

the other Federal banking agencies and Treasury, to respond to the current financial situation.

### Regulatory Flexibility Act

Under section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), a final regulatory flexibility analysis is required only for notice-and-comment rulemakings conducted under section 553 of the APA. Since the Board finds that there is "good cause" under the APA for not proceeding with notice-and-comment rulemaking for this amendment to the implementation date for the final rule, the RFA does not require that a final regulatory flexibility analysis be provided for this amendment.

The Board provided regulatory flexibility analysis in the preamble to the final rule published on March 10, 2005 (70 FR 11827–11838). In that regulatory flexibility analysis, the Board considered the likely impact of the final rule on small entities and determined that the final rule will not have a significant impact on a substantial number of small entities.

### Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed this rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in this rule.

### Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on how to make the final rule easier to understand.<sup>11</sup> No commenter indicated that the proposed rule should be revised to make it easier to understand. In the preamble to the final rule the Board indicated that it believes the final rule is written plainly and clearly.<sup>12</sup>

### List of Subjects in 12 CFR Part 225

Administrative Practice and Procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

## Board of Governors of the Federal Reserve System

### 12 CFR Chapter II

### Authority and Issuance

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

### PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

### Appendix A to Part 225 [Amended]

■ 2. In Appendix A to part 225, paragraphs II.A.1.b.ii. and II.A.2.d.iv. are amended by removing "2009" and adding "2011" in its place wherever it appears.

By order of the Board of Governors of the Federal Reserve System, March 16, 2009.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. E9–6096 Filed 3–20–09; 8:45 am]

**BILLING CODE 6210–02–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 370

**RIN 3064–AD37**

### Amendment of the Temporary Liquidity Guarantee Program To Extend the Debt Guarantee Program and To Impose Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009

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

**ACTION:** Interim Rule with request for comments.

**SUMMARY:** The FDIC is issuing this Interim Rule to amend the Temporary Liquidity Guarantee Program (TLGP) by providing a limited extension of the Debt Guarantee Program (DGP) for insured depository institutions (IDIs) participating in the DGP. The extended DGP also would apply to other participating entities; however, other participating entities that have not issued FDIC-guaranteed debt before April 1, 2009 are required to submit an application to and obtain approval from the FDIC to participate in the extended

DGP. The Interim Rule imposes surcharges on certain debt issued on or after April 1, 2009. Any surcharge collected will be deposited into the Deposit Insurance Fund (DIF or Fund). The Interim Rule also establishes an application process whereby entities participating in the extended DGP may apply to issue non-FDIC-guaranteed debt during the extension period.

**DATES:** The Interim Rule becomes effective on March 23, 2009. Comments on the Interim Rule must be received by April 7, 2009.

**ADDRESSES:** You may submit comments on the 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](mailto:Comments@FDIC.gov). Include RIN # 3064–AD37 on the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, 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:

Mark L. Handzlik, Senior Attorney, Legal Division, (202) 898–3990 or [mhandzlik@fdic.gov](mailto:mhandzlik@fdic.gov); Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or [rfick@fdic.gov](mailto:rfick@fdic.gov); A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or [aajohnson@fdic.gov](mailto:aajohnson@fdic.gov); (for questions or comments related to applications) *Lisa D Arquette*, Associate Director, Division of Supervision and Consumer Protection, (202) 898–8633 or [larquette@fdic.gov](mailto:larquette@fdic.gov); Serena L. Owens, Associate Director, Supervision and Applications Branch, Division of Supervision and Consumer Protection, (202) 898–8996 or [sowens@fdic.gov](mailto:sowens@fdic.gov); Gail Patelunas, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6779 or [gpatelunas@fdic.gov](mailto:gpatelunas@fdic.gov); Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or [dsaulnier@fdic.gov](mailto:dsaulnier@fdic.gov); or Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967 or [mstclair@fdic.gov](mailto:mstclair@fdic.gov).

### SUPPLEMENTARY INFORMATION:

<sup>11</sup> 69 FR 28856 (May 19, 2004).

<sup>12</sup> 70 FR 11834 (March 10, 2005).

