[XXXX-XX-X]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064-AD37

Final Rule Regarding Amendment of the Temporary Liquidity Guarantee Program to Extend the Transaction Account Guarantee Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final Rule.

SUMMARY: The FDIC is issuing a Final Rule extending the Transaction Account Guarantee (TAG) component of the Temporary Liquidity Guarantee Program (TLGP) through December 31, 2010, for insured depository institutions (IDIs) currently participating in the TAG program, with the possibility of an additional extension of up to 12 months without additional rulemaking, upon a determination by the FDIC's Board of Directors (Board) that continuing economic difficulties warrant further extension.

The Final Rule differs only slightly from the interim rule that preceded it. The interim rule provided for the possibility of a further extension of the TAG program until December 31, 2011, without additional rulemaking, should the FDIC's Board determine that economic conditions warrant a further extension of the program. The Final Rule provides that, under appropriate economic conditions, the Board may further extend the

TAG program for a period of time not to exceed December 31, 2011. Like the interim rule, the Final Rule modifies the assessment basis for calculating the assessment rate for an IDI's continued participation in the TAG to the average daily balances in the TAG-related accounts, but makes no changes to the assessment rate itself. Further, as in the interim rule the Final Rule requires IDIs that are participating in the TAG program and that offer NOW accounts covered by the program to reduce the interest rate on such accounts to a rate no higher than 0.25 percent and to commit to maintain that rate for the duration of the TAG extension in order for those NOW accounts to remain eligible for the FDIC's continued guarantee.

DATES: Effective [insert date of publication in *Federal Register*].

FOR FURTHER INFORMATION CONTACT: A. Ann Johnson, Counsel, Legal Division, (202) 898-3573 or aajohnson@fdic.gov; Robert C. Fick, Supervisory Counsel, Legal Division, (202) 898-8962 or rfick@fdic.gov; Julia E. Paris, Senior Attorney, Legal Division, (202) 898-3821 or jparis@fdic.gov; Lisa D Arquette, Associate Director, Division of Supervision and Consumer Protection, (202) 898-8633 or larquette@fdic.gov; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562-6167 or dsaulnier@fdic.gov; or Rose Kushmeider, Acting Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898-3861 or rkushmeider@fdic.gov.

SUPPLEMENTARY INFORMATION

I. Background

In October 2008, the FDIC adopted the TLGP following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve).[1] The TLGP is part of an ongoing and coordinated effort by the FDIC, the U.S. Department of the Treasury, and the Federal Reserve to address unprecedented disruptions in the financial markets and preserve confidence in the American economy.

The FDIC's October 2008 interim rule provided the blueprint for the TLGP.[2] The TLGP comprises two distinct components: the Debt Guarantee Program, pursuant to which the FDIC guarantees certain senior unsecured debt issued by entities participating in the TLGP; and the TAG program, pursuant to which the FDIC guarantees all funds held at participating IDIs (beyond the standard maximum deposit insurance limit) in qualifying noninterest-bearing transaction accounts.

The TAG component of the TLGP was developed, in part, to address concerns that a large number of account holders might withdraw their uninsured account balances from IDIs due to then-prevailing economic uncertainties. Such withdrawals could have further destabilized financial markets and impaired the funding structure of smaller banks that rely on deposits as a primary source of funding while also negatively affecting other

---

1 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.

2 73 FR 64179 (Oct. 29, 2008). This Interim Rule was followed by a Final Rule, published in the *Federal Register* on November 26, 2008. 73 FR 72244 (Nov. 26, 2008).

institutions that had relationships with these banks.[3] In designing the TAG program, the FDIC sought to improve public confidence and to encourage depositors to maintain their transaction account balances at IDIs participating in the TAG program.

