BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

JANET L. YELLEN
CHAIR

November 30, 2015

The Honorable David Vitter
United States Senate
Washington, D.C. 20510

Dear Senator:

In August 2014 you and a number of your colleagues sent a letter regarding the Federal Reserve Board's (Board) proposed rule to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amendments to the emergency lending authority under section 13(3) of the Federal Reserve Act. I wanted to follow-up on my original response to your letter to provide you with additional information about the Board's final rule. Your comments were helpful to us and a number of changes have been made to the final rule to address issues you have raised. Most importantly, the Board understands the significance of the changes to section 13(3) enacted by Congress and intends to implement these changes in a manner that is fully consistent with the Dodd-Frank Act.

Emergency lending is a critical authority that enables a central bank to provide liquidity to markets during times of unusual financial stress. The purpose of this lending is to prevent or mitigate extraordinary pressures in financial markets that would otherwise have severe adverse consequences for American households and businesses, and the U.S. economy. The Federal Reserve has long had this authority, but we have used this authority only sparingly, only in severe financial crises, and only with the end goal of supporting the real economy.

In the Dodd-Frank Act, the Congress reviewed the scope of the Federal Reserve's emergency lending authority and determined to make significant modifications that enable the Federal Reserve to extend emergency credit only through broad-based facilities and programs designed to provide liquidity to the financial system. The Dodd-Frank Act amendments eliminated the authority to lend for the purpose of aiding a failing firm or preventing a firm from entering bankruptcy or another resolution process. Congress also determined that emergency credit should not be extended to an insolvent firm and that emergency credit programs and facilities could be established only in

unusual and exigent circumstances and only with the approval of the Secretary of the Treasury. All of these restrictions have been in effect since the passage of the Dodd-Frank Act, and they have been incorporated into our rule implementing section 13(3).

In response to comments from you and others, we have made significant changes to the proposed rule to ensure that the rule will be applied in a manner that aligns with the intent of the Congress and the Dodd-Frank Act. These changes include modifications to five key aspects of the rule.

Definition of a broad-based program or facility

The Board's original proposal defined "broad based" by adopting the language of the Dodd-Frank Act, which specifies that a program or facility would not be considered "broad based" if it is designed for the purpose of aiding any failing financial company, structured to remove assets from the balance sheet of "a single and specific company," or established for the purpose of assisting "a single and specific company" avoid bankruptcy, resolution, or any other insolvency proceeding. You and other commenters indicated that this definition could be interpreted to permit the Board to help two failing firms in a single program and urged the Board to specify a larger number of eligible borrowers as a requirement for a program to be "broad-based."

The final rule has been changed in two significant ways to address this concern. First, the final rule provides that a program or facility is not broad-based unless it is designed to provide liquidity to an identifiable market or sector of the financial system and at least five persons or entities are eligible to participate in the facility. Importantly, the final rule also has been modified to provide that the program or facility must not be designed to assist any number of specific firms to avoid bankruptcy or resolution. These requirements are intended to ensure that specific failing firms are not grouped together into a single program or facility. In order to enhance transparency and accountability, the final rule provides that the Board will promptly make public and report to Congress a description of the market or sector of the financial system to which a program or facility with broad-based eligibility is intended to provide liquidity.

Prohibition on lending to insolvent borrowers

Several commenters, including you, urged the Board to adopt a broader definition of insolvency for purposes of the statutory prohibition on lending to insolvent borrowers than the definition provided in the Dodd-Frank Act. The final rule expands this definition by including (i) potential borrowers that are generally not paying their undisputed debts as they become due during the 90 days preceding borrowing from the program and (ii) potential borrowers that are otherwise determined by the Board or the lending Federal Reserve Bank to be insolvent. The final rule also clarifies that loans may

not be made to companies that are borrowing for the purpose of lending to insolvent companies.

Enhancements to the certification process

The Dodd-Frank Act amendments permit the Federal Reserve to rely on a certification from the borrower that they are not insolvent. This procedure can be invaluable in a crisis when lending decisions must be made quickly for a large number of potential borrowers. The final rule incorporates the new definition of insolvency. In order to improve the reliability of a certification, the final rule also provides that all extensions of credit to a borrower that are outstanding will become immediately due, including all accrued interest, fees and penalties, if the borrower is found to have made a knowing material misrepresentation in obtaining emergency credit. In addition, the final rule provides that the Federal Reserve will make a referral to relevant law enforcement authorities for appropriate action if a certification contains a knowing material misrepresentation.

Imposing a penalty rate on borrowing

You and other commenters urged the Board to specify that emergency loans must carry a penalty rate of interest. The practice of the Federal Reserve in extending emergency credit has been to impose a penalty rate designed to encourage borrowers to repay emergency credit as quickly as possible once the financial conditions that justified the emergency credit have normalized. The draft final rule has been changed from the original proposal to explicitly require the Board to establish a penalty rate. The final rule also provides that the rate will be a premium to the market rate in normal circumstances, afford liquidity in unusual and exigent circumstances, and encourage repayment and discourage additional requests for credit as financial conditions normalize. The final rule also sets out a list of factors that the Board will take into account when establishing the penalty rate. These factors include the condition of the affected markets and the financial system generally, the historical rate of interest for loans of comparable terms and maturity during normal times, the purpose of the program or facility, the risk of repayment, the collateral supporting the credit, and the duration, terms and amount of the credit.

