

OMB Number: 1545-1624.

Notice Number: Notice 98-52.

Regulation Project Number: REG-108639-99.

**Abstract:** This notice provides guidance to plan administrators, plan sponsors, etc., regarding nondiscriminatory safe harbors with respect to Internal Revenue Code sections 401(k)(12) and 401(m)(11), as amended by the Small Business Job Protection Act of 1996. The safe harbor provisions pertain to the actual deferral percentage test and the actual contribution percentage test for cash or deferred arrangements and for defined contribution plans. To take advantage of the safe harbor provisions, plan sponsors must amend their plans to reflect the new law and must provide plan participants with an annual notice describing the benefits available under the plan.

**Current Actions:** There are no changes being made to the notice or the regulation at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations, and not-for-profit institutions.

**Estimated Number of Respondents:** 60,000.

**Estimated Time per Respondent:** 1 hour, 20 minutes.

**Estimated Total Annual Burden Hours:** 80,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

**Comments are invited on:** (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 27, 2010.

**Gerald Shields,**

*Supervisory Tax Analyst.*

[FR Doc. 2010-22014 Filed 9-2-10; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### FEDERAL RESERVE SYSTEM

### FEDERAL DEPOSIT INSURANCE CORPORATION

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Proposed Agency Information Collection Activities; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Joint notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of

which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

**DATES:** Comments must be submitted on or before November 2, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

**OCC:** You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2-3, Attention: 1557-0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-5274, or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

**Board:** You may submit comments, which should refer to "Consolidated Reports of Condition and Income (FFIEC 031 and 041)" or "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S)," by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include reporting form number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and

Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FDIC:** You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064-0052," by any of the following methods:

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

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [comments@FDIC.gov](mailto:comments@FDIC.gov). Include "Consolidated Reports of Condition and Income, 3064-0052" in the subject line of the message.

- **Mail:** Gary A. Kuiper, (202) 898-3877, Counsel, Attn: Comments, Room F-1072, 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.

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

Comments may be inspected at the FDIC Public Information Center, Room E-1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

**OTS:** You may submit comments, identified by "1550-0023 (TFR: Schedule DI Revisions)," by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail address:** [infocollection.comments@ots.treas.gov](mailto:infocollection.comments@ots.treas.gov). Please include "1550-0023 (TFR: Schedule DI Revisions)" in the subject line of the message and include your name and telephone number in the message.

- **Fax:** (202) 906-6518.

- **Mail:** Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G

Street, NW., Washington, DC 20552, Attention: "1550-0023 (TFR: Schedule DI Revisions)."

- **Hand Delivery/Courier:** Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550-0023 (TFR: Schedule DI Revisions)."

**Instructions:** All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml1.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's Web site ([http://www.ffiec.gov/ffiec\\_report\\_forms.htm](http://www.ffiec.gov/ffiec_report_forms.htm)). Copies of the TFR can be obtained from the OTS's Web site <http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0>.

**OCC:** Mary Gottlieb, OCC Clearance Officer, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**Board:** Michelle E. Shore, Federal Reserve Board Clearance Officer, (202)

452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263-4869.

**FDIC:** Gary A. Kuiper, Counsel, (202) 898-3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**OTS:** Ira L. Mills, OTS Clearance Officer, at [Ira.Mills@ots.treas.gov](mailto:Ira.Mills@ots.treas.gov), (202) 906-6531, or facsimile number (202) 906-6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The agencies are proposing to revise the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S, which are currently approved collections of information.

1. **Report Title:** Consolidated Reports of Condition and Income (Call Report).

**Form Number:** Call Report: FE IEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

**Frequency of Response:** Quarterly.

**Affected Public:** Business or other for-profit.

**OCC:**

**OMB Number:** 1557-0081.

**Estimated Number of Respondents:** 1,494 national banks.

**Estimated Time per Response:** 50.15 burden hours.

**Estimated Total Annual Burden:** 299,696 burden hours.

**Board:**

**OMB Number:** 7100-0036.

**Estimated Number of Respondents:** 835 state member banks.

**Estimated Time per Response:** 55.54 burden hours.

**Estimated Total Annual Burden:**

185,504 burden hours.