As part of its rulemaking process, the FDIC in November 2008 expanded the TAG program to cover, among other accounts, "negotiable order of withdrawal," or NOW accounts, with interest rates no higher than 0.50 percent if the IDI offering the account committed to maintain the interest rate at a level no higher than 0.50 percent through December 31, 2009.[4]

The TAG program was originally set to expire on December 31, 2009.[5] The FDIC recognized that the TAG program was contributing significantly to improvements in the financial sector, but also noted that many parts of the country were still suffering from the effects of economic turmoil. As a result, on August 26, 2009, following a public notice and comment period,[6] the FDIC issued a final rule that extended the TAG program through June 30, 2010.[7]

The initial TAG extension included an increased assessment rate designed to offset the potential losses associated with the FDIC's guarantee. Beginning on January 1, 2010, the fee for continued participation in the TAG was raised and the basis changed to reflect an IDI's risk profile, ranging from 15 basis points to up to 25 basis points. The rule provided participating IDIs with a second opportunity to opt out of the TAG program.[8] The initial TAG extension also required participating IDIs to extend their

---

[3] 73 FR 64182-64183.
[4] 73 FR 72244, 72262 (Nov. 26, 2008).
[5] 73 FR 64179, 64182 (Oct. 29, 2008).
[6] 74 FR 31217 (June 30, 2009).
[7] 74 FR 45093 (Sept. 1, 2009).
[8] *Id*.

commitment to maintain interest rates on NOW account at no higher than 0.50 percent during the extended TAG program.[9]

Since its inception, the TAG program has been an important source of stability for many banks with large transaction account balances. Currently, over 6,300 insured depository institutions, representing approximately 80 percent of all IDIs, continue to participate in the TAG program and to benefit from the guarantee provided by the FDIC. These institutions held an estimated $356 billion of deposits in accounts currently subject to the FDIC's guarantee as of March 31, 2010. Of these, $280 billion represented amounts above the insured deposit limit and guaranteed by the FDIC through its TAG program. Among the current participants in the program, the average TAG account size was about $1.04 million. About 509 institutions rely on TAG accounts to fund 10 percent or more of their assets.

II. Interim Rule

While the immediate financial crisis that led to the creation of the TLGP in October 2008 has abated, several economic factors led the FDIC's Board to authorize publication in the *Federal Register* of an interim rule to amend the TLGP to provide for a six month extension, until December 31, 2010, of the TAG Program, with the possibility of an additional 12-month extension without further rulemaking.[10] Namely, the recession that began in late 2007 continues to pressure local communities across the country. The financial distress has spread from large, systemically important banks to banks of all sizes, particularly in regions suffering from ongoing economic turmoil.[11] Weaknesses facing community banks have intensified as the lingering consequences of the 2008

9 74 FR 45098.
10 75 FR 20257, 20260-261 (April 19, 2010).
11 *Id.* at 20258.

financial crisis and the resulting recession place continued pressure on earnings and asset quality. The effects of the financial crisis and recession are expected to persist for some time, especially as the magnitude of economic distress facing local markets places continued pressure on asset quality and earnings, with the potential for undermining the stability of the banking organizations that serve these markets.[12]

With these factors in mind, as well as the FDIC's general concern that allowing the TAG program to expire in the current environment could cause a number of community banks to experience deposit withdrawals from their large transaction accounts and risk needless liquidity failures or negatively affect IDI's deposit franchise values, the interim rule reflected several features designed to continue to promote confidence and stability in the banking system and to monitor and minimize risk of loss.[13]

In order to allow the majority of participating IDIs to remain in the program, the FDIC's interim rule did not increase fees for continued participation in the extended TAG program.[14] Rather, the tiered-pricing assessment structure, ranging from 15 to 25 basis points based on an IDI's deposit insurance assessment risk category remains in effect. However, the interim rule did modify the basis for calculating the risk-based assessments from end-of-calendar-quarter to average-daily-account-balance reporting.[15]

With respect to the treatment of NOW accounts, the interim rule reduced the permissible interest rate, from no higher than 0.50 percent to no higher than 0.25 percent, for the NOW accounts covered by the FDIC's TAG guarantee in order to better align the program with prevailing market rates. It also required participating IDIs to commit to

---

[12] *Id*. at 20259.
[13] *Id*. at 20260-261.
[14] 75 FR 20257, 20260 (April 19, 2010).
[15] *Id*.

maintain the interest rate at or below 0.25 percent after June 30, 2010, and through December 31, 2010, or the duration of the program, if the Board further extends the TAG program.[16]

In light of the regulatory modifications to the existing TAG program and in recognition that some IDIs wished to discontinue participation in the program, the interim rule provided IDIs currently participating in the TAG program with a one-time, irrevocable opportunity to opt out of this TAG extension by April 30, 2010.[17] An additional 441 institutions took advantage of this opt-out opportunity and indicated their intent to exit the program as of July 1, 2010. Under the interim rule, a participating IDI's decision to remain in the extended TAG program obligates it to remain in the program through December 31, 2010, or for the duration of the program, if the Board further extends the TAG program.