Termination of programs and facilities

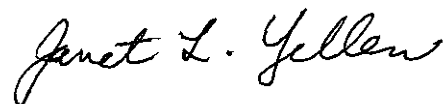
The final rule has also been changed to provide that the Board will review each program or facility at least every six months to ensure that circumstances continue to warrant the extension of emergency credit. In addition, the rule provides that each program or facility will terminate within one year from the date of its first extension of credit or its latest renewal date unless the Board determines, with the approval of the Secretary of the Treasury, to renew the program or facility. To renew the facility, the

Board must find that the unusual and exigent circumstances continue to warrant the extension of emergency credit. The rule provides that the Board must promptly notify Congress and the public of any renewal of an emergency credit program or facility.

Conclusion

In addition to these changes, the Board has incorporated all the other amendments made by Congress in the Dodd-Frank Act to section 13(3) of the Federal Reserve Act. We have also been working actively, including with a number of other Federal agencies, to implement provisions of the Dodd-Frank Act designed to make financial firms more resilient against failure and to reduce sources of risk to financial stability. In addition, we have been working with the Federal Deposit Insurance Corporation to implement provisions of the Dodd-Frank Act that establish an orderly resolution process and that require large financial firms to prepare plans for their resolution in bankruptcy. We believe these provisions will help to lessen the likelihood that the emergency lending authority in section 13(3) will be needed.

Sincerely,



Enclosure (Federal Register Notice)

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Regulation A; Docket No. R-1476

RIN 7100-AE08

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement the emergency lending authorities provided under the 3rd undesignated paragraph of section 13 of the Federal Reserve Act (the FRA) as amended by sections 1101 and 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). These provisions of the Dodd-Frank Act require the Board, in consultation with the Secretary of the Treasury, to establish by regulation policies and procedures with respect to emergency lending under section 13(3) of the FRA.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Laurie S. Schaffer, Associate General Counsel (202) 452-2272, Sophia H. Allison, Special Counsel (202) 452-3565, or Jay R. Schwarz, Senior Counsel (202)

452-2970, Legal Division. Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW, Washington, D.C. 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

SUPPLEMENTARY INFORMATION

I. Introduction

On December 23, 2013, the Board invited public comment on proposed amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement sections 1101 and 1103 of the Dodd-Frank Act (Pub. L. No. 111-203, 124 Stat. 1376).[1] The purpose of the proposed amendments was to implement the Dodd-Frank Act revisions to the Board's emergency lending authority in section 13(3) of the Federal Reserve Act that limit the use of this authority to the provision of liquidity through broadly-based facilities for solvent firms in a time of crisis. After careful review and consideration of the comments, the final rule adopted by the Board includes a number of changes and additional limitations to address concerns raised by commenters.

Prior to the enactment of the Dodd-Frank Act, section 13(3) provided that the Board may authorize a Federal Reserve Bank to extend credit to any

[1] 79 FR 615 (January 6, 2014).

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;[2] (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.[3]

Effective on July 21, 2010, the Dodd-Frank Act (Pub. L. No. 111-203, 124 Stat. 1376) amended section 13(3) 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

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[2] A lesser number of votes is required in certain emergency situations where at least five members of the Board are unavailable or not in service. 12 U.S.C. 248(r).

[3] *See* H.R. Rep. No. 1777, at 19, 20 (1932) (Conf. Rep.); S. Rep. No. 102-167, at 202 (1991) (Conf. Rep.).

with the limited authority to extend emergency credit only to participants in a program or facility with broad-based eligibility designed for the purpose of providing liquidity to the financial system.[4] 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.[5] 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).

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[4] Pub. Law 13-203, Sec. 1101(a)(2): 124 STAT 2113(amending section 13 of the Federal Reserve Act, 12 U.S.C. 343).

[5] Pub. Law 13-203, Sec. 1101(a)(6): 124 STAT 2113(amending section 13 of the Federal Reserve Act, 12 U.S.C. 343).

The draft rule proposed by the Board for public comment adopted all of the requirements and much of the specific statutory language contained in the Dodd-Frank Act amendments to section 13(3). The Board received fewer than a dozen comments on the proposed rule from financial institutions, policy institutions, individuals, and members of Congress.

While commenters generally expressed support for the proposed rule, most commenters recommended revisions to the proposed rule. Among the suggestions made by the commenters are that the rule:

- provide a more specific definition of what it means for a program or facility to be "broad-based";
- adopt a broader definition of insolvency for purposes of the prohibition on lending to insolvent borrowers;
- clarify that solvent firms may not borrow for the purpose of passing the proceeds of emergency loans on to insolvent firms;
- specify that emergency loans would only be made at a penalty rate that exceeds the market rate for such loans;
- include a specific timeline for evaluating whether an emergency lending program or facility should be terminated;
- limit the classes of collateral that can be accepted for emergency loans and require that the collateral be independently appraised; and
- require the Board to seek a joint resolution of Congress prior to granting an emergency loan.