## 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). 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.

More broadly, Congress, the Treasury, and the federal banking agencies, have taken coordinated steps to preserve confidence in the American economy. Congress enacted sweeping laws to deal with the economic crisis, including the Emergency Economic Stabilization Act<sup>1</sup> (which temporarily raised deposit insurance limits) and the American Recovery and Reinvestment Act of 2009;<sup>2</sup> the Federal Reserve made commercial paper facilities available; and the Treasury provided banks with capital injections.

The disruption in credit markets that emerged in the second half of 2008 impaired the ability of financial institutions to obtain funding, make loans to creditworthy borrowers, and intermediate credit transactions. Although the financial system and credit markets remain stressed, credit market conditions have improved in response to government stabilization efforts such as the TLGP. Interbank short-term funding rates have fallen notably since mid-October 2008. The three-month Libor rate has fallen about 350 basis points from the 4.75 percent peak in mid-October 2008. The three-month Libor spread over Treasuries has also declined to under one percent, down from 4.57 percent in mid-October 2008, but remains above a historical spread of approximately 40 basis points.

While liquidity in the financial markets has not returned to pre-crisis levels, the TLGP debt guarantee program has been effective to date in improving short-term and intermediate-term funding for banking organizations. More than two-thirds of new public debt issuances by banking organizations between October 14, 2008, and March 4, 2009, that matures on or before June 30, 2012, are FDIC-guaranteed. Thus far, non-FDIC-guaranteed debt issued by banking organizations has mostly been

for relatively small amounts with some exceptions. During the first two months of the year, one banking organization issued \$2 billion in 10-year senior notes, and another banking organization issued \$4 billion in 30-year bonds, both without government guarantees.

At its inception, the Federal Reserve and the Treasury recommended extending the DGP to bank holding companies, given the difficulties that these institutions were having with gaining access to funding. Concerns were raised that under the circumstances at that time, there would be risk to IDIs and to the banking system as a whole if the FDIC did not guarantee debt issued by bank holding companies under the TLGP.<sup>3</sup> The FDIC believes that certain aspects of the credit markets have improved, and with this Interim Rule, the FDIC is acting to ensure the orderly phase-out of the TLGP, a program that has provided benefit to IDIs, bank and certain savings and loan holding companies, and certain of their affiliates.

The FDIC expects the Interim Rule to provide an orderly transition period for participating entities returning to non-FDIC-guaranteed funding, and reduce the potential for market disruption when the DGP ends. Also, the extension should enhance bank liquidity while the elements of the Treasury's proposed Financial Stability Plan are fully implemented.<sup>4</sup>

## II. Authority To Provide Limited Extension of the TLGP

The amendment to the DGP provided under the Interim Rule is consistent with the rationale for establishing the existing TLGP and the determination of systemic risk made on October 14, 2008, pursuant to section 13(c)(4)(G),<sup>5</sup> by the Secretary of the Treasury (after consultation with the President) following receipt of the written recommendation dated October 13, 2008, by the Board of Directors of the FDIC (Board) and the similar written recommendation of the Federal Reserve. The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability by providing a guarantee of senior unsecured debt, and the FDIC initiated the TLGP in response. The limited extension of the TLGP provided for in the Interim Rule represents

continued action by the FDIC to avoid or mitigate further deterioration in the economic condition and stability of the U.S. financial system and is consistent with the systemic risk determination made by the Secretary of the Treasury based on recommendations of the FDIC and the FRB in October 2008.

In addition to the authority granted to the FDIC by the systemic risk determination made under Section 13(c)(4) of the FDI Act, as described above, the FDIC is authorized under Section 9(a) Tenth of the FDI Act,<sup>6</sup> to prescribe, by its Board, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act. The FDIC has determined that this Interim Rule is necessary to further enhance the TLGP.

## III. The Interim Rule

### A. Extension of the Debt Guarantee Program for IDIs Participating in the TLGP

Under the existing DGP, participating entities are permitted to issue senior unsecured debt until June 30, 2009. The FDIC will guarantee this debt until the earlier of the maturity of the debt or June 30, 2012.

The Interim Rule provides a limited four-month extension for the issuance of debt under the DGP and is consistent with extensions to other liquidity programs recently announced by the Federal Reserve.<sup>7</sup> The Interim Rule permits all IDIs participating in the DGP to issue FDIC-guaranteed senior unsecured debt until October 31, 2009. For debt issued on or after April 1, 2009, the Interim Rule extends the FDIC's guarantee (previously set to expire under the existing program on the earliest of the opt-out date, if any, the maturity of the debt, the mandatory conversion date for mandatory convertible debt, or June 30, 2012) until the earliest of the opt-out date, the maturity of the debt, the mandatory conversion date for mandatory convertible debt, or December 31, 2012.<sup>8</sup>

<sup>6</sup> 12 U.S.C. 1819(a)Tenth.