As to the disclosures required regarding the extended TAG program, the interim rule required IDIs that did not opt out of the extension to update their disclosures on or before May 20, 2010, to reflect the new termination date for the extension.[18] Under the interim rule, those IDIs that chose to opt out of the program similarly had to update disclosures to reflect that they would no longer be participating in the TAG program and that deposits in noninterest-bearing transaction accounts would no longer be guaranteed in full by the FDIC.[19]

The FDIC requested comment on the interim rule, and the comment period ended on May 19, 2010. A total of 10 comments were submitted by bankers, trade groups, and

---

16 *Id*. at 20261.
17 *Id*.
18 *Id*.
19 *Id*.

Members of the U.S. House of Representatives. The comments are summarized below and may be viewed in their entirety on the FDIC's Web site at http://www.fdic.gov/regulations/laws/federal/.

IV. Comment Summary and Discussion

With one exception, commenters generally supported the FDIC's interim rule extending the TAG program. They cited the continued confidence and stability that the TAG program instills in customers as well as the ability for banks to use the deposit base provided by the TAG program to lend and promote growth in their communities.

One commenter opposed to the interim rule suggests, without providing any supporting data, that, because evidence shows the economy is recovering, a further extension of the TAG program is unwarranted and would further cause participating IDIs to postpone addressing their liquidity positions. Although the FDIC agrees there are many signs that the economy is recovering, the recovery remains fragile and is still threatened by weak labor markets, household and business uncertainty, and tight credit conditions. The Final Rule extends the TAG program in order to reduce the risk of needless liquidity failures and increased costs that might result if the TAG program were not extended during this still fragile economic period. In addition, the Final Rule would maintain an important source of liquidity for participating IDIs to fund small business lending, which will further contribute to economic recovery. An orderly phase-out of the TAG program will be appropriate once evidence points to a more solid and sustained economic recovery.

Further comments are detailed below by subject.

Clarification of Possible Additional Extension Period

As an initial matter, the FDIC notes that some commenters viewed the interim rule's possible additional extension beyond December 31, 2010, as a term of "up to 12 months." To provide maximum flexibility in the event of a more rapid resurgence of positive economic conditions, the Final Rule defines the "TAG expiration date" to mean December 31, 2010, unless the Board, for good cause, extends the program for an additional period of time not to exceed one year, in which case the term "TAG expiration date" means the last day of such additional period of time. As with the interim rule, the Final Rule provides that the FDIC's Board will announce its decision regarding any additional extension of the TAG program no later than October 29, 2010. At that time, if such a further extension beyond December 31, 2010, is warranted, the Board will announce the TAG expiration date that will conclude the TAG program.

Requests to opt into TAG Program/Future Opt out Provision

Three commenters requested that the FDIC offer the opportunity to opt into the TAG program to IDIs that had previously opted out of the program. Some commenters note that they had opted out of the TAG program under the premise that the program was temporary in nature and that the increased assessment basis would not justify the cost of remaining in the program. All of these commenters now cite the potential for a competitive imbalance if similarly situated IDIs are not permitted to opt into the program. One commenter suggests that IDIs that were healthy at the time that they made their opt-out decision be permitted to opt in to the program.

After carefully considering these comments, the FDIC has not provided for opt-in opportunities in the Final Rule. Primarily, as noted in the interim rule, the extension of the TAG program represents a continuation of the FDIC's action under the October 2008 systemic risk determination to mitigate the continuing adverse effects of the financial crisis and recession. Permitting non-participating IDIs to opt back into the program would be inconsistent with the FDIC's previously-announced intent to conclude the program. Further, the TAG extension may terminate as soon as December 31, 2010, and only two institutions and one trade group have indicated a desire to opt in. At this stage of the TAG program, the costs of establishing and implementing systems to reinstate the program for a few IDIs and the potential for depositor confusion outweigh arguments to the contrary.