The final rule adopts all of the limitations and revisions required by the Dodd-Frank Act. In addition, in response to the comments, the Board has revised the final rule in a number of significant ways. In particular, as discussed below, the Board modified the final rule to:

- Further limit the definition of a broad-based program by including, in addition to the proposed requirement that the program be designed to provide liquidity to an identifiable market or sector of the financial system and not be for the purpose of assisting a specific firm to avoid bankruptcy or other resolution, a requirement that at least five persons be eligible to participate in the facility and a requirement that the facility not be designed to assist any number of identified firms to avoid bankruptcy or resolution;
- Expand the definition of insolvency to include potential borrowers that are generally not paying their undisputed debts as they become due during the 90 days preceding borrowing from the program, and potential borrowers that are otherwise determined by the Board or the lending Federal Reserve Bank to be insolvent, in addition to the proposal to identify as insolvent any person in a resolution or bankruptcy proceeding;

- Provide that loans may not be made to companies that are borrowing for the purpose of lending to insolvent companies;
- Specify that emergency loans must be extended at a penalty rate;
- Provide that the Board will make public and report to Congress a description of the market or sector of the financial system to which a program or facility with broad-based eligibility is intended to provide liquidity;
- Provide that the Board will review each program or facility at least every six months and that each program or facility will terminate within one year from the date of its first extension of credit or its latest renewal date unless the Board determines, by a vote of at least five members of the Board[6] and with the approval of the Secretary of the Treasury, to renew the program or facility; and,
- Clarify that, if a company or its representative is found to have made a knowing material misrepresentation regarding its solvency in obtaining emergency credit, the credit plus all

[6] A lesser number of votes is required in certain emergency situations where at least five members of the Board are unavailable or not in service. 12 U.S.C. 248(r).

applicable interest, fees, and penalties will become immediately due and payable, and the Federal Reserve will refer the matter to the relevant law enforcement authorities for appropriate action.

II. Section by Section Summary of Final Rule

A. Section 201.4(d) – Emergency credit for others.

1. *Authorization to extend credit*.

Section 201.4(d)(1) of the final rule provides that, in unusual and exigent circumstances, the Board may, upon the affirmative vote of not less than five of its members,[7] authorize any Federal Reserve Bank to extend credit under section 13(3) of the FRA through a program or facility with broad-based eligibility. This requirement mirrors the statutory requirement and is unchanged from the proposed rule. Conditions governing when a program or facility has broad-based eligibility are discussed below.

In addition, section 201.4(d)(1) provides that any credit extended under section 13(3) of the FRA is subject to such other conditions as the Board may determine. These could include conditions that govern the timing

[7] The rule permits the Board to authorize lending under the rule by a vote of fewer than five members in certain emergency situations permitted by statute where at least five members of the Board are not available or not in service. 12 U.S.C. 248(r).

of, collateral supporting, duration of, consideration for, terms of, counterparties to, and other conditions governing the extension of credit.

2. *Approval of the Secretary of the Treasury.*

Section 201.4(d)(2) of the final rule provides that a program or facility under section 13(3) of the FRA may not be established without the prior approval of the Secretary of the Treasury. This condition implements a requirement of the Dodd-Frank Act.[8]

One commenter suggested that, in addition to this approval, the Board should seek a joint resolution of Congress in connection with the establishment of a program or facility. While Congress in the Dodd-Frank Act imposed a similar requirement as a condition of certain emergency actions by the Federal Deposit Insurance Corporation (FDIC), Congress did not adopt this requirement in connection with emergency lending under section 13(3) of the FRA. Instead, Congress established a number of other specific procedural requirements for emergency lending in section 1101 of the Dodd-Frank Act, including the requirement that the Secretary of the Treasury approve the establishment of a program or facility.

The final rule does not adopt a requirement that Congress ratify a lending program or facility. It is the exclusive prerogative of Congress to

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[8] 12 U.S.C. 343(3)(B)(iv).

determine when and on what matters it will act. However, to further Congressional oversight of emergency lending facilities, the Board's final rule establishes a process by which the Board will promptly provide written notice to Congress of any emergency program or facility established under section 13(3) of the FRA.

3. *Disclosure of justification and terms.*

Section 201.4(d)(3) of the final rule requires that the Board make publicly available, as soon as is reasonably practicable, and no later than 7 days after the Board authorizes the program or facility, a description of the program or facility, the unusual and exigent circumstances that exist, the intended effect of the program or facility, and the terms and conditions for participation in the program or facility. The final rule also provides that, within the same 7-day period, this information will be provided by the Board to the Committee on Banking, Housing and Urban Affairs of the U.S. Senate and the Committee on Financial Services of the U.S. House of Representatives.

Some commenters suggested that the Board provide additional clarity regarding the scope of the market that must be eligible for a facility to have "broad-based eligibility." While this is addressed below, as part of its response to this comment, the Board amended section 201.4(d)(3) of the

final rule to require that the Board publicly disclose the market or sector of the financial system to which the program or facility is intended to provide liquidity. The Board added this disclosure requirement to help provide transparency regarding the broad-based nature of a program or facility at the time it is created.

4. *Definition of broad-based eligibility*.

The Dodd-Frank Act limits emergency lending under section 13(3) of the FRA to lending conducted through a program or facility "with broad-based eligibility."[9] The draft implementing rule as originally proposed would have implemented this restriction in the Dodd-Frank Act by incorporating the language contained in the Dodd-Frank Act prohibiting lending for the purpose of removing assets from the balance sheet of "a single and specific company," assisting "a single and specific company" to avoid bankruptcy, resolution under Title II of the Dodd-Frank Act, or any other Federal or State insolvency proceeding, or aiding a failing financial company.[10]

Several commenters expressed concern that the reference in the proposed rule to "a single and specific company" could allow the Board to

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[9] 12 U.S.C. 343(3)(A).

[10] *See* 12 U.S.C. 343(3)(B)(iii).

circumvent the limits imposed by the Dodd-Frank Act by grouping two or more bankrupt or failing firms in a program or facility. Some of these commenters suggested that the Board specify the number of eligible participants that would be required for a program or facility to have broad-based eligibility. One legislative proposal would provide that a program or facility is not broad-based unless at least five persons are eligible to participate in the program or facility.