<sup>7</sup> 2009 Monetary Press Release, Release Date: February 3, 2009, <http://www.federalreserve.gov/newsevents/press/monetary/20090203a.htm> (last visited February 20, 2009) (announcing four month extensions until October 2009 of six liquidity programs originally scheduled to expire in April 2009).

<sup>8</sup> Unless those other participating entities that have not issued debt before April 1, 2009, apply and receive the approval of the FDIC to participate in the extended DGP, the FDIC's guarantee will expire for such entities no later than June 30, 2012. (See Section III.B.)

<sup>1</sup> Public Law 110-343 (October 3, 2008).

<sup>2</sup> Public Law 111-5 (February 17, 2009).

<sup>3</sup> Memorandum dated November 19, 2008, to FDIC Chairman Sheila C. Bair from Federal Reserve Board Staff at page 1.

<sup>4</sup> Secretary Geithner Introduces Financial Stability Plan, <http://www.treas.gov/press/releases/tg18.htm> (last visited Feb. 19, 2009).

<sup>5</sup> 12 U.S.C. 1823(c)(4)(G).

*B. Extension of the Debt Guarantee Program for Other Entities Participating in the TLGP*

The Interim Rule permits other participating entities that have issued FDIC-guaranteed debt before April 1, 2009 to participate in the extended DGP. However, other participating entities that have not issued FDIC-guaranteed debt before April 1, 2009 must apply to and receive approval from the FDIC to participate in the extended DGP.<sup>9</sup> The deadline for submitting an application to participate in the extended DGP is June 30, 2009. The FDIC will review such applications on a case-by-case basis.

As with other applications submitted to the FDIC for purposes of the DGP, the application must include a summary of the applicant's strategic operating plan; the proposed use of the debt proceeds; the entity's plans for retiring any FDIC-guaranteed debt; a description of the entity's financial history, current condition and future prospects; the risk presented by the proposal to the FDIC; and any other relevant information that the FDIC deems appropriate. The FDIC also may condition its approval on any requirement deemed appropriate, including without limitation, the pledge of collateral by the applicant to secure the applicant's obligation to reimburse

the FDIC for any payments made pursuant to the FDIC's guarantee.

This Interim Rule will not change a participating entity's existing debt guarantee limit or affect any conditions that the FDIC may have placed on the issuance of debt by an IDI or other participating entity. In addition, consistent with prudent liquidity management practices, issuance levels under the TLGP should be consistent with existing funding plans and estimated liquidity needs. The chart that follows provides a summary of the relevant dates for entities that participate (and those that do not participate) in the extended DGP.

	Application date	Issue date	Guarantee expiration date
IDI's currently participating in the DGP, and other participating entities that have issued FDIC-guaranteed debt before April 1, 2009.	Not required to submit an application to participate in the extension of the DGP.	Senior unsecured debt may be issued no later than Oct. 31, 2009.	For debt issued on or after April 1, 2009, FDIC-guarantee of senior unsecured debt expires on the earliest of the opt-out date, if any, the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or Dec. 31, 2012.
Other participating entities that have not issued FDIC-guaranteed debt before April 1, 2009, which have received approval to participate in the extension of the DGP.	Application due on or before June 30, 2009.	With FDIC approval, senior unsecured debt may be issued no later than Oct. 31, 2009.	For debt issued on or after April 1, 2009, with FDIC approval, FDIC-guarantee of senior unsecured debt expires on the earliest of the opt-out date, if any, the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or Dec. 31, 2012.
Other participating entities currently participating in the DGP, but not participating in the extension of the DGP.	N/A .....	Senior unsecured debt may be issued no later than June 30, 2009.	FDIC-guarantee of senior unsecured debt expires on the earliest of the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or June 30, 2012.

*C. Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009*

Surcharges provided for in the Interim Rule will be imposed on an annualized basis and apply only to FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year; the assessment rates for shorter term FDIC-guaranteed debt remain unchanged, as do the rates for guaranteed debt issued before April 1, 2009.

For FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year issued on or after April 1, 2009, until and

including June 30, 2009, and maturing on or before June 30, 2012, the annualized surcharge on the assessments is 10 basis points for IDIs and 20 basis points for other participating entities.

The Interim Rule also imposes an additional surcharge on assessments for FDIC-guaranteed debt issued under the extended DGP—that is, FDIC-guaranteed debt issued after June 30, 2009 and on or before October 31, 2009, or FDIC-guaranteed debt issued on or after April 1, 2009 with a maturity date after June 30, 2012. The applicable annualized surcharge on the assessments for IDIs is 25 basis points. For other participating entities that have issued FDIC-guaranteed debt under the DGP before

April 1, 2009 (and for such entities that have not issued FDIC-guaranteed debt under the DGP before April 1, 2009, but that have been approved by the FDIC to participate in the extended DGP), the annualized applicable surcharge on the assessments is 50 basis points.

Unlike TLGP fees, which are reserved for possible TLGP losses and not generally available for DIF purposes, the amount of any surcharge collected in connection with the extended DGP will be deposited into the DIF and used by the FDIC when calculating the reserve ratio of the Fund. The FDIC has every expectation that the TLGP will pay for itself and has set TLGP fees accordingly.

The surcharge provisions recognize that a relatively small portion of the

<sup>9</sup> Unlike IDIs (for whom the FDIC has either primary or backup supervision authority) and other participating entities that have issued debt before April 1, 2009 (for whom the FDIC is aware of current debt issuances and the evolving financial

condition of those entities), for other participating entities that have not issued debt before April 1, 2009, the FDIC has chosen to mitigate its risk during the extension period by establishing an application process that will enable the FDIC to

become more familiar with the current financial situation for these entities and with their plans for issuing debt during the extension period.

industry is actively using the DGP, but all IDIs ultimately bear the risk that a systemic risk assessment might be necessary to recover any excess losses attributable to the program. The surcharge is intended to compensate the DIF members, by increasing funds deposited directly into the DIF, for bearing the risk that TLGP fees will be insufficient and that a systemic risk will be levied.

The surcharges also are intended to reduce the subsidy provided by the DGP and to encourage institutions to seek funding in ways that do not involve government guarantees, so that the DGP can be wound down in an orderly fashion. The DGP extension will also partially address potential competitive disparities with similar programs in other countries. The FDIC anticipates that the amount of revenue that the surcharge produces will enable the FDIC to reduce the amount of the special assessment provided for in the Interim Rule adopted on February 27, 2009.<sup>10</sup>

#### *D. Opportunity To Apply To Issue Non-Guaranteed Debt*

Any entities participating in the extended DGP may apply to the FDIC to issue non-FDIC-guaranteed debt. If approved, such entities may issue non-guaranteed debt after June 30, 2009, without cost to the entity.<sup>11</sup>

### **IV. Request for Comments**

The FDIC invites comments on all aspects of the Interim Rule and solicits suggestions regarding its implementation. In particular, the FDIC seeks comment as to the appropriateness of the surcharges imposed on participating entities beginning April 1, 2009, for their participation in the DGP.

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

#### *A. Administrative Procedure Act*

The process of amending Part 370 by means of this Interim 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, the FDIC finds that good cause exists for a finding that general notice and opportunity for public comment are impracticable and contrary to the public interest. The TLGP was announced by the FDIC on October 14, 2008, as an initiative to counter the system-wide crisis in the nation's financial sector, and involved a determination of systemic risk by the Secretary of the Treasury after consultation with the President. The systemic risk determination allowed the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions and financial stability. The purpose of the TLGP is to promote financial stability by preserving confidence in the banking system and facilitating the flow of liquidity to creditworthy businesses and consumers, favorably impacting both the availability and cost of credit. Immediate issuance of this Interim Rule furthers the public interest by addressing the unprecedented disruption in credit markets, which remain largely closed to financial institutions unless their bonds and notes carry an FDIC guarantee. For these same reasons, the FDIC finds good cause to publish this Interim Rule with an immediate effective date. See 5 U.S.C. 553(d)(3).

Although general notice and opportunity for public comment are not required prior to the effective date, the FDIC invites comments on all aspects of the Interim Rule, which the FDIC may revise if necessary or appropriate in light of the comments received.

