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An entity's Risk Category is determined in accordance with the FDIC's risk-based premium system described in 12 CFR Part 327. The amount of the fee for each such entity is equal to the annualized, TAG assessment rate for the entity multiplied by the amount of the deposits held in noninterest-bearing transaction accounts (as defined in § 370.2(h) and including any amounts swept from a noninterest bearing transaction account into a noninterest bearing savings deposit account as provided in § 370.4(c)) that exceed the existing deposit insurance limit of \$250,000, as reported on the entity's most recent quarterly Call Report. The annualized TAG assessment rates are as follows:

- (i) 15 basis points, for the portion of each quarter in which the entity is assigned to Risk Category I;
- (ii) 20 basis points, for the portion of each quarter in which the entity is assigned to Risk Category II; and
- (iii) 25 basis points, for the portion of each quarter in which the entity is assigned to either Risk Category III or Risk Category IV.

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

(d) *Collection of assessment.* Assessments for the transaction account guarantee program shall be collected along with a participating entity's quarterly deposit insurance payment as provided in § 327.3, and subject to penalties for failure to timely pay assessments as referenced in § 308.132(c)(3)(v).

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 45099, Sept. 1, 2009]

§ 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

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under 12 U.S.C. 1823(c)(4)(G)(ii) of the FDI Act.

[74 FR 12085, Mar. 23, 2009]

§ 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.

[74 FR 12085, Mar. 23, 2009]

§ 370.10 Oversight.

(a) Participating entities are subject to the FDIC's oversight regarding compliance with the terms of the temporary liquidity guarantee program.

(b) A participating entity's default in the payment of any debt may be considered an unsafe or unsound practice and may result in enforcement action as described in § 370.11.

(c) In general, with respect to a participating entity that is an insured depository institution, the FDIC shall consider the existence of conditions which rise to an obligation to pay on its guarantee as providing grounds for the appointment of the FDIC as conservator or receiver under Section 11(c)(5)(C) and (F) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(c)(5)(C) and (F).

(d) By issuing guaranteed debt, all participating entities agree, for the duration of the temporary liquidity guarantee program, to be subject to the FDIC's authority to determine compliance with the provisions and requirements of the program.

§ 370.11 Enforcement mechanisms.

(a) *Termination of Participation.* If the FDIC, in its discretion, after consultation with the participating entity's appropriate Federal banking agency, determines that the participating entity should no longer be permitted to continue to participate in the temporary liquidity guarantee program, the FDIC will inform the entity that it will no longer be provided the protections of the temporary liquidity guarantee program.

(1) Termination of participation in the temporary liquidity guarantee program will solely have prospective effect. All previously issued guaranteed

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debt will continue to be guaranteed as set forth in this part.

(2) The FDIC will work with the participating entity and its appropriate Federal banking agency to assure that the entity notifies its counterparties or creditors that subsequent debt issuances are not covered by the temporary liquidity guarantee program.

(b) *Enforcement Actions.* Violating any provision of the temporary liquidity guarantee program constitutes a violation of a regulation and may subject the participating entity and its institution-affiliated parties to enforcement actions under Section 8 of the FDI Act (12 U.S.C. 1818), including, for example, assessment of civil money penalties under section 8(i) of the FDI Act (12 U.S.C. 1818(i)), removal and prohibition orders under section 8(e) of the FDI Act (12 U.S.C. 1818(e)), and cease and desist orders under section 8(b) of the FDI Act (12 U.S.C. 1818(b)). The violation of any provision of the program by an insured depository institution also constitutes grounds for terminating the institution's deposit insurance under section 8(a)(2) of the FDI Act (12 U.S.C. 1818(a)(2)). The appropriate Federal banking agency for the participating entity will consult with the FDIC in enforcing the provisions of this part. The appropriate Federal banking agency and the FDIC also have enforcement authority under section 18(a)(4)(C) of the FDI Act (12 U.S.C. 1828(a)(4)(C)) to pursue an enforcement action if a person knowingly misrepresents that any deposit liability, obligation, certificate, or share is insured when it is not in fact insured.

§ 370.12 Payment on the guarantee.

(a) *Claims for Deposits in Noninterest-bearing Transaction Accounts.* (1) *In general.* The FDIC will pay the guaranteed claims of depositors for funds in a non-interest-bearing transaction account in an insured depository institution that is a participating entity as soon as possible upon the failure of the entity. Unless otherwise provided for in this paragraph (a), the guaranteed claims of depositors who hold noninterest-bearing transaction deposit accounts in such entities will be paid in accordance with 12 U.S.C. 1821(f) and 12 CFR parts 330 and 370.

(2) *Subrogation rights of FDIC.* Upon payment of such claims, the FDIC will be subrogated to the claims of depositors in accordance with 12 U.S.C. 1821(g).

(3) *Review of final determination.* The final determination of the amount guaranteed shall be considered a final agency action of the FDIC reviewable in accordance with Chapter 7 of Title 5, by the United States district court for the federal judicial district where the principal place of business of the depository institution is located. Any request for review of the final determination shall be filed with the appropriate district court not later than sixty (60) days of the date on which the final determination is issued.

(b) *Payments on Guaranteed Debt of participating entities in default.* —(1) *In general.* The FDIC's obligation to pay holders of FDIC-guaranteed debt issued by a participating entity shall arise upon the uncured failure of such entity to make a timely payment of principal or interest as required under the debt instrument (a "payment default").

(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, or in the case of mandatory convertible debt, through the mandatory conversion date (without regard to default or penalty provisions). Any principal payment on mandatory convertible debt 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.

(3) *Demand for payment; proofs of claim.* —(i) *Payment through authorized representative.* Except as provided in paragraph (b)(3)(ii) of this section, a demand for payment on the guaranteed amount shall be made on behalf of all holders of debt subject to a payment default that is made by a duly authorized representative of such debtholders