The Board believes that the requirement that a program or facility have "broad-based eligibility" cannot be avoided by grouping two or more failing or bankrupt firms into a single facility. Thus, section 201.4(d)(4) of the final rule has been modified to make clear that an emergency program or facility has broad-based eligibility under the final rule only if three conditions are met. First, the program or facility must be designed for the purpose of providing liquidity to an identifiable market or sector of the financial system.

Second, the program or facility must not be designed for the purpose of assisting one or more specific companies to avoid bankruptcy or other resolution, including by removing assets from the balance sheet of the company or companies. The original proposal would have adopted the language in the Dodd-Frank Act that a program not be designed for the

purpose of assisting "a single and specific company" avoid bankruptcy or resolution. The final rule has been changed to provide that a program or facility may not be designed to assist "one or more" specific companies to avoid bankruptcy or resolution. This change is intended to accent that a program or facility would not qualify as a broad-based program or facility if it is designed for the purpose of assisting any number of specific persons or entities to avoid resolution. A program or facility that is designed to remove assets from a single and specific firm's balance sheet to help the firm avoid bankruptcy or resolution such as was done with regard to Bear Stearns would not be permissible.

Third, the final rule provides that a program or facility would not be considered broad-based if fewer than five persons are eligible to participate in the program or facility. In this context, eligibility would be determined by qualification under all the terms and conditions established for participation in the program or facility.

Together, these limitations are designed to ensure that emergency credit programs and facilities are established only to fulfill the central bank's role as lender of last resort to the financial system and not as a lender to troubled firms seeking to avoid resolution or failure. For example, this approach would permit the Federal Reserve to establish programs or

facilities like the Term Asset-backed Securities Loan Facility (TALF), which provided several thousand loans that provided liquidity to fund several billion dollars of student loans, car loans, small business loans and other loans in the securitization market; the Commercial Paper Funding Facility (CPFF), which was a program with broad-based eligibility designed to provide liquidity to the commercial paper market; the Asset-backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF) and the Money Market Investor Funding Facility (MMIFF), which were programs with broad-based eligibility designed to provide liquidity to the money market fund sector; and the Primary Dealer Credit Facility (PDCF), which provided liquidity to all primary dealers in support of trading in the U.S. Government securities market.

However, these restrictions would not permit emergency lending to remove assets from a failing firm as was done in the case of the emergency loan to Bear Stearns, or to provide credit to prevent a firm from entering bankruptcy as was done in the case of the emergency credit facility established for AIG. Importantly, the final rule would not authorize a program or facility that sought to evade these limitations by grouping multiple failing or insolvent firms in a single program or facility. Thus, the revisions in the final rule would not permit the Federal Reserve to extend

emergency credit in a case like the Bear Stearns or AIG situation simply by establishing a single program or facility for the purpose of providing credit to both Bear Stearns and AIG, or any other number of specific failing or insolvent firms.[11]

The Board is adopting Section 201.4(d)(4)(iv) as proposed. That section authorizes the Board to determine the type of mechanism or vehicle used to extend credit, so long as the facility is broad-based. For example, liquidity facilities may extend credit directly to participants in those facilities in some cases, or through a special purpose vehicle in other cases. In any case, the extensions of credit would be subject to all of the requirements related to the provision of liquidity under section 13(3) of the FRA.

5. *Definition of insolvency*.

As noted above, section 1101 of the Dodd-Frank Act requires the Board to "establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent." Section 1101 also provides that a borrower "shall be considered insolvent" if the borrower "is in bankruptcy, resolution under Title II of [the Dodd-Frank Act], or any other Federal or

[11] While the final rule requires that at least five persons be eligible to participate in a program or facility, that requirement is in addition to the restriction on establishing a program or facility for the purpose of providing credit to prevent the failure or resolution of any number of specific failing or insolvent persons, and would not allow a program or facility designed for the purpose of preventing the resolution or failure of more than five persons.

State insolvency proceeding."[12] Some commenters suggested that section 1101 does not preclude the Board from identifying other situations where a person or entity has not yet entered into formal proceedings but nevertheless should be deemed to be insolvent and encouraged the Board to extend the definition of insolvency to apply to these circumstances.

As an initial matter, the final rule adopts the insolvency constraint as provided in the Dodd-Frank Act. Section 201.4(d)(5) provides that a Federal Reserve Bank may not extend credit through a program or facility established under section 13(3) of the FRA to any person or entity that is in bankruptcy, resolution under Title II of the Dodd-Frank Act, or any other Federal or State insolvency proceeding.

In response to these comments, the Board has amended the final rule to acknowledge that there may be situations that are not identified explicitly in the statute where the Board may determine that an entity is insolvent. In particular, the final rule provides that a person or entity is insolvent if the person or entity is generally not paying its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility. The final rule also provides that the Board or Federal Reserve

[12] 124 Stat. 1376 at 2113-15.

Bank may determine, based on recent audited financial statements or other relevant documentation, that an entity is otherwise insolvent.

Section 201.4(d)(5) of the final rule requires the Board or the lending Federal Reserve Bank, prior to extending credit, to obtain evidence that the person or entity is not insolvent. As provided by the Dodd-Frank Act, the final rule provides that the Board and a Federal Reserve Bank may rely on a written certification from the person, the chief executive officer of the entity or another authorized officer of the entity, at the time the person or entity initially borrows under a program or facility, that the person or entity is not in bankruptcy or in a resolution or other insolvency proceeding. The Board has broadened this part of the final rule to require that the certification also state that the potential borrower has not failed to generally pay its undisputed debts as they become due during the 90 days preceding the date of borrowing.