In addition, if the Board decides that an extension is warranted after December 10, 2010, one commenter believes that the FDIC should offer another opportunity to opt out of the TAG program. The commenter reasons that a secondary extension would cause IDIs to incur additional assessments. However, the interim rule notified IDIs that they would be obligated to remain in the program (and pay any required assessment) through December 31, 2010, or for the duration of the program, if the Board further extended the TAG program. In making the decision to remain in the extended TAG program, IDIs should have factored in the expense of participating in the program for the duration of the program. Moreover, the interim rule provided for a secondary extension of one year beyond December 31, 2010, until December 31, 2011. The Final Rule provides for the possibility that the program may be extended for a period of less than one year beyond December 31, 2010. If the Board determines to extend the program for less than one year beyond December 31, 2010, the costs of the extension provided for in the Final Rule would be less than those provided for in the interim rule. Accordingly, the Final Rule does not provide an additional opt out opportunity.

Reduction of Interest Rate for TAG-qualifying NOW Accounts

Some commenters expressed concern regarding the reduction, from 0.50 percent to 0.25 percent, of the maximum interest permissible for TAG-qualifying NOW accounts provided for in the interim rule. These commenters noted that the interest rate reduction could lead to decreased earnings on such TAG-qualifying NOW accounts, and may cause banks to divert funds to pledge as collateral that might otherwise be used to support lending. Further, a commenter expressed concern that if the TAG program is extended beyond December 31, 2010, the 0.25 percent maximum permissible interest rate for TAG-qualifying accounts may not align with future prevailing market rates. Other commenters felt that the reduced interest rate represented current market rates in their regions, and did not believe that such a reduction would affect their earnings.

IDIs throughout the country participate in the TAG program. In the interim rule, the FDIC explained its rationale for reducing the maximum interest rate for TAG-qualifying NOW accounts.[20] Based on data provided by RateWatch, the FDIC noted that the nationwide average rates for regular interest-bearing checking accounts ranged from 0.12 percent to 0.15 percent for most accounts, and from 0.26 percent to 0.29 percent for premium accounts held by municipalities, school districts, and other typical large transaction account holders. In providing for the interest rate reduction on TAG-qualifying NOW accounts in the interim rule, the FDIC sought to align the interest rate with current market rates and to ensure the program is not used inappropriately by IDIs to attract interest-sensitive deposits to fund high-risk activities.

[20] 75 FR 20261.

The FDIC has considered the commenters' concerns that the reduced interest rate may not align with prevailing rates by region or with future interest rates, but has determined to retain the 0.25 percent limit for qualifying NOW accounts as representative of the prevailing nationwide interest rates for such accounts at this time and for the relatively short duration of the TAG extension. The FDIC will continue to monitor interest rates for TAG-qualifying NOW accounts.

Modification of the Reporting Basis for the TAG Program

In order to monitor and assess fees based on the ongoing risk exposure, the interim rule modified the basis for calculating risk-based assessments from end-of-calendar-quarter to average-daily-account-balance reporting. One commenter suggested that the modification is only appropriate for IDIs that currently report their FDIC deposit insurance assessments as the quarterly average of daily closing balances because of the significant cost associated with altering general ledger systems to meet this requirement for potentially only two calendar quarters. However, another commenter representing community banks expressly noted that even though this change may create additional administrative burdens on smaller IDIs, the change "would more accurately reflect the TAG amounts of these fluctuating and volatile accounts."[21]

In the interim rule, the FDIC noted that, of the institutions that use quarter-end reporting for their deposit insurance assessment base, fewer than 1,000 institutions report more than 25 TAG-qualifying accounts. After carefully considering this comment, the FDIC continues to believe that the modification in the assessment base for such a limited universe of IDIs would not create a significant burden that would outweigh its responsibility to accurately monitor the TAG program and the associated risk of loss.

---

[21] Independent Community Banks of America, May 19, 2010, Letter.

