

**Supporting Statement for the  
Reporting Requirements Associated with  
Emergency Lending Under Section 13(3)  
(FR A; OMB No. 7100-0373)**

**Summary**

The Board of Governors of the Federal Reserve System (Board), under authority delegated from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Reporting Requirements Associated with Emergency Lending Under Section 13(3) (FR A; OMB No. 7100-0373).<sup>1</sup> Section 13(3) of the Federal Reserve Act provides that the Board may authorize any Federal Reserve Bank to extend credit to an individual, partnership, or corporation, subject to conditions. This information collection contains reporting requirements for entities' compliance with the terms and conditions of the emergency lending facilities.

The Board proposes to revise the FR A by removing certain reporting and disclosure requirements that were specific to COVID-19 era lending facility programs established in 2020, which have since ceased operation.

The current estimated total annual burden for the FR A is 257,305 hours and would decrease to 55 hours. The proposed revisions would result in a decrease of 257,250 hours.

**Background and Justification**

Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>2</sup>, section 13(3) provided that the Board may authorize a Federal Reserve Bank to extend credit to any individual, partnership, or corporation subject to four principal conditions. These conditions required that (1) credit be extended only in unusual and exigent circumstances, (2) credit be extended only if the Board authorizes the lending by the affirmative vote of at least five of its members, (3) the lending Federal Reserve Bank obtain evidence before extending the credit that the borrower is unable to secure adequate credit from other banking institutions, and (4) the extension of credit be indorsed or otherwise secured to the satisfaction of the Federal Reserve Bank. This statutory authority to extend emergency credit to any person in unusual and exigent circumstances was enacted by Congress in 1932 to enable the Federal Reserve, as the nation's central bank, to provide liquidity in times of financial stress.

Effective on July 21, 2010, the Dodd-Frank Act amended section 13(3) of the Federal Reserve Act to limit this emergency lending authority to broad-based programs and facilities that relieve liquidity pressures in financial markets. To accomplish this, the Dodd-Frank Act amended section 13(3) to remove the general authority to lend to an individual, partnership, or corporation and to replace that general authority with the limited authority to extend emergency

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<sup>1</sup> This information collection is defined as a reporting requirement, as providing information to a federal agency is considered "reporting" burden under the Paperwork Reduction Act. There is no formal reporting form for this collection of information.

<sup>2</sup> Public Law 111-203, 124 Stat 1376 (2010).

credit only to participants in a program or facility with broad-based eligibility designed for the purpose of providing liquidity to the financial system. In addition, the amendments to section 13(3) provide that a program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy or resolution under a Federal or State insolvency proceeding, would not be considered a program or facility with broad-based eligibility. The Dodd-Frank Act also prohibits lending under section 13(3) to insolvent borrowers and requires that the Board establish policies and procedures that assign a value to all collateral for an emergency loan and that are designed to ensure that the collateral is sufficient to protect taxpayers from losses. Moreover, section 13(3) was amended to provide that a program or facility may not be established without the prior approval of the Secretary of the Treasury. The Dodd-Frank Act also imposed certain publication and congressional reporting requirements regarding lending under section 13(3).

The Board's Regulation A<sup>3</sup> establishes policies and procedures with respect to emergency lending under section 13(3), as required by sections 1101 and 1103 of the Dodd-Frank Act.

As a result of the 2020 COVID-19 pandemic, the Board established thirteen lending facilities under section 13(3) to support the flow of credit to households, businesses, and employers, and authorized Federal Reserve Banks to lend under the programs. The thirteen facilities were the Commercial Paper Funding Facility (CPFF), the five facilities of the Main Street Lending Program, Money Market Mutual Fund Liquidity Facility, Municipal Liquidity Facility, Paycheck Protection Program Liquidity Facility, Primary Dealer Credit Facility, Primary Market Corporate Credit Facility (PMCCF), Secondary Market Corporate Credit Facility (SMCCF), and Term Asset-Backed Securities Loan Facility (TALF).

No other federal law mandates reporting of the information required in the FR A. As a result, this information is not available from other sources. As noted above, the FR A can be a required component of lending programs under Section 13(3). If required collections were not authorized, the Federal Reserve System would be less able to create new lending programs and thus would have had fewer tools in its efforts to help prevent severe disruptions in the financial system.