The statute specifically permits the Board to rely on a certification to establish solvency. Use of a certification is particularly important in the context of programs and facilities with broad-based eligibility because these programs and facilities have the potential to involve numerous borrowers seeking credit in unusual periods of severe illiquidity. A binding

certification aids in quickly and effectively making liquidity available on safe and reasonable terms in these difficult economic circumstances.

The final rule contains a number of provisions designed to ensure the continued accuracy of the certification. First, the final rule provides that a person or entity that submits a written certification must immediately notify the lending Federal Reserve Bank if the information in the certification changes. Section 201.4(d)(5)(vi) of the final rule also provides that a participant that is or has become insolvent would be prohibited from receiving any new extension of credit under the program or facility.

Moreover, to improve the reliability of a certification, the final rule provides that, if a participant or a person has provided a certification under section 201.4(d)(5) or (8) that includes a knowing material misrepresentation, all emergency credit extended to the borrower immediately becomes due and payable, and the Federal Reserve will promptly refer the matter to appropriate law enforcement authorities for action under applicable criminal and civil law.

Some commenters expressed concern that third-party conduits would be used to evade any insolvency restrictions in the rule by passing borrowed funds on to an entity that is insolvent. Section 201.4(d)(5)(i) of the final rule provides that a Federal Reserve Bank may not extend credit through a

program or facility to any person that is borrowing for the purpose of lending the proceeds of the loan to an insolvent entity.

Another commenter suggested that the final rule clarify whether conservatorships are eligible to participate in broad-based facilities. Section 13(3) as amended by the Dodd-Frank Act prohibits lending to an insolvent borrower or to aid a failing firm. As a general matter, conservators are appointed to conserve a failing company's assets.[13] Accordingly, a conservatorship and a company in conservatorship would not be eligible to borrow from a program or facility established under section 13(3) of the FRA.

6. *Indorsement or other security.*

Prior to the Dodd-Frank Act, section 13(3) provided that any extension of credit under that section must be "indorsed or otherwise secured to the satisfaction of the Federal Reserve bank."[14] The Dodd-Frank Act retained this provision of the original statute and added two further requirements. First, the Dodd-Frank Act directs the Board to adopt policies and procedures "designed to ensure . . . that the security for emergency loans

[13] *See* 12 U.S.C. 1821(c)(5).

[14] *See* 12 U.S.C. 343, 47 Stat. 715.

is sufficient to protect taxpayers from losses."[15] Second, the Dodd-Frank Act requires that the Board's policies and procedures "require that a Federal Reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed" under section 13(3) of the FRA.[16]

Protecting taxpayers from losses as a result of emergency lending has always been an important concern for the Board, and the Board notes that the extensions of credit under the emergency lending programs it authorized during the recent financial crisis were all repaid in full with interest. The proposed rule incorporated the new statutory requirements from the Dodd-Frank Act into Regulation A.

Some commenters argued that the Board should limit the types of collateral the Federal Reserve Banks may accept in support of an emergency credit. Several commenters argued that the Federal Reserve should establish haircuts for collateral accepted by programs and facilities that extend emergency credit.

The final rule continues to emphasize the importance of ensuring that the security for emergency loans is sufficient to protect taxpayers from

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[15] 12 U.S.C. 343(3)(B)(1).

[16] *Id.*

losses. As proposed and as adopted in the final rule, section 201.4(d)(6) provides that all credit extended under emergency lending programs and facilities must be indorsed or otherwise secured to the satisfaction of the lending Federal Reserve Bank.

The final rule also requires the Federal Reserve Bank, no later than at the time the credit is initially extended, to assign a lendable value to all collateral for the program or facility, consistent with sound risk management practices and to ensure protection for the taxpayer. The Federal Reserve Banks have long assigned a lendable value to collateral at the time credit is extended. Much of the collateral accepted as security for emergency lending has a readily available market value. In connection with assigning a lendable value to other collateral, Reserve Banks readily take into account independent appraisals of the collateral that may be available. In all cases, the Reserve Bank applies appropriate discounts or "haircuts" to the value of the collateral. The haircuts applied to collateral are described in the Federal Reserve Discount Window & Payment System Risk Collateral Margins Table and the Federal Reserve Collateral Guidelines, available on the Federal Reserve Discount Window & Payment System Risk Website.[17] The Federal Reserve Banks also consider the financial strength of the borrower,

[17] http://www.frbdiscountwindow.org/index.cfm.

the presence of any indorsement, and other factors, in determining whether the credit is satisfactorily secured.

The Board believes that these provisions allow the Federal Reserve to impose collateral and other requirements to protect the taxpayer from loss and address the statutory requirement for policies and procedures that are designed to ensure protection for the taxpayer.

7. *Penalty rate.*

Section 13(3) of the FRA has always provided that emergency credit extended under that section shall be at rates established in accordance with the provisions of section 14(d) of the FRA. Commenters suggested that the Board amend the proposed rule to require that extensions of emergency credit be subject to a penalty rate of interest.

The practice of the Federal Reserve in extending emergency credit has been to set the relevant interest rate at a penalty rate designed to encourage borrowers to repay emergency credit as quickly as possible once the unusual and exigent circumstances that justify the program or facility have receded and financial conditions have normalized. This approach has also ensured that the taxpayer is compensated by a higher interest rate than would be charged during normal times for the increased risk taken in extending emergency credit. Indeed, while the Federal Reserve adopted different rates

for the various broad-based facilities that it established during the recent financial crisis, in each case, the rate set for the facility exceeded the rate for comparable instruments during normal times. As a result of this practice, emergency broad-based credit facilities established by the Federal Reserve under section 13(3) terminated and wound down as economic conditions normalized.