Increasing TAG Assessment Rate and Assessing Non-Participating IDIs

One commenter suggested increasing the tiered-pricing assessment for participating IDIs in order to decrease their reliance on the TAG Program. However, the interim rule specifically did not impose an increased TAG assessment rate in order to keep the program accessible to all participating IDIs and to avoid further pressure on the liquidity posture of those that participate in the TAG program. The FDIC remains committed to these goals; consequently, as with the interim rule, the Final Rule does not increase fees for participation in the TAG program.

V. The Final Rule

For the reasons set forth in the preceding section, the FDIC has issued the Final Rule, with only one modification. The change concerns the length of any possible secondary extension of the TAG program, should the FDIC's Board deem further extensions necessary beyond December 31, 2010. The features of the Final Rule are discussed below.

A. *Extension of the TAG Program for Participating IDIs*

The Final Rule extends the TAG program through December 31, 2010, with the possibility of an additional extension not to exceed December 31, 2011, without further rulemaking, at the discretion of the Board upon a finding of continued need for the TAG program. If the Board determines that an additional extension is warranted beyond December 31, 2010, an announcement to that effect will be made by the FDIC no later than October 29, 2010.

B. *No Increased Fee for Continued Participation in the Extended TAG Program*

As with the interim rule, the Final Rule does not make any changes to the existing tiered-pricing assessment, ranging from 15 to 25 basis points based on an institution's deposit insurance risk profile. As noted in the interim rule, in order to prevent unanticipated risk of loss, the FDIC reminds participating IDIs to exercise prudent marketing of TAG accounts that qualify for the FDIC's guarantee and to continue to exercise risk-management principles applicable to an IDI's existing business plan. Participating IDIs should not use the extension period to aggressively market or grow their TAG-related accounts.

C. *Change in Basis for Reporting Assessment Purposes*

The Final Rule provides that IDIs that did not opt out of the TAG program will be required to report their TAG amounts as average daily balances in order to enable the FDIC to monitor and assess fees based upon the ongoing risk exposure. Under the Final Rule, beginning with the September 30, 2010, report date for the Report of Condition or Thrift Financial Report, the total dollar amount of TAG-qualifying accounts and the total number of accounts must be reported as an average balance. The amounts to be reported as daily averages are the total dollar amounts of the noninterest-bearing transaction accounts, as defined in 12 C.F.R. 370.2(h), of more than $250,000 for each calendar day during the quarter divided by the number of calendar days in the quarter. For days that an office of the reporting IDI is closed (e.g., Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day would be used. The total number of accounts to be reported should be calculated on the same basis. Documentation supporting the amounts used in the calculation of the average daily balance amounts must be retained and be readily available upon request by the FDIC or the IDI's primary Federal regulator.

D. *Treatment of NOW Accounts*

Consistent with the interim rule, the Final Rule provides that the interest rate on NOW accounts that are eligible for the FDIC's guarantee may not exceed 0.25 percent. The Rule also requires participating IDIs to commit to maintain the interest rate at or below 0.25 percent after June 30, 2010, and through December 31, 2010, or for the duration of the program should the Board extend it.

E. *Opportunity to Opt Out*

The interim rule provided IDIs currently participating in the TAG program with an opportunity to opt out of this TAG extension by April 30, 2010, and detailed the mechanism by which an IDI was to provide the FDIC with notice of its intent to opt out. The Final Rule does not change this feature. Accordingly, a participating IDI's decision to remain in the extended TAG program obligates it to remain in the program through December 31, 2010, or for the duration of a possible additional extension if the Board determines such extension is warranted.

V. Regulatory Analysis and Procedure

A. Administrative Procedure Act

The process of amending Part 370 by means of this Final Rule is governed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and opportunity for public comment are not required with respect to a rule making when an agency for good cause finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Similarly, section 553(d)(3) of the APA provides that the publication of a rule shall be made not less than 30 days before its effective date, except "… (3) as otherwise provided by the agency for good cause found and published with the rule."

Consistent with section 553(b)(B) of the APA, in publishing the interim rule, the FDIC invoked the good cause exception based on the furtherance of the public interest by extending the time period of the TAG program to promote continued stability in the banking system through guaranteeing large uninsured transaction account balances in order to provide participating IDIs with continued sources of funding to meet their liquidity needs. (Nonetheless, the FDIC solicited comments on the interim rule, and has fully considered the comments that were submitted.) For similar reasons, the FDIC confirms that the good cause exception, provided for in section 553(b)(B) of the APA, applies to the Final Rule.