## **Description of Information Collection**

This information collection comprised the following four parts:

- Regulation A Certifications (FR A-1) pertains to reporting requirements resulting from Regulation A - Extensions of Credit by Federal Reserve Banks (12 CFR Part 201), which sets out the Board's policies and procedures with respect to emergency lending under section 13(3) of the Federal Reserve Act (section 13(3)),

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<sup>3</sup> 12 CFR 201.4(d)(5)(iv)(A), 12 CFR 201.4(d)(8)(ii).

- CARES Act Certifications (FR A-2) pertained to reporting requirements associated with implementation of requirements under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)<sup>4</sup>,
- Main Street Lending Program Certifications (FR A-3) pertained to reporting requirements specific to the Main Street Expanded Loan Facility, Main Street New Loan Facility, Main Street Priority Loan Facility, Nonprofit Organization Expanded Loan Facility, and Nonprofit Organization New Loan Facility (collectively, the Main Street Lending Program), and
- Main Street Lending Program Disclosure (FR A-4) pertained to disclosure requirements associated with Main Street borrowers who participate in the Paycheck Protection Program (PPP).

*Regulation A Certifications (FR A-1)*

The written certifications contained in Regulation A are designated as FR A-1, for internal purposes. Section 201.4(d)(5)(iv)(A) provides that a Federal Reserve Bank may rely on a written certification from the person or from the chief executive officer or other authorized officer of the entity, at the time the person or entity initially borrows under the program or facility, that the person or entity is not in bankruptcy, resolution under Title II of Public Law 111-203 (12 U.S.C. 5381 et seq.) or any other Federal or State insolvency proceeding, and has not failed to generally pay its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility, and is not borrowing for the purpose of lending the proceeds of the loan to a person or entity that is insolvent. Section 201.4(d)(8)(ii) allows a Reserve Bank to rely on a written certification from a participant in a facility to meet the requirement that the Reserve Bank obtain evidence that, under the prevailing circumstances, participants in a facility are unable to secure adequate credit accommodations from other banking institutions.

*CARES Act Certifications (FR A-2)*

Of the thirteen lending facilities that the Board established, seven included information collection requirements in their term sheets related to CARES Act provisions. As indicated, these collections had been designated as FR A-2 for internal purposes. Participants in the Main Street Lending Program, PMCCF and SMCCF must satisfy the conflicts-of-interest requirements of section 4019 of the CARES Act (15 U.S.C. § 9054.), which included a requirement that the participant certify that the entity is eligible to engage in that transaction, including that the entity is not a covered entity under section 4019 of the CARES Act.

The PMCCF ceased purchasing eligible assets on December 31, 2020. The SMCCF ceased purchasing eligible assets on December 31, 2020. The Main Street Lending Program terminated on January 8, 2021.

*Main Street Lending Program Certifications (FR A-3)*

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<sup>4</sup> Pub. L. 116-136.

The Main Street Lending Program had additional information collections in its term sheets and that the Board developed for its implementation. As indicated, these collections had been designated as FR A-3 for internal purposes. Under the term sheets for these facilities, eligible lenders were to certify that the methodology used for calculating the eligible borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA) or, in the case of nonprofit organizations, earnings before interest, depreciation, and amortization (EBIDA) in order to determine the maximum loan size is the methodology the lender previously used for adjusting EBITDA or EBIDA when extending credit in similar circumstances on or before the date specified by the facility.

Under all Main Street Lending Program facilities, an eligible borrower was required to certify that it had a reasonable basis to believe that, as of the date of entering into the relevant transaction and after entering into that transaction, it had the ability to meet its financial obligations for at least the next 90 days and did not expect to file for bankruptcy during that time period. Additionally, eligible lenders were expected to collect the required certifications and covenants from each eligible borrower at the time of origination or upsizing of the eligible loan.

Depending on the requirements of a particular lending facility, there may have been a need to vary the certifications, depending on the facts and circumstances.

#### *Main Street Lending Program Disclosure (FR A-4)*

The Board and the U.S. Department of the Treasury developed an additional requirement that Main Street borrowers that also had outstanding PPP loans complete and disclose one of two forms to their Main Street Lender in order to exclude certain amounts of PPP loans from the "existing outstanding and undrawn available debt" calculation under the Main Street Lending Program. These borrowers could submit either (1) the PPP loan forgiveness application form (SBA Form 3508, 3508EZ, or 3508S; OMB No. 3245-0407), if it had already been completed and submitted to its PPP lender or lender servicing its PPP loan or (2) the Exclusion of PPP Loan from Main Street "Outstanding Debt" form.