**FDIC:**

**OMB Number:** 3064-0052.

**Estimated Number of Respondents:** 4,800 insured state nonmember banks.

**Estimated Time per Response:** 40.18 burden hours.

**Estimated Total Annual Burden:** 771,456 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 655 hours per quarter, depending on an individual institution's circumstances.

2. **Report Title:** Thrift Financial Report (TFR).

*Form Number:* OTS 1313 (for savings associations).

*Frequency of Response:* Quarterly; Annually.

*Affected Public:* Business or other for-profit.

*OTS:*

*OMB Number:* 1550–0023.

*Estimated Number of Respondents:* 753 savings associations.

*Estimated Time per Response:* 37.5 burden hours.

*Estimated Total Annual Burden:* 179,676 burden hours.

3. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank

*Form Numbers:* FFIEC 002; FFIEC 002S.

*Board:*

*OMB Number:* 7100–0032.

*Frequency of Response:* Quarterly.

*Affected Public:* U.S. branches and agencies of foreign banks.

*Estimated Number of Respondents:* FFIEC 002—240; FFIEC 002S—60.

*Estimated Time per Response:* FFIEC 002 25.07 hours; FFIEC 002S—6 hours.

*Estimated Total Annual Burden:* FFIEC 002—24,067 hours; FFIEC 002S—1,440 hours.

### General Description of Reports

*These information collections are mandatory:* 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, the call Report, the TFR, and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

### Abstracts

*Call Report and TFR:* Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as

required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

*FFIEC 002 and FFIEC 002S:* On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including but not limited to decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

### Current Actions

The agencies are proposing to add two items to the schedules in the Call Report, the TFR, and the FFIEC 002 for collecting data related to deposit insurance assessments and to revise the instructions for an existing item in these schedules effective December 31, 2010.

These changes respond to amendments made to the Federal Deposit Insurance Act (FDI Act) by Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, July 21, 2010) pertaining to the insurance of transaction accounts.

In October 2008, the FDIC Board of Directors adopted the Transaction Account Guarantee (TAG) program as one of two components of a Temporary Liquidity Guarantee Program (TLGP) 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.(1) Under the TAG program the FDIC guarantees all funds held at participating insured depository institutions (beyond the maximum deposit insurance limit) in qualifying noninterest-bearing transaction accounts, which include certain interest-bearing NOW accounts.

(1) To administer the TLGP, the FDIC Board approved an interim rule on October 23, 2008, an amendment to the interim rule on November 4, 2008, and a final rule on November 21, 2008. See 73 FR 64179, October 29, 2008; 73 FR 66160, November 7, 2008; and 73 FR 72244, November 26, 2008, respectively. The TAG program originally was set to expire on December 31, 2009, but it was extended through June 30, 2010, with certain modifications to the program, and then extended for another six months through December 31, 2010, with the possibility of an additional 12-month extension, through December 31, 2011.(2)

(2) See 74 FR 45093, September 1, 2009; 75 FR 20257, April 19, 2010; and 75 FR 36506, June 28, 2010.

Section 343 of the Dodd-Frank Act amends the FDI Act with respect to the insurance coverage of noninterest-bearing transaction accounts. These amendments take effect December 31, 2010, and require the FDIC to “fully insure the net amount that any depositor at an insured depository institution maintains in a noninterest-bearing transaction account,” thereby in effect replacing the FDIC's TAG program. Section 343 includes a definition of “noninterest-bearing transaction account” that differs from the definition of this term in the FDIC's TAG program regulations.(3) In addition, the full insurance coverage of these accounts applies to all insured depository institutions, not just those institutions that elected to obtain insurance coverage for noninterest-bearing transaction accounts through the FDIC's TAG program. Under Section 343, the full insurance coverage of

noninterest-bearing transaction accounts would be in effect through December 31, 2012.

(3) As defined in Section 343, a “noninterest-bearing transaction account” is an account “(I) with respect to which interest is neither accrued nor paid; (II) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and (III) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.” In contrast, under the FDIC’s TAG program, the term “noninterest-bearing transaction account” includes not only those accounts within the scope of Section 343 but also accounts commonly known as Interest on Lawyers Trust Accounts (or functionally equivalent accounts) and negotiable order of withdrawal accounts with interest rates no higher than 0.25 percent for which the institution at which the account is held has committed to maintain the interest rate at or below 0.25 percent.

