rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the FDIC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 345, paragraph (a)(1) is revised to read as follows:

Appendix A to Part 345—Ratings

(a) * * * (1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 345.21 and 345.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

* * * * *

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the joint preamble, the Office of Thrift Supervision proposes to amend part 563e of chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563e—COMMUNITY REINVESTMENT

1. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2908.

2. In § 563e.21, add new paragraphs (e) and (f) to read as follows:

§ 563e.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a savings association under this part, the OTS considers, as a factor, low-cost education loans provided by the savings association to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means:

(1) Education loans originated by the savings association through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a State or local education loan program), originated by the savings association for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the OTS considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

3. In Appendix A to part 563e, paragraph (a)(1) is revised to read as follows:

Appendix A to Part 563e—Ratings

(a) * * * (1) In assigning a rating, the OTS evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§ 563e.21 and 563e.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

* * * * *

Dated: June 19, 2009.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 23, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 23rd day of June 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: June 17, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. E9–15204 Filed 6–29–09; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Notice of Proposed Rulemaking Regarding Possible Amendment of the Temporary Liquidity Guarantee Program To Extend the Transaction Account Guarantee Program With Modified Fee Structure

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is issuing this Notice of Proposed Rulemaking to present and request comment on two alternatives for phasing out the Transaction Account Guarantee (TAG) component of the Temporary Liquidity Guarantee Program (TLGP). Under the first proposed alternative, the FDIC's guarantee of deposits held in qualifying noninterest-bearing transaction accounts subject to the TAG program would continue until December 31, 2009. There would be no modification of the existing fee structure or any other change in the FDIC's guarantee of noninterest-bearing transaction accounts, as provided for in the current regulation.

Under the second proposed alternative, the TAG program would be extended for six months until June 30, 2010. Insured depository institutions (IDIs) that are currently participating in the TAG program would be provided a single opportunity to opt out of the extended TAG program. IDIs that opt

out of the extended TAG program would be required to update their disclosure postings and notices to indicate that they are no longer participating in the program.

Under this proposal, IDIs choosing to participate in the extended TAG program, would be subject to increased fees for the FDIC's extended guarantee of its qualifying noninterest-bearing transaction accounts. Also, IDIs participating in the extended TAG program might be required to update their disclosures related to the TAG program.

DATES: Written comments must be received by the FDIC no later than July 30, 2009.

ADDRESSES: You may submit comments on the Final 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/final.html*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov*; A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov*; Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@fdic.gov*; Joe DiNuzzo, Counsel, Legal Division, (202) 898–7349 or *jdinuzzo@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 Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967 or *mstclair@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).[1] The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

On October 23, 2008, the FDIC's Board of Directors (Board) initially authorized the publication in the **Federal Register** of an interim rule that outlined the parameters of the TLGP.[2] Designed to assist in the stabilization of the nation's financial system, the FDIC's TLGP was designed to be a temporary program and is comprised of two distinct components: the Debt Guarantee Program (DGP), 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 DGP generally permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the FDIC's guarantee for such debt to expire on the earlier of the maturity or conversion of the debt (for mandatory convertible debt) or June 30, 2012. On March 17, 2009, to reduce market disruption at the conclusion of the debt guarantee component of the TLGP and to facilitate the orderly phase-out of the program, the Board adopted an interim rule that, among other things, provided for a limited four-month extension for the issuance of senior unsecured debt under the DGP.[3]

At the time the TLGP was developed, there was concern that many account holders might withdraw their uninsured balances from IDIs. The TAG component of the TLGP was designed to improve public confidence and encourage depositors to leave these large account balances at IDIs of various sizes. Loss of these accounts would have potentially impaired the funding structure of the banking institutions that relied on them, as well as other institutions that had relationships with these banks.