#### *B. Riegle Community Development and Regulatory Improvement Act*

The Riegle Community Development and Regulatory Improvement Act (RCDRIA) 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 IDIs 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.<sup>12</sup> For the same reasons discussed above, the FDIC finds that

good cause exists for an immediate effective date for the Interim Rule.

#### *C. Small Business Regulatory Enforcement Fairness Act Not Finalized With OMB*

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 Government Accountability Office so that the Interim Rule may be reviewed.

#### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (Pub. L. 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.

#### *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 Office of Management and Budget (OMB) control number. This Interim Rule contains new reporting requirements that modify an existing collection of information, entitled "Temporary Liquidity Guarantee Program" (OMB Control No. 3064-0166), and that have been submitted to OMB under emergency clearance procedures, with a request for clearance by March 17, 2009. The use of emergency clearance procedures is necessary to facilitate an orderly transition period for participating institutions to return to non-guaranteed funding and to reduce the potential for market disruption and sudden, unanticipated systemic risks to the nation's financial system when the TLGP ends. A limited four-month extension of the DGP should also help to enhance bank liquidity while the elements of the Treasury's proposed Financial Stability Plan are fully implemented. These new collections of information are necessary to give effect to the extension. Specifically, section 370.3(h)(1)(vi) requires other

<sup>10</sup> See 74 FR 9525 (March 4, 2009).

<sup>11</sup> Some participating entities elected to pay a fee to issue long-term non-guaranteed debt that could mature beyond June 30, 2012, pursuant to 12 CFR 370.6(f). If those entities are eligible to participate in the extension of the TLGP, the Interim Rule requires such entities to apply to issue other than long-term non-guaranteed debt, without cost for such issuances if approved by the FDIC.

<sup>12</sup> 12 U.S.C. 4802.

participating entities that have not issued FDIC-guaranteed debt before April 1, 2009 and that wish to participate in the extended DGP to submit a written application to the FDIC. Any such application must be submitted on or before June 30, 2009. In addition, section 370.3(h)(1)(vii) requires any participating entity that wishes to issue non-FDIC-guaranteed debt after June 30, 2009, to submit a written application to the FDIC. The estimated burden for the new applications is as follows:

*Title:* Temporary Liquidity Guarantee Program.

*OMB Number:* 3064-0166.

*Estimated Number of Respondents:* Application to issue non-guaranteed debt—1,000. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—25.

*Frequency of Response:* Application to issue non-guaranteed debt—once. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—once.

*Affected Public:* Thrift holding companies, bank and financial holding companies, and affiliates of insured depository institutions.

*Average Time per Response:* Application to issue non-guaranteed debt—2 hours. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—2 hours.

*Estimated Annual Burden:* Application to issue non-guaranteed debt—2,000 hours. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—50 hours.

*Previous Annual Burden*—2,201,625 hours.

*Total New Burden*—2,050.

*Total Annual Burden*—2,203,675 hours.

If the FDIC obtains OMB approval of its emergency clearance request, it will be followed by a request for clearance under normal procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. In accordance with normal clearance procedures, public comment will be invited for an initial 60-day comment period and a subsequent 30-day comment period on: (1) Whether these collections of information are 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 collections, 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 collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments should refer to the name and number of the collection. Interested parties are invited to submit written comments 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.

#### *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. The FDIC invites your comments on how to make this proposal 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 regulation clearly stated? If not, how could the regulation be more clearly stated?

• Does the 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 regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?

• What else could the FDIC do to make the regulation easier to understand?

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

The FDIC has determined that the interim rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency 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 stated in the preamble, the Federal Deposit Insurance Corporation amends part 370 of chapter III of Title 12 of the Code of Federal Regulations to read 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 (f);

■ b. Revise paragraph (m) introductory text; and

■ c. Add a new paragraph (n) as follows:

#### **§ 370.2 Definitions.**

\* \* \* \* \*

(f) *Newly issued senior unsecured debt.* (1) The term “newly issued senior unsecured debt” means:

(i) With respect to a participating entity that opted out of the debt guarantee program, senior unsecured debt that is issued on or after October 14, 2008, and on or before the date the entity opted out; and

(ii) With respect to a participating entity that has not opted out of the debt guarantee program, senior unsecured debt that is issued during the issuance period.