In keeping with this practice, section 201.4(d)(7) of the final rule provides that a penalty rate will be imposed on emergency extensions of credit. Because the appropriate interest rate depends on a number of factors, such as the duration of the credit, the collateral requirements, and the other terms and conditions for the credit, it is not feasible to establish a single penalty rate for all emergency facilities or to set penalty rates in advance of designing the facility. Consequently, the final rule provides that the interest rate for credit extended under section 13(3) must be at a level that is a premium to the market rate in normal circumstances, affords liquidity in unusual and exigent circumstances, and encourages repayment and discourages use of the program as unusual and exigent circumstances normalize.

Section 201.4(d)(7)(iii) of the final rule sets forth a non-exhaustive list of factors that the Board will take into account when establishing the penalty

rate. These factors include the condition of the affected markets and the financial system generally, the historical rate of interest for loans of comparable terms and maturity during normal times, the purpose of the program or facility, the risk of repayment, the collateral supporting the credit, the duration, terms and amount of the credit, and other factors relevant to ensuring the taxpayer is appropriately compensated for the risks associated with the emergency credit. The final rule also explains that the rate on emergency credit under section 13(3) may be set by auction or other method consistent with section 14(d) of the FRA. Such an auction could be structured with a minimum stop out rate to ensure that the resulting rate would satisfy the requirements of a penalty rate.

8. *Evidence regarding unavailability of adequate credit accommodation*.

Section 13(3) has always required that a Federal Reserve Bank, prior to extending credit to any participant in a program or facility under that section, obtain evidence that such participant is unable to secure adequate credit accommodations from other banking institutions. The proposed rule incorporated this requirement and provided that this evidence may include evidence based on economic conditions in the market or markets addressed by the program or facility or evidence obtained from other sources, including facility or market participants and certifications from borrowers.

In response to comments, the Board has amended the final rule to add as relevant evidence a certification from the participant that it is unable to secure adequate credit accommodations from other banking institutions.

9. *Termination of program or facility.*

The Dodd-Frank Act requires that the Board's policies and procedures with respect to section 13(3) extensions of credit be designed to ensure that any such program is terminated in a timely and orderly fashion.[18] In order to address this requirement, the proposed rule would have required the Board periodically to review the existence of unusual and exigent circumstances; the extent of usage of the program or facility; the extent to which the continuing authorization of the program or facility facilitates restoring or sustaining confidence in financial markets; economic and market conditions; the functioning of financial markets; the ongoing need for the liquidity support provided by such program or facility; and such other factors as the Board may deem to be appropriate.

Some commenters suggested that a specific time period for review be adopted. The Board has amended the draft proposal to adopt this suggestion. Section 201.4(d)(9)(i) of the final rule provides that a program or facility will terminate no later than one year after the date of the first

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[18] Dodd-Frank Act Section 1101(a)(6).

extension of credit under the program or facility. The rule allows the Board to renew the program or facility if it finds, by a vote of five members,[19] that unusual and exigent circumstances continue to exist, and the Secretary of the Treasury has approved the renewal. Each renewal may extend the program or facility for not more than one year. The final rule requires the Board promptly to report publicly and to the relevant congressional committees any renewal of a program or facility under section 13(3).

The final rule has been amended to provide that the Board will, not less frequently than every six months, review whether each emergency lending program or facility should be terminated. The final rule provides that the Board may terminate an emergency lending program or facility at any time, and will terminate an emergency program or facility upon finding that conditions no longer warrant continuation of the program or facility.

The final rule retains the provisions of the proposed rule providing factors for the Board to consider in conducting this review, with some additional modifications. Specifically, the final rule provides that the Board will consider such factors as the continued existence of unusual and exigent circumstances; the extent of usage of the program or facility; the extent to which the continuing authorization of the program or facility facilitates

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[19] See 12 U.S.C. 248(r).

restoring or sustaining confidence in the identified financial markets; the ongoing need for the liquidity support provided by such program or facility; and other appropriate factors.

One commenter suggested that the final rule include procedures for the orderly unwinding of a program or facility, including how the Board will cover any associated losses. The Board expects, as it has with past facilities, to evaluate the appropriate methods for an orderly unwinding of any emergency credit facility at the time the facility is unwound.

10. *Reporting requirements*.

The Dodd-Frank Act contains detailed reporting requirements with respect to section 13(3) extensions of credit.[20] The proposed rule set forth the statutory requirements as enacted, and no comments were received on those provisions of the proposed rule. Therefore, the Board is adopting these provisions as proposed. The final rule provides that the Board will comply with 12 U.S.C. 248(s) and 12 U.S.C. 343(3)(C) pursuant to their terms.

11. *No obligation to extend credit*.

Section 201.4(d)(11) of the proposed rule provided that Federal Reserve Banks have no obligation to extend credit to any particular person

[20] Dodd-Frank Act Sections 1101(a)(6) and 1103(b).

or entity through an emergency lending program or facility. This provision mirrors the provision applicable to lending to depository institutions set forth in section 201.3(b) of Regulation A. No comments were received on this provision, and the Board is adopting it as proposed.

12. *Participation in programs and facilities and vendor selection.*

The final rule reflects existing legal requirements that participation in any program or facility under section 13(3) of the Federal Reserve Act will not be limited or conditioned on the basis of any legally prohibited basis, such as the race, religion, color, gender, national origin, age or disability of the borrower. Moreover, in accordance with existing law, the selection of third-party vendors used in the design, marketing or implementation of any program or facility under this subsection will be without regard to the race, religion, color, gender, national origin, age or disability of the vendor or any principal shareholder of the vendor, and, to the extent possible and consistent with law, will involve a process designed to support equal opportunity and diversity.

