

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Subpart F—[Removed and Reserved]

■ 2. Remove and reserve subpart F, consisting of § 300.601 through § 300.606.

[FR Doc. E8–26559 Filed 11–6–08; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Temporary Liquidity Guarantee Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Amendment to the Interim Rule with request for comments.

SUMMARY: The FDIC is amending its Interim Rule with Request for Comment (Interim Rule) relating to implementation of its Temporary Liquidity Guarantee Program (TLG Program) by extending the opt out date for eligible entities until December 5, 2008; extending the deadline for complying with certain disclosure requirements related to the TLG Program until December 19, 2008; and establishing assessment procedures to accommodate the extended opt out period.

DATES: The Amended Interim Rule becomes effective on November 4, 2008. The effective date of § 370.5 paragraphs (h)(2) and (h)(3), added at 73 FR 64186, October 29, 2008, is delayed from December 1, 2008 until December 19, 2008. The FDIC seeks general and specific comments relating to questions raised in both the Amended Interim Rule and the Interim Rule. Comments regarding both the Amended Interim Rule and the Interim Rule must be received by November 13, 2008.

ADDRESSES: You may submit comments on the Amended Interim Rule by any of the following methods:

- *Agency Web Site:* <http://www.FDIC.gov/regulations/laws/federal/notices.html>. Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* Comments@FDIC.gov.

Include RIN # 3064–AD37 on the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

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

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The TLG Program was first announced by the FDIC on October 14, 2008, as an initiative to counter the current system-wide crisis in the nation's financial sector. It provided two limited guarantee programs: One, that guaranteed newly-issued senior unsecured debt of insured depository institutions and most U.S. holding companies of such insured depository institutions (the debt guarantee program), and another, that guaranteed certain noninterest-bearing transaction accounts at insured depository institutions (the transaction account guarantee program).

The FDIC's action in establishing the TLG Program was preceded by a determination of systemic risk by the Secretary of the Treasury (after consultation with the President), following receipt of the written recommendation of the Board on

October 13, 2008, along with a similar written recommendation of the Board of Governors of the Federal Reserve System.

The recommendations and eventual determination of systemic risk were made in accordance with section 13(c)(4)(G) to the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk allowed the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions and financial stability. The FDIC believes that the TLG Program promotes financial stability by preserving confidence in the banking system and encouraging liquidity in order to ease lending to creditworthy businesses and consumers. As a result, on October 23, 2008, the FDIC's Board of Directors authorized publication in the **Federal Register** and requested comment regarding an Interim Rule designed to implement the TLG Program. The Interim Rule was published on October 29, 2008.¹ It became effective on October 23, 2008, with the exception of certain disclosure requirements for which a delayed effective date of December 1, 2008 was established.² The FDIC requested comments regarding the Interim Rule by November 13, 2008.

II. Opt Out Deadline in the Interim Rule

The Interim Rule provides that no later than 11:59 p.m. Eastern Standard Time (EST), on November 12, 2008, each eligible entity³ must inform the FDIC if it desires to opt out of the debt guarantee component or the transaction account guarantee component (or both components) of the TLG Program.⁴ If an eligible entity opts out of the TLG Program, coverage under the program ends on the earlier of the date of the opt out or on November 12, 2008.⁵ According to the Interim Rule, failure to opt out by November 12, 2008 constitutes a decision on behalf of an eligible entity to remain in the

¹ 73 FR 64179 (Oct. 29, 2008).

² 12 CFR 370.5(h)(2) and (h)(3).

³ 12 CFR 370.2(a) defines "eligible entity" as any of the following: (1) An insured depository institution; (2) a U.S. bank holding company, provided that it has at least one chartered and operating insured depository institution within its holding company structure; (3) a U.S. savings and loan holding company, provided that it has at least one chartered and operating insured depository institution within its holding company structure; or (4) other affiliates of insured depository institutions that the FDIC after consultation with the appropriate Federal banking agency, designate as eligible entities which affiliates, by seeking and obtaining such designation, will have opted in to the debt guarantee program.