(2) The term “newly issued senior unsecured debt” includes, without limitation, senior unsecured debt

(i) That matures and is renewed during the issuance period; or

(ii) That is issued during such period pursuant to a shelf registration, regardless of the date of creation of the shelf registration.

\* \* \* \* \*

(m) *Mandatory convertible debt.* The term “mandatory convertible debt”

means senior unsecured debt that is required by the terms of the debt instrument to convert into common shares of the issuing entity on a fixed and specified date, on or before the expiration of the guarantee, unless the issuing entity:

\* \* \* \* \*

(n) *Issuance period*. The term “issuance period” means

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

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

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

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

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

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

■ 3. Amend § 370.3 as follows:

■ a. Revise the introductory text of paragraph (c);

■ b. Revise paragraph (d);

■ c. Revise paragraph (e)(3);

■ d. Revise paragraphs (h)(1)(i) and (h)(1)(v) and add new paragraphs (h)(1)(vi) and (h)(1)(vii);

■ e. Revise paragraph (h)(2);

■ f. Revise paragraph (h)(3);

■ g. Revise paragraph (h)(4);

■ h. Revise paragraph (h)(5);

■ i. Add a new paragraph (h)(6);

■ j. Revise paragraph (i); and

■ k. Add a new paragraph (j) as follows:

### § 370.3 Debt Guarantee Program.

\* \* \* \* \*

(c) *Calculation and reporting responsibility*. Participating entities are responsible for calculating and reporting to the FDIC the amount of senior unsecured debt as defined in § 370.2(e)(1)(i) as of September 30, 2008.

\* \* \* \* \*

(d) *Expiration of Guarantee*.

(1) With respect to debt that is issued before April 1, 2009 by any participating entity, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or June 30, 2012.

(2) With respect to debt that is issued on or after April 1, 2009 by a

participating entity that is either an insured depository institution, a participating entity that has issued guaranteed debt before April 1, 2009, or a participating entity that has been approved pursuant to paragraph (h) of this section to issue guaranteed debt after June 30, 2009 and on or before October 31, 2009, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or December 31, 2012.

(3) With respect to guaranteed debt that is issued on or after April 1, 2009 by a participating entity other than an entity described in paragraph (d)(2) of this section, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or on June 30, 2012.

(e) \* \* \*

\* \* \* \* \*

(3) The issuing entity has had its participation in the debt guarantee program terminated by the FDIC or is not a participating entity;

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) A request by a participating entity to establish, increase, or decrease its debt guarantee limit,

\* \* \* \* \*

(v) A request by a participating entity to issue FDIC-guaranteed mandatory convertible debt,

(vi) A request by a participating entity that is neither an insured depository institution nor an entity that has issued FDIC-guaranteed debt before April 1, 2009, to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, and

(vii) A request by a participating entity to issue senior unsecured non-guaranteed debt after June 30, 2009.

(2) Each letter application must describe the details of the request, provide a summary of the applicant's strategic operating plan, describe the proposed use of the debt proceeds, and

(i) With respect to an application for approval of the issuance of mandatory convertible debt, must also include:

(A) The proposed date of issuance,

(B) The total amount of the mandatory convertible debt to be issued,

(C) The mandatory conversion date,

(D) The conversion rate (i.e., the total number of shares of common stock that will result from the conversion divided by the total dollar amount of the mandatory convertible debt to be issued),

(E) Confirmation that all applications and all notices required under the Bank

Holding Company Act of 1956, as amended, the Home Owners' Loan Act, as amended, or the Change in Bank Control Act, as amended, have been submitted to the applicant's appropriate Federal banking agency in connection with the proposed issuance, and

(F) Any other relevant information that the FDIC deems appropriate;

(ii) With respect to an application pursuant to paragraph (h)(1)(vi) of this section to extend the period for issuance of FDIC-guaranteed debt to and including October 31, 2009, the entity's plans for the retirement of the guaranteed debt, a description of the entity's financial history, current condition, and future prospects, and any other relevant information that the FDIC deems appropriate; and

(iii) With respect to an application pursuant to paragraph (h)(1)(vii) of this section to issue senior unsecured non-guaranteed debt, a summary of the applicant's strategic operating plan and the entity's plans for the retirement of any guaranteed debt.