The TAG program has been an important source of stability for banks with large transaction account balances. Over 7,100 IDIs are participating in the TAG program, with an estimated $700 billion of deposits in noninterest-bearing transaction accounts (that would not otherwise be insured) currently subject to the FDIC's guarantee. Although liquidity in financial markets has not returned to pre-crisis levels, financial market volatility and risk aversion have moderated since the fall of 2008 when the FDIC implemented the TAG program as part of the TLGP.

The TAG program is scheduled to expire on December 31, 2009. As with the DGP, the FDIC is committed to providing an orderly phase-out of the TAG program for participating IDIs and their depositors. To that end, and as discussed in more detail below, the FDIC proposes and requests comment on two alternatives for successfully concluding the TAG program.

II. Proposed Alternatives for Concluding the Transaction Account Guarantee Program

The FDIC proposes to conclude its guarantee of noninterest-bearing transaction accounts under the TAG program using one of the alternatives that follow. In general, Alternative A would permit the program to expire on December 31, 2009, as provided for in existing regulations. Alternative B would extend the TAG program until June 30, 2010, but the extension would be coupled with increased fees for participation and possible new disclosure requirements.

A. Alternative A

Alternative A would preserve the current regulation regarding the duration of the FDIC's guarantee for coverage of deposits in noninterest-bearing transaction accounts pursuant to the TAG program. Under the current

[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.

Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth, provides additional authority for the establishment of the TLGP.

[2] 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).

[3] 74 FR 12078 (March 23, 2009). This Interim Rule was finalized and a Final Rule was published in the **Federal Register** on June 3, 2009. 74 FR 26521 (June 3, 2009).

All IDIs and those other participating entities that issued debt under the TLGP on or before April 1, 2009, may participate in the extended DGP without application to the FDIC. Other participating entities that did not issue FDIC-guaranteed debt by April 1, 2009, may apply to participate in the extended DGP. 12 CFR 370.2(n); 370.3(h)(vi).

regulation, the FDIC's guarantee of noninterest-bearing transaction accounts expires on the earlier of the date of opt-out (if an IDI opted out of the TAG program) or December 31, 2009.[4] Any IDI that offers noninterest-bearing transaction accounts is required to post a conspicuous notice in its lobby, branch(es), and Web site, if applicable, that discloses whether the IDI is participating in the TAG program.[5] Disclosures for participating IDIs must contain a statement that indicates that all noninterest-bearing transaction accounts are fully guaranteed by the FDIC.[6] In addition, even those IDIs that are not participating in the TAG program are required to disclose that deposits in noninterest-bearing transaction accounts continue to be insured for up to $250,000, pursuant to the FDIC's general deposit insurance rules.[7] At this time, IDIs participating in the TAG program pay quarterly an annualized 10 basis point assessment on any deposit amounts that exceed the existing deposit insurance limit.[8]

B. Alternative B

Under the proposed Alternative B, the TAG program would be extended through June 30, 2010, six months beyond the current expiration date of December 31, 2009. The extended guarantee would apply only to noninterest-bearing transaction accounts maintained at IDIs that do not opt out of the extended TAG program, as discussed below. If an IDI that is currently participating in the program opts out, the FDIC's guarantee would expire as scheduled on December 31, 2009.

Increased Fees for Participation in the Extended TAG Program

If the TAG program is extended, the FDIC expects to increase fees to support its continued guarantee. The cost of providing guarantees for noninterest-bearing transaction accounts at failed IDIs since the inception of the TAG program already has exceeded projected total TAG program revenue through the end of December 2009. The FDIC projects additional failures of IDIs through the end of the year that will result in overall TAG losses that are expected to considerably exceed revenues. (Revenues generated from fees associated with the DGP are expected to cover TAG losses as well as losses incurred by the FDIC under the DGP.) In an effort to balance the income generated from TAG fees with potential losses associated with the TAG program, during the extension period, the FDIC proposes to charge an annualized rate of 25 basis points (rather than the current 10 basis points) on deposits in noninterest-bearing transaction accounts. The fee would continue to be collected quarterly in the same manner as provided for in existing regulations.