⁴ 12 CFR 370.5(c).

⁵ 12 CFR 370.5(a).

program.⁶ Prior to November 12, 2008, an eligible entity may also notify the FDIC that it will not opt out of (that is, that it will opt in to) either or both programs.⁷ The choice to opt out or in, once made, is irrevocable.⁸

The opt out deadline of November 12, 2008 is referenced in several sections of the Interim Rule in describing the scope of the guarantees provided by the TLG Program. For example, the Interim Rule provides that funds held in noninterest-bearing transaction accounts at eligible entities will be guaranteed from October 14, 2008, through November 12, 2008,⁹ and that eligible entities that do not opt out on or before November 12, 2008 will not be able to select which newly issued senior unsecured debt¹⁰ is guaranteed debt under the Debt Guarantee Program.¹¹

Significantly, in the Interim Rule calculations involving assessments charged to an eligible entity for its participation in the TLG Program are related to the November 12, 2008 opt out date. For example, the Interim Rule permits eligible entities to participate in both components of the TLG Program from October 14, 2008, through November 12, 2008, at no cost to the entities.¹²

With respect to the Debt Guarantee Program, the Interim Rule requires an eligible entity that does not opt out of the program by the opt out date of November 12, 2008, and that issues guaranteed debt during the period from October 14, 2008, through November 12, 2008 that was still outstanding on November 12, 2008, to notify the FDIC and certify that the issuances that it made did not exceed the guaranteed limit.¹³ (An eligible entity that has not opted out of the Debt Guarantee Program and that issues debt after November 12, 2008, is subject to similar notification and certification requirements.) Beginning on November 13, 2008, if an eligible entity has not opted out, the Interim Rule provides for eligible entities to be charged

assessments for their participation in the Debt Guarantee Program.¹⁴

With respect to the Transaction Account Guarantee Program, the Interim Rule provides that, beginning on November 13, 2008 and continuing through December 31, 2009, any eligible entity that has not opted out of this component of the TLG Program will be subject to an assessment for its participation in the Transaction Account Guarantee Program.

III. Opt Out and Disclosure Deadlines Extended in the Amended Interim Rule

The comment period for the Interim Rule will expire on November 13, 2008. Thus, the FDIC will not issue a final rule concerning its TLG Program before eligible entities are required to opt out on November 12, 2008, as prescribed in the Interim Rule. The FDIC anticipates issuing a final rule after the expiration of the comment period and after its consideration of comments related to the Interim Rule. In order to provide eligible entities an opportunity to review the final rule before they are required to decide whether or not to opt out, this Amended Interim Rule extends the opt out deadline for the TLG Program until December 5, 2008. For similar reasons, this Amended Interim Rule extends the deadline for compliance with certain disclosure requirements described in section 370.5(h) until December 19, 2008.

By establishing December 5, 2008 as the new opt out deadline, conforming modifications are required to provisions of part 370 that refer to or are based upon the previous opt out deadline of November 12, 2008. The changes that result from the extended opt out period are technical in nature, and are not discussed in further detail. Those changes that relate to assessments under the Debt Guarantee Program and the Transaction Guarantee Program are described further below.

Assessments under the Debt Guarantee Program are discussed in section 370.6. Under section 370.6(a), eligible entities are not required to pay any assessment associated with the Debt Guarantee Program for the period from October 14, 2008, through November 12, 2008. The amendments made to the Interim Rule retain this provision. In addition, section 370.6(a) of the Amended Interim Rule includes a provision to the effect that an eligible entity that opts out of the Debt Guarantee Program by the extended deadline of December 5, 2008 will not pay any assessment under the program.

Sections 370.6(b)(1) and (2) contain notice and certification requirements for eligible entities that issue guaranteed debt under the Debt Guarantee Program for the period from October 14, 2008 through November 12, 2008 and for the period after November 12, 2008, respectively. Although the notification and certification requirements have not changed, the references in those sections to the former opt out deadline of November 12, 2008, have been changed to reflect the new opt out deadline of December 5, 2008.