The PPP ended on May 31, 2021, and the PPP Liquidity Facility ceased extending credit on July 30, 2021.

The Board expects that respondents may use information technology to comply with these provisions, as was the case when information was submitted into the Main Street Lending Program Portal.

#### **Respondent Panel**

The FR A panel comprises persons or entities borrowing under an emergency lending program or facility established pursuant to section 13(3).

#### **Frequency and Time Schedule**

The FR A is an event-driven information collection. The certification or form must be filed at or before the time the person or entity borrows under the program or facility.

### **Proposed Revisions to the FR A**

The Board proposes to remove the reporting and disclosure requirements in FR A-2, FR A-3, and FR A-4. These requirements were specific to the lending facilities for which authorizations have ceased.

### **Public Availability of Data**

There are no data related to this information collection available to the public.

### **Legal Status**

The FR A is authorized pursuant to section 13(3) of the FRA,<sup>5</sup> which allows for the written certification, as required by sections 1101 and 1103 of the Dodd-Frank Act.<sup>6</sup> (Additionally, FR A is authorized pursuant to section 4019 of the Coronavirus Aid, Relief, and Economic Security Act,<sup>7</sup> which requires certain certifications be made to the Board.)

To the extent a reporting institution submits confidential commercial or financial information in connection with the information required under FR A, which is both customarily and actually treated as private by the reporting institution, the reporting institution may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act.<sup>8</sup>

### **Consultation Outside the Agency**

There has been no consultation outside the Federal Reserve System.

### **Public Comments**

On March 7, 2024, the Board published an initial notice in the *Federal Register* (89 FR 16570) requesting public comment for 60 days on the extension, with revision, of the FR A. The comment period for this notice expires on May 6, 2024.

### **Estimate of Respondent Burden**

As shown in the table below, the estimated total annual burden for the FR A is 257,305 hours and would decrease to 55 hours with the proposed revisions. The Board does not currently

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<sup>5</sup> 12 U.S.C. § 343(3).

<sup>6</sup> 12 U.S.C. §§ 343(1) and (3).

<sup>7</sup> 15 U.S.C. § 9054.

<sup>8</sup> 5 U.S.C. § 552(b)(4).

anticipate establishing new or existing emergency lending facilities, but for the purpose of the Paperwork Reduction Act, the Board will assume 10 respondents. The burden estimate was produced using the standard Board burden calculation methodology. These reporting requirements represent less than 1 percent of the Board’s total paperwork burden.

<b>FR A</b>	<i>Estimated number of respondents<sup>9</sup></i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b>Current Reporting</b>				
FR A-1	4,914	1	8	39,312
FR A-2	3,073	1	40	122,920
FR A-3:				
Lender certifications	650	2.36	2	3,068
Borrower certifications:				
For-profit businesses	9,500	1	8	76,000
Nonprofit organizations	2,000	1	8	16,000
<i>Disclosure</i>				
FR A-4	5	1	1	<u>5</u>
	<i>Current Total</i>			257,305
<b>Proposed Reporting</b>				
FR A-1	10	1	5.5	<u>55</u>
	<i>Proposed Total</i>			55
	<i>Change</i>			(257,250)

The estimated total annual cost to the public for this collection of information is \$15,219,591 and would decrease to \$3,644.<sup>10</sup>

## Sensitive Questions

<sup>9</sup> Of these respondents to this information collection, no respondents are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets). Size standards effective March 17, 2023. See <https://www.sba.gov/document/support-table-size-standards>.

<sup>10</sup> Total cost to the responding public is estimated using the following formula: total burden hours, multiplied by the cost of staffing, where the cost of staffing is calculated as a percent of time for each occupational group multiplied by the group’s hourly rate and then summed (30% Office & Administrative Support at \$22, 45% Financial Managers at \$80, 15% Lawyers at \$79, and 10% Chief Executives at \$118). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2022, published April 25, 2023 at <https://www.bls.gov/news.release/ocwage.t01.htm#>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.

These collections of information contain no questions of a sensitive nature, as defined by OMB guidelines.

**Estimate of Cost to the Federal Reserve System**

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.