Section 553(d)(3) of the APA provides that the publication of a rule shall be made not less than 30 days before its effective date, except "as otherwise provided by the agency for good cause found and published with the rule." For reasons that supported its invocation of the good cause exception to section 553(b)(B) of the APA, the FDIC relied upon the good cause exception to section 553(d)(3) and published the interim rule with an immediate effective date. For similar reasons, the FDIC invokes the good cause exception provided for in section 553(d)(3) of the APA and provides for an immediate effective date for this Final Rule.

B. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act provides that any new regulations or amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.[22] For the same reasons discussed above, the FDIC finds that good cause exists for an immediate effective date for the Final Rule.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that the Final Rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. § 801 et seq.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. No. 96-354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rule making pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the FDIC has determined for good cause that general notice and opportunity for public comment would be impracticable and contrary to the public interest. Therefore, the RFA, pursuant to 5 U.S.C. 601(2), does not apply.

[22] 12 U.S.C. 4802.

E. 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. The Interim Rule, by extending the termination date for the TAG Program, changed the estimated number of respondents for the reporting and recordkeeping requirements in an existing OMB-approved information collection, entitled the "Transaction Account Guarantee Program Extension," (OMB No. 3064-0170). Those burden adjustments were submitted to OMB as a request for a nonmaterial/nonsubstantive change. This Final Rule imposes no additional paperwork burden; therefore, the previously submitted burden estimates for the Transaction Account Guarantee Program Extension information collection require no further adjustment.

Section 370.6(c)(5) of both the Interim Rule and the Final Rule requires that a new data element on average daily balances in noninterest-bearing transaction accounts be incorporated into the Consolidated Report of Income and Condition (CALL Report) filed by program extension participants. The reporting requirement will not be implemented until the quarterly report filed for the period July 1, 2010, to September 30, 2010. This change to the CALL Report was the subject of a *Federal Register* notice published on May 21, 2010 (75 FR 28612) by the FDIC and the other bank regulatory agencies as required by the Paperwork Reduction Act.

F. 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. No commenters suggested that the interim rule was materially unclear, and the FDIC believes that the Final Rule is substantively similar to the interim rule.

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

The FDIC has determined that the Final 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 amends part 370 of chapter III of Title 12 of the Code of Federal Regulations 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 (o) to read as follows:

§ 370.2 Definitions.

* * * * *

(o) TAG expiration date. The term “TAG expiration date” means December 31, 2010 unless the Board of Directors of the FDIC (the “Board”), for good cause, extends the transaction account guarantee program beyond December 31, 2010 for an additional period of time not to exceed one year, in which case the term “TAG expiration date” means the last day of such additional period of time. Good cause exists if the Board finds that the economic conditions and circumstances that led to the establishment of the transaction account guarantee program are likely to continue beyond December 31, 2010 and that extending the transaction account guarantee program for an additional period of time will help mitigate or resolve those conditions and circumstances. If the Board decides to extend the transaction account guarantee program beyond December 31, 2010 for an additional period of time, it will do so without further rulemaking; however, the FDIC will publish notice of any extension no later than October 29, 2010. Participating entities must update the disclosures required by § 370.5(h)(5), as necessary, to reflect the current TAG expiration date, including any extension of such date.

3. Amend section 370.5 by revising paragraph (h)(5) to read as follows:

§ 370.5 Participation.

* * * * *

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

* * * * *

(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. Participating entities must update their disclosures to reflect the

current TAG expiration date, including any extension pursuant to § 370.2(o) or, if applicable, any decision to opt-out.

(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, December 31, 2010, or such other date established by the Board as the TAG expiration date pursuant to §370.2(o), whichever is applicable], 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 July 1, 2010

Beginning July 1, 2010 [Institution Name] will no longer participate in the FDIC's Transaction Account Guarantee Program. Thus, after June 30, 2010, 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.

*   *   *   *   *

Dated at Washington, DC, this 22nd day of June, 2010.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman,

Executive Secretary

(SEAL)