Section 370.6(c) governs the initiation of assessments for the Debt Guarantee Program. It originally provided that beginning on November 13, 2008, any eligible entity that has chosen not to opt out of this aspect of the TLG Program would be charged assessments as provided elsewhere in part 370. The section did not distinguish between overnight debt instruments and other types of newly issued senior secured debt. Although the manner of calculating assessments has not changed, the revisions to section 370.6(c) reflect two changes. The first change reflects the newly extended opt out deadline, and the second change differentiates between overnight debt instruments and other newly issued senior unsecured debt and explains how assessments are initiated for overnight debt instruments as compared with other newly issued senior unsecured debt.

Section 370.6(c), as amended, provides that assessments will accrue, with respect to each eligible entity that does not opt out of the debt guarantee program on or before December 5, 2008 (1) beginning on November 13, 2008, on all senior unsecured debt, other than overnight debt instruments, issued by it on or after October 14, 2008 that is still outstanding on November 13, 2008; (2) beginning on November 13, 2008, on all senior unsecured debt, other than overnight debt instruments, issued by it on or after November 13, 2008 and before December 6, 2008; and (3) beginning on December 6, 2008, on all senior unsecured debt issued by it on or after December 6, 2008. Calculations related to both overnight debt instruments and other newly issued unsecured debt will continue to be made in accordance with section 370.6(d). Section 370.6(d) remains unchanged.

Assessments under the Transaction Account Guarantee Program are discussed in section 370.7. Under section 370.7(a), eligible entities are not required to pay an assessment associated with the Transaction Account Guarantee Program from the

⁶ 12 CFR 370.5(c).

⁷ *Id.*

⁸ 12 CFR 370.5(d).

⁹ 12 CFR 370.5(j)(2).

¹⁰ 12 CFR 370.2(f) defines "newly issued senior unsecured debt" as senior unsecured debt issued by a participating entity on or after October 14, 2008, and on or before: (1) The earlier of November 12, 2008 or the date an eligible entity opts out, for an eligible entity that opts out of the debt guarantee program; or (2) June 30, 2009, for an eligible entity that does not opt out of the debt guarantee program.

¹¹ 12 CFR 370.5(f). The limitations of this provision are subject to 12 CFR 370.3(f), describing the long term non-guaranteed debt option.

¹² 12 CFR 370.6(a) and 370.7(a).

¹³ 12 CFR 370.6(b)(1) and (2).

¹⁴ 12 CFR 370.6(c).

period October 14, 2008, through November 12, 2008. The Amended Interim Rule adds a new provision to section 370.7(a) to the effect that an eligible entity that opts out of the Transaction Account Guarantee Program by the extended opt out deadline of December 5, 2008 will not pay any assessment under the program.

Section 370.7(b) governs the initiation of assessments for the Transaction Account Guarantee Program. It originally provided that for the period beginning on November 13, 2008, and continuing through December 31, 2009, any eligible entity that failed to notify the FDIC that it had opted out of the Transaction Account Guarantee Program would be charged an assessment for its participation in the Transaction Account Guarantee Program. Section 370.7(b) of the Amended Interim Rule contains references to the newly extended opt out date. The amended section now provides that beginning on November 13, 2008, an eligible entity that does not opt out of the Transaction Account Guarantee Program on or before December 5, 2008 will be required to pay the FDIC assessments on all deposit amounts in noninterest-bearing transaction accounts. Calculations related to the amount of assessments for the Transaction Account Guarantee Program will continue to be made in accordance with section 370.7(c). Section 370.7(c) remains unchanged.

IV. Request for Comments

The FDIC requests comments on all aspects of the Amended Interim Rule. The FDIC specifically requests comments on the following questions:

1. Should the FDIC charge different premium rates for Fed Funds and/or other short-term borrowings versus longer term borrowings? If so, why, what should be the criteria for determining which borrowings qualify for which rates, and what should be the rate differential?