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

(i) For applications pursuant to paragraphs (h)(1)(i), (h)(1)(ii), (h)(1)(iii), and (h)(1)(v) of this section: The proposed use of the proceeds; the financial condition and supervisory history of the eligible/surviving entity;

(ii) For applications pursuant to paragraph (h)(1)(iv) of this section: The proposed use of the proceeds; the extent of the financial activity of the entities within the holding company structure; the strength, from a ratings perspective of the issuer of the obligations that will be guaranteed; the size and extent of the activities of the organization;

(iii) For applications pursuant to paragraph (h)(1)(vi) of this section: The proposed use of the proceeds; the entity's plans for the retirement of the guaranteed debt, the entity's financial history, current condition, future prospects, capital, management, and the risk presented to the FDIC, and

(iv) For applications pursuant to paragraph (h)(1)(vii) of this section: The entity's plans for the retirement of the guaranteed debt.

(4) Applications required under this part must be in letter form and addressed to the Director, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

(5) The filing deadlines for certain applications are:

(i) At the same time the merger application is filed with the appropriate Federal banking agency, for an application pursuant to paragraph (h)(1)(iii) of this section (which must include a copy of the merger application);

(ii) October 31, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to paragraph (h) of this section to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009;

(iii) June 30, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity other than an entity described in paragraph (h)(5)(ii) of this section; and

(iv) June 30, 2009, for an application pursuant to paragraph (h)(1)(vi).

(6) In granting its approval of an application filed pursuant to paragraph (h) of this section the FDIC may impose any conditions it deems appropriate, including without limitation, a requirement that the issuer

(i) Hedge any foreign currency risk, or

(ii) Pledge collateral to secure the issuer's obligation to reimburse the FDIC for any payments made pursuant to the guarantee.

(i) *Time limits on issuance of guaranteed debt.*

(1) A participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to paragraph (h) of this section to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, may issue FDIC-guaranteed debt under the debt guarantee program through and including October 31, 2009.

(2) A participating entity other than an entity described in paragraph (i)(1) of this section may issue FDIC-guaranteed debt under the debt guarantee program through and including June 30, 2009.

(j) *Issuance of non-guaranteed debt after June 30, 2009.*

(1) After obtaining the FDIC's prior written approval to issue non-guaranteed debt pursuant to paragraph (h)(1) of this section, any participating entity that has elected pursuant to paragraph (g) of this section to issue senior unsecured non-guaranteed debt with maturities after June 30, 2012 and that has paid the fee provided in § 370.6(f), may issue after June 30, 2009 senior unsecured non-guaranteed debt in any amount with maturities on or before June 30, 2012. A participating

entity that has both made the election provided by paragraph (g) of this section and paid the fee provided by § 370.6(f) does not need the FDIC's approval to issue senior unsecured non-guaranteed debt that matures after June 30, 2012.

(2) After obtaining the FDIC's prior written approval to issue non-guaranteed debt pursuant to paragraph (h)(1) of this section, any participating entity, other than an entity described in paragraph (j)(1) of this section, may issue after June 30, 2009 senior unsecured non-guaranteed debt in any amount with any maturity.

■ 4. Amend § 370.5 as follows:

■ a. Revise paragraph (b)(1);

■ b. Revise paragraph (f); and

■ c. Revise paragraphs (h)(2), (h)(3), (h)(4) and (h)(5) as follows:

#### § 370.5 Participation.

\* \* \* \* \*

(b) \* \* \*

(1) Bound by the terms and conditions of the program, including without limitation, assessments and the terms of the Master Agreement as set forth on the FDIC's Web site;

\* \* \* \* \*

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

\* \* \* \* \*

(h) \* \* \*

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

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

*expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or December 31, 2012.]*

(3) Each participating entity other than an entity described in paragraph (h)(2) of this section must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt that is issued by it during the applicable issuance period and that is guaranteed under the debt guarantee program:

*This debt is guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's Web site, <http://www.fdic.gov/tlgp>. [If the debt being issued is mandatory convertible debt, add: The expiration date of the FDIC's guarantee is the earlier of the mandatory conversion date or June 30, 2012. [If the debt being issued is any other senior unsecured debt, add: The expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or June 30, 2012.]*

(4) Each participating entity must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt issued by it during the applicable issuance period that is not guaranteed under the debt guarantee program:

*This debt is not guaranteed under the Federal Deposit Insurance Corporation's 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 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 December 31, 2009, 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 through December 31, 2009 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 § 370.6 as follows:

- a. Revise paragraph (c)(2);
- b. Revise paragraphs (d)(1) introductory text, (d)(2), and the first sentence of paragraph (d)(3);
- c. Revise paragraph (d)(4); and
- d. Add new paragraphs (g)(4) and (h) as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) Beginning on December 6, 2008, on all senior unsecured debt, as defined in paragraphs (e)(1)(ii) or (e)(1)(iii) of § 370.2, issued by it on or after December 6, 2008.