Limited Opportunity To Opt Out of Extended TAG Program

Because of the increase in fees and the other regulatory modifications associated with an extension of the TAG program, the FDIC proposes to offer participating IDIs a single opportunity to opt out of the TAG extension. An IDI that wishes to opt out of the TAG extension would be required to provide the FDIC with notice of its intent to opt out by submitting an e-mail with the subject line ''TLGP Election Form Opt Out Requested—Cert No. XXXXX'' to *dcas@fdic.gov*. The e-mail would be required to include the following information: Name of the IDI; FDIC certificate number; City, State, and zip code for the IDI; contact name and contact information (telephone number and e-mail address); a concise statement that the IDI would like to opt out of the TAG program effective January 1, 2010; and confirmation that, no later than November 15, 2009, the IDI will post a notice in the lobby of its main office, each domestic branch, and if it offers Internet deposit services, on its Web site, clearly indicating that funds held in noninterest-bearing transaction accounts that are in excess of the standard maximum deposit insurance amount will not be guaranteed under the TAG program after December 31, 2009.

Once this information has been received and processed, FDIC staff would contact the IDI to confirm the IDI's opt out decision. At this time, FDIC staff also would be able to provide a PDF document of the IDI's Election Form that would indicate the IDI's opt out decision regarding the TAG program (available for download via FDIC*connect*).

Disclosure Requirements

Under regulations governing the TAG program, each IDI that offers noninterest-bearing transaction accounts is required to post a prominent notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site clearly indicating whether the institution is participating in the TAG program.[9] If an IDI is participating in the TAG program, the notice must state that funds held in noninterest-bearing transaction accounts at the institution are guaranteed in full by the FDIC. Although existing regulations do not require specific language to appear in disclosures regarding the TAG program, the notices must be provided in simple, readily understandable text. Also, if the IDI uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the TAG program, the IDI must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee as to the swept, transferred, or reclassified funds.[10] Existing regulations provide sample disclosures for IDIs that participate and for those that do not participate in the TAG program.

If the expiration date of the TAG program is extended, participating IDIs that do not opt out of the extended TAG program may be required to amend these disclosures. The current TAG program disclosure postings and notices would suffice, as long as those notices continue to be accurate and, in particular, do not indicate that the FDIC's guarantee will apply only through December 31, 2009. Disclosures that indicate that the FDIC's guarantee under the TAG program will terminate on December 31, 2009, would have to be updated to reference June 30, 2010, as the extended termination date. Also, on or before November 15, 2009, participating IDIs that opt out of the extended TAG program would be required to update their disclosures to inform customers and depositors that, beginning on January 1, 2010, they will no longer participate in the TAG program and the deposits in noninterest-bearing transaction accounts will no longer be guaranteed in full by the FDIC.

III. Request for Comments

The FDIC requests comments on every aspect of this notice and particularly asks commenters to indicate a preference for Alternative A or Alternative B (or some other alternative) as a means of providing an orderly phase out of the FDIC's TAG program.

In addition, the FDIC requests comment on the following questions:

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

[4] 12 CFR 370.4(a).

[5] 12 CFR 370.5(h)(5).

[6] *Id.*

[7] *Id.*

[8] 12 CFR 370.7(c).

[9] 12 CFR 370.5(h)(5).

[10] *Id.*

period for the TAG program? Please provide reasons to support your comment.

• When the TAG program was modified to include an FDIC-guarantee for NOW accounts, the FDIC's guarantee extended only to those NOW accounts with interest rates no higher than 0.50 percent. The interest rate limitation placed on such accounts was comparable to the average effective Federal funds rates and significantly below the one month CD rates and money market fund rates. The NOW interest rate limitation for purposes of the TAG program is now almost three times the Federal funds rate, double the one month CD rate, and comparable to the average money market deposit account rate.