13. *Short-term emergency credit secured solely by United States or agency obligations.*

Section 201.4(d)(13) of the proposed rule retained, but relocated, a provision in current Regulation A that authorizes a Federal Reserve Bank to extend credit under section 13(13) of the FRA if the collateral used to secure

the credit consists solely of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or an agency of the United States. Section 201.4(d)(13) of the final rule retains the provision that extensions of credit under this section be at a rate above the highest rate in effect for advances to depository institutions. As set forth in section 13(13) of the FRA, section 201.4(d)(13) of the final rule also provides that credit extended under this provision may not be extended for a term exceeding 90 days.

One commenter suggested that section 201.4(d)(13) should be revised to limit the number of times a loan issued pursuant to its provisions may be rolled over. However, the commenter did not provide a suggested limit on roll overs and acknowledged that there would need to be exceptions made to any limit imposed. Instead of imposing such a limit, the Board will rely on its ability to assess whether unusual and exigent circumstances continue to exist at the time that the loan is renewed in order to appropriately limit roll overs of such loans. Therefore, the Board is retaining section 201.4(d)(13) as written.

B. Section 201.3(b) – No obligation to make advances or discounts.

Section 201.3(b) of the final rule reflects a technical change to conform the language of that section with the language of section 201.4(d)(11) of the final rule.

III. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Board solicited public comment on the rule in a notice of proposed rulemaking. The Board did not receive any comments regarding burden to small banking organizations.

In accordance with section 1101 and 1103 of the Dodd-Frank Act, the Board is amending Regulation A (12 CFR part 201 et seq.) to establish policies and procedures for emergency lending under section 13(3) of the FRA. The reasons and justification for the final rule are described in the Supplementary Information. The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. Under regulations issued by the Small Business Administration ("SBA"), a "small

entity" includes those firms within the "Finance and Insurance" sector with asset sizes that vary from $75.5 million or less in assets to $550 million or less in assets. The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature and the vast majority of emergency loans under section 13(3) during the recent financial crisis were extended to such firms.

As discussed in the Supplementary Information, the final rule would apply to any participant in an emergency lending program or facility with broad-based eligibility. To the extent that small entities are participants in these programs or facilities, they would be receiving extensions of emergency credit from Federal Reserve Banks. It is not possible to ascertain at this time the number of small entities that might participate in these programs and facilities were they to be authorized, or what requirements would be imposed on them if they do so. At a minimum, it is likely that participants would be required to pay interest on credit extended to them and to keep records of the use of proceeds of such extensions of credit. However, the positive economic impact of receiving such a credit is likely to substantially outweigh any economic burden of participating in the program or facility.

In light of the foregoing, the Board does not believe that the final rule would have a significant negative economic impact on a substantial number of small entities.

B. Paperwork Reduction Act Analysis

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the Board 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 OMB control number for the Board is 7100-NEW. The Board reviewed the final rule under the authority delegated to the Board by OMB. The final rule contains requirements subject to the PRA. The reporting requirements are found in section 201.4(d)(5)(iv)(A). The Board indicated in the proposed rule that the reporting requirements associated with the Regulation A would be minimal and no PRA burden was taken. The Board received no comments on this aspect of the proposal. However, based on the comments received for clarifying the proposed rule to prohibit solvent firms from passing the proceeds of emergency loans on to insolvent firms and

adopting a broader definition of insolvency, the Board will take reporting burden for this section.

The Board has a continuing interest in the public's opinions of collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer (1) by mail to U.S. Office of Management and Budget, 725 17th Street NW, 10235, Washington, DC 20503; (2) by facsimile to 202–395–6974; or (3) by e-mail to: oira_submission@omb.eop.gov, Attention, Federal Reserve Board Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Regulation A (Extensions of Credit by Federal Reserve Banks).

Frequency of Response: Event-generated.

Affected Public: Businesses, individuals or other persons.

Respondents: Any participant in a program or facility with broad-based eligibility.

Abstract: Sections 1101 and 1103 of the Dodd-Frank Act amend the emergency lending authorities provided in section 13(3) of the Federal Reserve Act. The amendments require the Board, in consultation with the Secretary of the Treasury, to establish by regulation policies and procedures with respect to such emergency lending. The purpose of the amendments to Regulation A in this final rule is to implement the Dodd-Frank Act revisions to the Board's emergency lending authority in section 13(3) of the Federal Reserve Act that limit the use of this authority to the provision of liquidity through broadly-based facilities for solvent firms in a time of crisis.

Reporting Requirements

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 No. 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.

Estimated Burden per Response: 5 hours.

Number of Respondents: 10 (The Federal Reserve is not currently aware of any respondents, but for purposes of the PRA we will assume 10. If or when we receive any certifications we intend to update this data upon the next renewal of the information collection).

Total Estimated Annual Burden: 50 hours.

C. Invitation for Comments on Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act of 1999 requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[21] The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR Part 201 (Regulation A) as follows:

PART 201 – EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 is revised to read as follows:

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[21] 12 U.S.C. 4809.

Authority: 12 U.S.C. 248(i)-(j) and (s), 343 et seq., 347a, 347b, 347c, 348 et seq., 357, 374, 374a, and 461.

2. Section 201.3 paragraph (b) is revised to read as follows:

§201.3 Extensions of credit generally.

* * * * *

(b) *No obligation to make advances or discounts.* This subsection does not entitle any person or entity to obtain any credit or any increase, renewal or extension of maturity of any credit from a Federal Reserve Bank.