(d) \* \* \*

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

\* \* \* \* \*

(2) If the debt being issued has a maturity date that occurs after the expiration date of the guarantee, the expiration date of the guarantee instead of the maturity date will be used to calculate the assessment.

(3) The amount of assessment for a participating entity, other than an insured depository institution, that controls, directly or indirectly, or is otherwise affiliated with, at least one insured depository institution will be

determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the rates set forth in the table in paragraph (d)(1) of this section, except that each such rate shall be increased by 10 basis points, if the combined assets of all insured depository institutions affiliated with such entity constitute less than 50 percent of consolidated holding company assets. \* \* \*

(4) *Assessment Invoicing.* As soon as the participating entity provides notice as required in paragraph (b) of this section, the invoice for the appropriate fee will be automatically generated and posted on *FDICconnect* for the account associated with the participating entity, and the time limits for providing payment in paragraph (g) of this section will apply.

\* \* \* \* \*

(g) \* \* \*

(4) For purposes of this paragraph (g) of this section, assessments shall include all applicable surcharges imposed pursuant to paragraph (h) of this section.

(h) *Surcharges on assessments.*

(1) For FDIC-guaranteed debt that has a time period to conversion (in the case of mandatory convertible debt) or a maturity of one year or more, that is issued on or after April 1, 2009 and on or before June 30, 2009, and that matures or converts on or before June 30, 2012, the assessment rate provided in the table in paragraph (d)(1) of this section shall be increased by:

(i) 10 basis points for such debt that is issued by a participating entity that is an insured depository institution, and

(ii) 20 basis points for such debt that is issued by any other participating entity.

(2) For FDIC-guaranteed debt that has a time period to conversion (in the case of mandatory convertible debt) or a maturity of one year or more, and that is either issued on or after April 1, 2009 with a maturity or conversion date after June 30, 2012, or issued after June 30, 2009, the assessment rate provided in the table in paragraph (d)(1) of this section shall be increased by

(i) 25 basis points for such debt that is issued by a participating entity that is an insured depository institution, and

(ii) 50 basis points for such debt that is issued by any other participating entity.

#### ■ 6. Revise § 370.8 to read as follows:

#### § 370.8 Systemic risk emergency special assessment to recover loss.

To the extent that the assessments provided under § 370.6 or § 370.7, other than the surcharges provided in § 370.6(h), are insufficient to cover any loss or expenses arising from the temporary liquidity guarantee program, the Corporation shall impose an emergency special assessment on insured depository institutions as provided under 12 U.S.C. 1823(c)(4)(G)(ii) of the FDI Act.

#### ■ 7. Revise § 370.9 to read as follows:

#### § 370.9 Recordkeeping requirements.

The FDIC will establish procedures, require reports, and require participating entities to provide and preserve any information needed for the operation and supervision of this program.

#### ■ 8. Revise § 370.12(b)(2) to read as follows:

#### § 370.12 Payment on the guarantee.

\* \* \* \* \*

(b) \* \* \*.

(2) *Method of payment.* Upon the occurrence of a payment default, the FDIC shall satisfy its guarantee obligation by making scheduled payments of principal and interest pursuant to the terms of the debt instrument through maturity (without regard to default or penalty provisions). For purposes of mandatory convertible debt, principal payment shall be limited to amounts paid by holders under the issuance. The FDIC may in its discretion, at any time after the expiration of the guarantee period, elect to make a final payment of all outstanding principal and interest due under a guaranteed debt instrument whose maturity extends beyond that date. In such case, the FDIC shall not be liable for any prepayment penalty.

\* \* \* \* \*

Dated at Washington, DC, this 17th day of March, 2009.

By order of the Board of Directors.  
Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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