Should the FDIC reduce the maximum interest rate for NOW accounts that qualify for the FDIC's guarantee under the TAG program? For example, would placing an interest rate limit on NOW accounts of no higher than 0.25 percent be appropriate? If not, what would be considered an appropriate interest rate limitation for NOW accounts? Please provide reasons to support your comment.

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

IV. 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 7,107 IDIs participate in the TAG program, of which approximately 3,744, or 52.7 percent are small entities. Within the universe of small institutions, 1,072, or 28.6 percent did not have TAG eligible deposits as of the March 2009 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, "March 2009 Call Reports"); thus, they were not required to pay the 10 basis point fee currently assessed for participation in the TAG program. Assuming these IDIs do not change circumstances and do not opt out as provided in Alternative B, there would be no impact on this group if the proposed fee increase contained in Alternative B were adopted. As to the remaining 2,672 small entities that had TAG eligible deposits as of the March 2009 Call Reports, they would have the opportunity to opt out of the extended TAG program if Alternative B were adopted. However, assuming these 2,672 small entities remain in the TAG program if Alternative B is adopted, the FDIC asserts that Alternative B described in the proposed rulemaking could have some impact on a substantial number of them that remain participants in the TAG program during the extension period.

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. With respect to the fee increase from 10 basis points to 25 basis points if Alternative B were adopted, based on figures from the March 2009 Call Reports, the average fee increase for IDIs participating in the extended TAG program would be $2,200 annually, representing 0.8 percent of the average net operating income before taxes. In addition, because Alternative B proposed only a six-month extension, the actual average fee would be less than the annualized projection. Moreover, the FDIC asserts that the economic benefit of the six-month extension of Alternative B would outweigh the increased fee associated with participation in that the small entities would benefit from the extended time period within which to phase out the TAG program as financial markets continue to stabilize.

With respect to amending the disclosures related to the TAG program if Alternative B is adopted, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they pay a fee) would be de minimus in nature and would be outweighed by the economic benefit of the six-month extension.

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. Alternative B of the Notice of Proposed Rulemaking contains reporting and disclosure requirements that, if adopted, would revise an existing OMB-approved information collection, entitled the "Temporary Liquidity Guarantee Program" (OMB No. 3064–0166). Specifically, section 370.5(c)(2) allows IDIs participating in the TAG program on October 31, 2009, to opt out of the program effective January 1, 2010. In addition, section 370.5(g)(2)(vi) requires institutions that opt out of the TAG program to disclose to customers that funds in excess of the standard maximum deposit insurance amount will no longer be guaranteed under the TAG program after December 31, 2009. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

Title: Temporary Liquidity Guarantee Program.

OMB Number: 3064–0166.

Affected public: Participating IDIs—7,109.

Estimated Number of Respondents:

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

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

Frequency of Response:

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

Disclosure to customers of TAG program guarantee extension—once.

Average Time per Response:

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

Disclosure to customers of TAG program guarantee extension—1 hour.

Estimated Annual Burden:

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

Disclosure to customers of TAG program guarantee extension—3554 hours.

Current annual burden—382,214 hours.

Total new burden—7,109 hours

Total annual burden—389,323 hours.

The FDIC is requesting comment on the proposed new TLGP-related information collection. 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 for opt-out of the TAG program and disclosures to customers of discontinuation of TAG program guarantees by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: 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 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.

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 regulation clearly stated? If not, how could the proposed regulation be more clearly stated?
- Does the proposed regulation 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 regulation easier to understand? If so, what changes to the format would make the proposed regulation easier to understand?
- What else could the FDIC do to make the proposed regulation 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 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 § 370.2 as follows:

a. Revise paragraph (g); and

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

§ 370.2 Definitions.

* * * * *

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

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

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

(h) * * *

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

* * * * *

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

§ 370.4 Transaction Account Guarantee Program.

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

(1) The date of opt-out, in the case of an entity that opted out prior to December 5, 2008;

(2) December 31, 2009, in the case of an entity that opts out effective on January 1, 2010; or

(3) June 30, 2010, in the case of an entity that does not opt out.

