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12 CFR Ch. III (1–1–11 Edition)

(3) Failure to take all necessary action or to provide funding to allow the Corporation to debit assessments shall be deemed to constitute nonpayment of the assessment, and such failure by any participating entity will be subject to the penalties for failure to timely pay assessments as provided for at § 308.132(c)(3)(v).

(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.

(i) *Assessment for debt issued under the Emergency Guarantee Facility.* The amount of the assessment for FDIC-guaranteed debt issued pursuant to § 370.3(k) of this part is equal to the amount of the debt times the term of the debt (or in the case of mandatory convertible debt, the time period to conversion) times an annualized assessment rate of 300 basis points, or such

greater rate as the FDIC may determine in its decision approving such issuance.

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 9525, Mar. 4, 2009; 74 FR 12085, Mar. 23, 2009; 74 FR 54749, Oct. 23, 2009]

§ 370.7 Assessment for the Transaction Account Guarantee Program.

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

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

(c) *Amount of assessment.*

(1) Except as provided in paragraphs (c)(2) and (c)(3) 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) For the period after December 31, 2009 through and including June 30, 2010, each participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly a fee based upon its Risk Category rating. The amount of the fee for each such entity is equal to the

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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.

(3) Beginning on July 1, 2010, each participating entity that does not opt out of the transaction account guarantee program shall pay quarterly a fee based upon its Risk Category rating. The amount of the fee for each such entity is equal to the annualized, TAG assessment rate for the entity multiplied by the aggregate 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, calculated based upon the average daily balances in such accounts as reported on the entity's most recent quarterly Call Report.

(4) 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.

(5) The amount to be reported for each noninterest-bearing transaction account as the average daily balance is the total dollar amount held in such account that exceeds \$250,000 for each calendar day during the quarter divided by the number of calendar days in the quarter. For those days that an office of the reporting institution is closed (e.g., Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day should be used. The total number of accounts

to be reported should be calculated on the same basis. Documentation supporting the amounts used in the calculation of the average daily balance amounts must be retained and be readily available upon request by the FDIC or the institution's primary Federal regulator. In addition, all institutions that do not opt of the transaction account guarantee program must establish procedures to gather the necessary daily data beginning July 1, 2010.

(6) An entity's Risk Category is determined in accordance with the FDIC's risk-based premium system described in 12 CFR part 327. 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; 75 FR 20265, Apr. 19, 2010]

§ 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.

[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]