2. Should banks be allowed to issue guaranteed debt in an amount equal to the bank's cap plus its holding company's(ies) cap, so long as the total guaranteed debt issued by the bank and its holding company(ies) does not exceed their combined cap? If so, why, and how could this process be managed to assure, among other things, that the entities together do not exceed their combined cap?

3. Section 370.3(b) of the Interim Rule states, "If a participating entity had no senior unsecured debt on September 30, 2008, the entity may seek to have some amount of debt covered by the debt guarantee program. The FDIC, after

consultation with the appropriate Federal banking agency, will decide whether, and to what extent, such requests will be granted on a case-by-case basis." Should the FDIC establish an alternative guarantee cap, e.g., a percentage of total liabilities, or an average of outstanding senior unsecured debt over some period of time, for those eligible entities that had no or de minimis amounts of senior unsecured debt outstanding on September 30, 2008? If so, what should that alternative be, and why?

V. Regulatory Analysis and Procedure

A. Administrative Procedure Act

Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), notice and comment are not required prior to the issuance of a final rule if an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In addition, section 553(d)(3) of the APA provides that an agency, for good cause found and published with the rule, does not have to comply with the requirements that a final rule be published not less than 30 days before its effective date. The FDIC invoked these good cause exceptions to make the Interim Rule effective on October 23, 2008, due to the severe financial conditions that threaten the stability of the nation's economy generally and the banking system in particular, the serious adverse effects on economic conditions and financial stability that would result from any delay of the effective date of the Interim Rule, and the fact that the Temporary Liquidity Guarantee Program became effective on October 14, 2008.

For the same reasons, and because comments regarding the Interim Rule may be submitted through November 13, 2008, and because the delay that would result from complying with notice and public procedure in connection with the Amended Interim Rule would frustrate the FDIC's objective of quickly restoring liquidity to the financial markets, the FDIC finds good cause to adopt the Amended Interim Rule without prior notice and comment and without the 30-day delayed effective date.

B. Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that any new rule prescribed by a Federal banking agency that imposes additional reporting, disclosures, or other new requirements on insured depository institutions take

effect on the first day of a calendar quarter unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.¹⁵ The FDIC invoked the RCDRIA's good cause exception to make the Interim Rule effective on October 23, 2008 due to the severe financial conditions that threaten the stability of the nation's economy generally and the banking system in particular, the serious adverse effects on economic conditions and financial stability that would result from any delay of the effective date of the Interim Rule, and the fact that the Temporary Liquidity Guarantee Program has been in effect since October 14, 2008.

For the same reasons, the FDIC finds good cause to make the Amended Interim Rule effective immediately. In addition, the Amended Interim Rule does not impose any additional reporting, disclosures, or other new requirements on insured depository institutions that were not already imposed by the Interim Rule.

C. Small Business Regulatory Enforcement Fairness Act

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

D. Regulatory Flexibility Act

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

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collections contained in the Interim Rule issued by the Board on October 23, 2008, were submitted to and approved by the Office of Management and Budget (OMB) under emergency clearance procedures and assigned OMB Control No. 3064-0166 (expiring on April 30, 2009). The Amended Interim

¹⁵ 12 U.S.C. 4802.

Rules does not affect the collections of information outlined in the Interim Rule nor does it affect the estimated burden set forth in the Interim Rule.

List of Subjects in 12 CFR Part 370

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

■ For the reasons stated above, The Board of Directors of the Federal Deposit Insurance Corporation amends 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).

§ 370.2 [Amended]

■ 2. Amend § 370.2 as follows:

■ A. In paragraph (f), remove “November 12” and replace it with “December 5”.

■ B. In paragraph (g), remove “November 12” and replace it with “December 5” and remove “November 13” wherever it appears and replace it with “December 6”.

§ 370.3 [Amended]

■ 3. Amend § 370.3 as follows:

■ In paragraphs (b) and (f), remove “November 12” wherever it appears and replace it with “December 5”.