* * * * *

4. Amend § 370.5 as follows:

a. Revise paragraph (c);

b. Revise paragraph (g); and

c. Revise paragraph (h)(5), to read as follows:

§ 370.5 Participation.

* * * * *

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

(1) From October 14, 2008 through December 5, 2008, each eligible entity is a participating entity in both the debt

guarantee program and the transaction account guarantee program, unless the entity opts out. No later than 11:59 p.m., Eastern Standard Time, December 5, 2008, each eligible entity must inform the FDIC if it desires to opt out of the debt guarantee program or the transaction account guarantee program, or both. Failure to opt out by 11:59 p.m., Eastern Standard Time, December 5, 2008 constitutes a decision to continue in the program after that date. Prior to December 5, 2008 an eligible entity may opt in to either or both programs by informing the FDIC that it will not opt out of either or both programs.

(2) Any insured depository institution that is participating in the transaction account guarantee program may elect to opt out of such program effective on January 1, 2010. Any such an election to opt out must be made in accordance with the procedures set forth in paragraph (g)(2) of this section. An election to opt out once made is irrevocable.

* * * * *

(g) *Procedures for opting out.*

(1) Except as provided in paragraph (g)(2) of this section, the FDIC will provide procedures for opting out and for making an affirmative decision to opt in using FDIC's secure e-business Web site, FDICconnect. Entities that are not insured depository institutions will select and solely use an affiliated insured depository institution to submit their opt-out election or their affirmative decision to opt in.

(2) Pursuant to paragraph (c)(2) of this section a participating entity may opt out of the transaction account guarantee program by submitting to the FDIC on or before 11:59 p.m. EDST on October 31, 2009 an e-mail conveying the entity's election to opt out. The subject line of the e-mail must include: ''TLGP Election to Opt Out—Cert. No. ____ .'' The e-mail must be addressed to *dcas@fdic.gov* and must include the following:

(i) Institution Name;

(ii) FDIC Certificate number;

(iii) City, State, ZIP;

(iv) Name, Telephone Number and E-mail Address of a Contact Person;

(v) A statement that the institution is opting out of the transaction account guarantee program effective January 1, 2010; and

(vi) Confirmation that no later than November 15, 2009 the institution will post a prominent notice in the lobby of its main office, each domestic branch and, if it offers Internet deposit services, on its Web site clearly indicating that funds held in non-interest bearing transaction accounts that are in excess of the standard maximum deposit insurance amount will not be guaranteed under the transaction account guarantee program after December 31, 2009.

(h) * * *

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

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

For Participating Institutions

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

For Non-Participating Institutions

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

(ii) If the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the transaction account guarantee program, for example, an interest-bearing account, the institution must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee with respect to the swept, transferred, or reclassified funds.

* * * * *

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

§ 370.7 Assessments for the Transaction Account Guarantee Program.

* * * * *

(c) *Amount of assessment.*

(1) Except as provided in paragraph (c)(2) of this section any eligible entity that does not opt out of the transaction account guarantee program shall pay quarterly an annualized 10 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of $250,000, as reported on its quarterly Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (each, a ''Call Report'') in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest bearing transaction account into a noninterest bearing savings deposit account as provided in § 370.4(c).

(2) Beginning on January 1, 2010, a participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly an annualized 25 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of $250,000, as reported on its quarterly Call Report in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest bearing transaction account into a noninterest bearing savings deposit account as provided in § 370.4(c).

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

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of June, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–15377 Filed 6–29–09; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 724

[No. USN–2008–0009]

RIN 0703–AA86

Naval Discharge Review Board

AGENCY: Department of the Navy, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is amending its regulations to reflect the name change of the Naval Council of Personnel Boards to the Secretary of the Navy Council of Review Boards and to update other administrative information pertaining to the Naval Discharge Review Board.