt,
  - (vi) A request by a participating entity that is neither an insured depository institution nor an entity that has issued FDIC-guaranteed debt before April 1, 2009, to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009,
  - (vii) A request by a participating entity to issue senior unsecured non-guaranteed debt after June 30, 2009, and
  - (viii) A request by a participating entity to issue FDIC-guaranteed debt after October 31, 2009 under the Emergency Guarantee Facility pursuant to paragraph (k) of this section.
- (2) Each letter application must describe the details of the request, provide a summary of the applicant's strategic operating plan, describe the proposed use of the debt proceeds, and

- (i) with respect to an application for approval of the issuance of mandatory convertible debt, must also include:
  - (A) the proposed date of issuance,
  - (B) the total amount of the mandatory convertible debt to be issued,
  - (C) the mandatory conversion date,
  - (D) the conversion rate (i.e., the total number of shares of common stock that will result from the conversion divided by the total dollar amount of the mandatory convertible debt to be issued),
  - (E) confirmation that all applications and all notices required under the Bank Holding Company Act of 1956, as amended, the Home Owners' Loan Act, as amended, or the Change in Bank Control Act, as amended, have been submitted to the applicant's appropriate Federal banking agency in connection with the proposed issuance, and
  - (F) any other relevant information that the FDIC deems appropriate;
- (ii) with respect to an application pursuant to paragraph (h)(1)(vi) of this section to extend the period for issuance of FDIC-guaranteed debt to and including October 31, 2009, the entity's plans for the retirement of the guaranteed debt, a description of the entity's financial history, current condition, and future prospects, and any other relevant information that the FDIC deems appropriate;
- (iii) with respect to an application pursuant to paragraph (h)(1)(vii) of this section to issue senior unsecured non-guaranteed debt, a summary of the applicant's strategic operating plan and the entity's plans for the retirement of any guaranteed debt; and
- (iv) with respect to an application pursuant to paragraph (h)(1)(viii) of this section to issue FDIC-guaranteed debt under the Emergency Guarantee Facility, a projection of the sources and uses of funds through December 31, 2012, a summary of the entity's contingency plans, a description of the collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee, a description of the plans for retirement of the FDIC-



guaranteed debt, a description of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt, a description of management's efforts to mitigate the effects of such disruptions or circumstances, conclusive evidence that demonstrates an entity's inability to issue non-guarantee debt, and any other relevant information.

(3) In addition to any other relevant factors that the FDIC deems appropriate, the FDIC will consider the following factors in evaluating applications filed pursuant to paragraph (h) of this section:

- (i) For applications pursuant to paragraphs (h)(1)(i), (h)(1)(ii), (h)(1)(iii), and (h)(1)(v) of this section: the proposed use of the proceeds; the financial condition and supervisory history of the eligible/surviving entity;
- (ii) For applications pursuant to paragraph (h)(1)(iv) of this section: the proposed use of the proceeds; the extent of the financial activity of the entities within the holding company structure; the strength, from a ratings perspective of the issuer of the obligations that will be guaranteed; the size and extent of the activities of the organization;
- (iii) For applications pursuant to paragraph (h)(1)(vi) of this section: the proposed use of the proceeds; the entity's plans for the retirement of the guaranteed debt, the entity's financial history, current condition, future prospects, capital, management, and the risk presented to the FDIC;
- (iv) For applications pursuant to paragraph (h)(1)(vii) of this section: the entity's plans for the retirement of the guaranteed debt, and
- (v) For applications pursuant to paragraph (h)(1)(viii) of this section, the applicant's strategic operating plan, the proposed use of the debt proceeds, the entity's plans for the retirement of the FDIC-guaranteed debt, the entity's contingency plans, the nature and extent of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt, the collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee,

management's efforts to mitigate the effects of such conditions or circumstances, the evidence that demonstrates an entity's inability to issue non-guarantee debt, and the risk presented to the FDIC.