§ 370.5 [Amended]

■ 4. Amend § 370.5 as follows:

■ A. In paragraphs (a), (c), (f), and (j), remove “November 12” wherever it appears and replace it with “December 5”.

■ B. In paragraph (h), remove “December 1” and replace it with “December 19”.

■ 5. Amend § 370.6 by revising paragraphs (a), (b)(1), (b)(2), and (c) to read as follows:

§ 370.6 Assessments under the Debt Guarantee Program.

(a) *Waiver of assessment for certain initial periods.* No eligible entity shall pay any assessment associated with the debt guarantee program for the period from October 14, 2008 through November 12, 2008. An eligible entity that opts out of the program on or before December 5, 2008 will not pay any assessment under the program.

(b) * * *

(1) Any eligible entity that does not opt out of the Debt Guarantee Program on or before December 5, 2008, as

provided in § 370.5, and that issues any guaranteed debt during the period from October 14, 2008 through December 5, 2008 which is still outstanding on December 5, 2008, shall notify the FDIC of that issuance via the FDIC’s e-business Web site *FDICconnect* on or before December 19, 2008, and the eligible entity’s Chief Financial Officer or equivalent shall certify that the issuances outstanding at each point of time did not exceed the guaranteed amount limit as set forth in § 370.3.

(2) Any eligible entity that does not opt out of the program and that issues guaranteed debt after December 5, 2008, shall notify the FDIC of that issuance via the FDIC’s e-business Web site *FDICconnect* within the time period specified by the FDIC. The eligible entity’s Chief Financial Officer or equivalent shall certify that the issuance of guaranteed debt does not exceed the guarantee limit as set forth in § 370.3.

* * * * *

(c) *Initiation of assessments.*

Assessments, calculated in accordance with paragraph (d) of this section, will accrue, with respect to each eligible entity that does not opt out of the debt guarantee program on or before December 5, 2008.

(1) Beginning on November 13, 2008, on all senior unsecured debt, other than overnight debt instruments, issued by it on or after October 14, 2008 that is still outstanding on November 13, 2008;

(2) Beginning on November 13, 2008, on all senior unsecured debt, other than overnight debt instruments, issued by it on or after November 13, 2008 and before December 6, 2008; and

(3) Beginning on December 6, 2008, on all senior unsecured debt issued by it on or after December 6, 2008.

■ 6. Amend § 370.7 by revising paragraphs (a) and (b) to read as follows:

§ 370.7 Assessments under the Transaction Account Guarantee Program.

(a) *Waiver of assessment for certain initial periods.* No eligible entity shall pay any assessment associated with the transaction account guarantee program for the period from October 14, 2008, through November 12, 2008. An eligible entity that opts out of the program on or before December 5, 2008 will not pay any assessment under the program

(b) *Initiation of assessments.* Beginning on November 13, 2008 each eligible entity that does not opt out of the transaction account guarantee program on or before December 5, 2008 will be required to pay the FDIC assessments on all deposit amounts in noninterest-bearing transaction accounts

calculated in accordance with paragraph (c) of this section.

* * * * *

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–26569 Filed 11–4–08; 4:15 pm]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE285, Special Conditions No. 23–225A–SC]

Final Special Conditions: AmSafe Aviation; Inflatable Restraints Installation; Approved Model List of Normal and Utility Category Airplanes, and Agricultural Airplanes Certified in the Normal/Utility/Restricted Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for AmSafe Aviation to amend the list of approved models. These airplanes, as modified by AmSafe Aviation, will have novel and unusual design features associated with the lap belt or shoulder harness portion of the safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate and appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards.

DATES: The effective date of these amended special conditions is October 31, 2008. Comments must be received on or before December 8, 2008.

ADDRESSES: Mail two copies of your comments on these amended special conditions to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE285, 901 Locust, Room 506, Kansas City, Missouri 64106, or you may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE285. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.