As a result of this statutory change in deposit insurance coverage for noninterest-bearing transaction accounts, the agencies are proposing to add two items to the schedules in the Call Report, the TFR, and the FFIEC 002 in which data are collected for deposit insurance assessment purposes (Schedule RC–O, Schedule DI, and Schedule O, respectively) effective December 31, 2010. As of that report date, all insured depository institutions, including those institutions that had not elected to participate in the FDIC’s TAG program, would begin to report the quarter-end amount and number of noninterest-bearing transaction accounts (as defined in the Dodd-Frank Act, not as defined in the FDIC’s TAG program regulations) of more than \$250,000. These data are needed in order for the FDIC to estimate the quarter-end amount of insured deposits for reserve ratio calculation purposes(4) and to determine the appropriate level of the Deposit Insurance Fund’s contingent loss reserve for anticipated failures of insured depository institutions. Unless the full insurance coverage of noninterest-bearing transaction accounts under Section 343 of the Dodd-Frank Act is extended, the two proposed new items would be collected only through the December 31, 2012, report date.

(4) The Deposit Insurance Fund’s reserve ratio is the fund’s balance divided by estimated insured deposits.

Institutions participating in the FDIC’s TAG program should note that, for purposes of determining their TAG program assessments for the fourth calendar quarter of 2010 (which will be payable on March 30, 2011), they must complete the existing TAG program data items—Call Report Schedule RC–O, Memorandum items 4.a and 4.b; TFR Schedule DI, items D1570 and D1575; or FFIEC 002 Schedule O, Memorandum items 4.a and 4.b, as appropriate—for the final time in their reports for December 31, 2010. These items capture the average daily amount and average daily number for the quarter of qualifying noninterest-bearing transaction accounts of more than \$250,000 as defined in the FDIC’s TAG program regulations.(5)

(5) The reporting of these existing TAG program items as quarterly averages, rather than as quarter-end amounts, is subject to OMB approval. See 75 FR 45201, August 2, 2010.

As a result of the full insurance coverage for noninterest-bearing transaction accounts as defined in the Dodd-Frank Act effective December 31, 2010, the agencies are also proposing to revise the instructions for reporting estimated uninsured deposits in Call Report Schedule RC–O, Memorandum item 2; TFR Schedule DI, item D1210; and FFIEC 002 Schedule O, Memorandum item 2. These items are required to be completed by institutions with \$1 billion or more in total assets. At present, balances in TAG program qualifying noninterest-bearing transaction accounts of more than \$250,000 are treated as uninsured deposits for purposes of reporting estimated uninsured deposits because the TAG program was instituted as a component of the TLGP, which resulted from a systemic risk determination. Thus, TAG program insurance coverage and assessments are separate from the regular deposit insurance program administered by the FDIC. Under the Dodd-Frank Act, the extension of full insurance coverage to noninterest-bearing transaction accounts at all insured depository institutions falls within the FDIC’s regular deposit insurance program. Therefore, in response to this statutory change in insurance coverage, the instructions for reporting estimated uninsured deposits in Call Report Schedule RC–O, Memorandum item 2; TFR Schedule DI, item D1210; and FFIEC 002 Schedule O, Memorandum item 2, would be revised to indicate that balances of more than \$250,000 in noninterest-bearing transaction accounts (as defined in the Dodd-Frank Act) should be treated as insured, rather than uninsured,

deposits. Unless the full insurance coverage of noninterest-bearing transaction accounts under Section 343 of the Dodd-Frank Act is extended, this instructional revision would be in effect only through the December 31, 2012, report date.

#### Request for Comment

*Public comment is requested on all aspects of this joint notice. Comments are invited on:*

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility;

(b) The accuracy of the agencies’ estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: August 24, 2010.

#### Stuart E. Feldstein,

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, August 24, 2010.

#### Robert deV. Frierson,

*Deputy Secretary of the Board.*

Dated at Washington, DC, this 24th day of August, 2010.

Federal Deposit Insurance Corporation.

#### Robert E. Feldman,

*Executive Secretary.*

Dated: August 24, 2010.

#### Ira L. Mills,

*Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2010–21538 Filed 9–2–10; 8:45 am]

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