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- (5) The filing deadlines for certain applications are:
- (i) at the same time the merger application is filed with the appropriate Federal banking agency, for an application pursuant to paragraph (h)(1)(iii) of this section (which must include a copy of the merger application);
  - (ii) October 31, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to paragraph (h) of this section to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009;
  - (iii) June 30, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity other than an entity described in paragraph (h)(5)(ii) of this section;
  - (iv) June 30, 2009, for an application pursuant to paragraph (h)(1)(vi); and
  - (v) April 30, 2010, for applications pursuant to paragraph (h)(1)(viii).
- (6) In granting its approval of an application filed pursuant to paragraph (h) of this section the FDIC may impose any conditions it deems appropriate, including without limitation, requirements that the issuer
- (i) hedge any foreign currency risk, or
  - (ii) pledge collateral to secure the issuer's obligation to reimburse the FDIC for any payments made pursuant to the guarantee.
  - (iii) limit executive compensation and bonuses, and/or
  - (iv) limit or refrain from the payment of dividends.

\* \* \* \* \*

(k) Emergency Guarantee Facility. In the event that a participating entity that is either an insured depository institution or an entity that has issued FDIC-guaranteed debt on or before September 9, 2009 is unable, after October 31, 2009, to issue non-guaranteed debt to replace maturing senior unsecured debt as a result of market disruptions or other circumstances beyond the entity's control, the participating entity may, with the FDIC's prior approval under paragraph (h) of this section, issue FDIC-guaranteed debt after October 31, 2009 and on or before April 30, 2010. Any such issuance is subject to all of the terms and conditions imposed by the FDIC in its approval decision as well as all of the provisions of this part, including without limitation, the payment of the applicable assessment and compliance with the disclosure requirements.

\* \* \* \* \*

4. Amend section 370.5 as follows:
  - a. Revise paragraph (f); and
  - b. Revise paragraph (h)(2), to read as follows:

**§ 370.5 Participation.**

\* \* \* \* \*

(f) Except as provided in paragraphs (g), (j), and (k) of § 370.3, participating entities are not permitted to select which newly issued senior unsecured debt is guaranteed debt; all senior unsecured debt issued by a participating entity up to its debt guarantee limit must be issued and identified as FDIC-guaranteed debt as and when issued.

\* \* \* \* \*

(h) \* \* \*

(2) Each participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, an entity that has been approved pursuant to § 370.3(h) to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, or a participating entity that has been approved pursuant to § 370.3(k) to issue FDIC-guaranteed debt after October 31, 2009, must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt that is issued by it during the applicable issuance period and that is guaranteed under the debt guarantee program:

*This debt is guaranteed under the Federal Deposit Insurance Corporation’s Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC’s regulations, 12 CFR Part 370, and at the FDIC’s website, [www.fdic.gov/tlgp](http://www.fdic.gov/tlgp). [If the debt being issued is mandatory convertible debt, add: *The expiration date of the FDIC’s guarantee is the earlier of the mandatory conversion date or December 31, 2012*]. [If the debt being issued is any other senior unsecured debt, add: *The expiration date of the FDIC’s guarantee is the earlier of the maturity date of the debt or December 31, 2012*.]*

\* \* \* \* \*

5. Amend section 370.6 as follows:
  - a. Revise paragraph (d)(1); and
  - b. Add paragraph (i), to read as follows:

**§ 370.6 Assessments under the Debt Guarantee Program.**

\* \* \* \* \*

(d) Amount of assessments for debt within the debt guarantee limit

- (1) Calculation of assessment. Subject to paragraphs (d)(3) and (h) of this section, and except as provided in paragraph (i) of this section, the amount of assessment will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the following table.

For debt with a maturity or time period to conversion date of	The annualized assessment rate (in basis points) is
180 days or less (excluding overnight debt)	50
181-364 days	75
365 days or greater	100

\* \* \* \* \*

(i) Assessment for Debt issued under the Emergency Guarantee Facility. The amount of the assessment for FDIC-guaranteed debt issued pursuant to § 370.3(k) of this part is equal to the amount of the debt times the term of the debt (or in the case of mandatory convertible debt, the time period to conversion) times an annualized assessment rate of 300 basis points, or such greater rate as the FDIC may determine in its decision approving such issuance.

\* \* \* \* \*

Dated at Washington DC, this 9th day of September 2009.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,