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3. Section 201.4 paragraph (d) is revised to read as follows:

§201.4 Availability and terms of credit.

* * * * *

(d) *Emergency credit for others*. -- (1) *Authorization to extend credit*. In unusual and exigent circumstances, the Board, by the affirmative vote of not less than five members,[1] may authorize any Federal Reserve Bank, subject

[1] Unless fewer are authorized pursuant to section 11(r) of the Federal Reserve Act. 12 U.S.C. 248(r).

to such conditions and during such periods as the Board may determine, to extend credit to any participant in a program or facility with broad-based eligibility established and operated in accordance with this subsection.

(2) *Approval of the Secretary of the Treasury.* A program or facility may not be established under this subsection without obtaining the prior approval of the Secretary of the Treasury.

(3) *Disclosure of justification and terms.* As soon as is reasonably practicable, and no later than 7 days after a program or facility is authorized under this subsection, the Board and the authorized Federal Reserve Bank or Federal Reserve Banks, as appropriate, will make publicly available a description of the program or facility, a description of the market or sector of the financial system to which the program or facility is intended to provide liquidity, a description of the unusual and exigent circumstances that exist, the intended effect of the program or facility, and the terms and conditions for participation in the program or facility. In addition, within the same 7-day period, the Board will provide a copy of this information to the Committee on Banking, Housing and Urban Affairs of the U.S. Senate and the Committee on Financial Services of the U.S. House of Representatives.

(4) *Broad-based eligibility*. (i) A program or facility established under this subsection must have broad-based eligibility in accordance with terms established by the Board.

(ii) For purposes of this subsection, a program or facility has broad-based eligibility only if the program or facility is designed to provide liquidity to an identifiable market or sector of the financial system;

(iii) A program or facility will not be considered to have broad-based eligibility for purposes of this subsection if:

(A) the program or facility is designed for the purpose of assisting one or more specific companies avoid bankruptcy, resolution under Title II of Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law No. 111-203, 12 U.S.C. 5381 *et seq*.), or any other Federal or State insolvency proceeding, including by removing assets from the balance sheet of one or more such company;

(B) the program or facility is designed for the purpose of aiding one or more failing financial companies; or

(C) fewer than five persons or entities would be eligible to participate in the program or facility.

(iv) A Federal Reserve Bank may extend credit through a program or facility with broad-based eligibility established under this

subsection through such mechanism or vehicle as the Board determines would facilitate the extension of such credit.

(5) *Insolvency*. (i) A Federal Reserve Bank may not extend credit through a program or facility established under this subsection to any person or entity that is insolvent or to any person or entity that is borrowing for the purpose of lending the proceeds of the loan to a person or entity that is insolvent.

(ii) Before extending credit through a program or facility established under this subsection to any person or entity, the Federal Reserve Bank must obtain evidence that the person or entity is not insolvent.

(iii) A person or entity is "insolvent" for purposes of this subsection if:

(A) The person or entity is in bankruptcy, resolution under Title II of Public Law No. 111-203 (12 U.S.C. 5381 et seq.) or any other Federal or State insolvency proceeding;

(B) The person or entity is generally not paying its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility; or

(C) The Board or Federal Reserve Bank otherwise determines that the person or entity is insolvent.

(iv) For purposes of meeting the requirements of this paragraph, the Board or Federal Reserve Bank, as relevant, may rely on:

(A) 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 No. 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;

(B) recent audited financial statements of the person or entity; or

(C) other information that the Board or the Federal Reserve Bank may determine to be relevant.

(v) A person or officer (or successor of either) that submits a written certification under this subparagraph must immediately notify the lending Federal Reserve Bank if the information in the certification changes.

(vi) Upon a finding by the Board or a Federal Reserve Bank that a participant, including a participant that has provided a certification under this paragraph, is or has become insolvent, that participant is not

eligible for any new extension of credit from a program or facility established under this subsection until such time as the Board or a Federal Reserve Bank determines that such participant is no longer insolvent.

(vii) If a participant or person has provided a certification under this paragraph or paragraph (d)(8)(ii) of this subsection that includes a knowing material misrepresentation in the certification, all extensions of credit made pursuant to this subsection that are outstanding to the relevant participant shall become immediately due and payable, and all accrued interest, fees and penalties shall become immediately due and payable. The Board or the lending Federal Reserve Bank will also refer the matter to the relevant law enforcement authorities for investigation and action in accordance with applicable criminal and civil law.

(6) *Indorsement or other security*. (i) All credit extended under a program or facility established under this subsection must be indorsed or otherwise secured, in each case, to the satisfaction of the lending Federal Reserve Bank.

(ii) In determining whether an extension of credit under any program or facility established under this subsection is secured to its satisfaction, a Federal Reserve Bank must, prior to or at the time the credit is initially extended, assign a lendable value to all collateral for the program or

facility, consistent with sound risk management practices and to ensure protection for the taxpayer.

(7) *Penalty rate and fees.* (i) The Board will determine the interest rate to be charged on any credit extended through a program or facility established under this section in accordance with this subsection and the provisions of section 14, subdivision (d) of the Federal Reserve Act (12 U.S.C. 357). The Board may determine the interest rate by auction or such other method as the Board determines in accordance with section 14, subdivision (d) of the Federal Reserve Act (12 U.S.C. 357).

(ii) The interest rate established for credit extended through a program or facility established under this section will be set at a penalty level that:

(A) is a premium to the market rate in normal circumstances;

(B) affords liquidity in unusual and exigent circumstances; and

(C) encourages repayment of the credit and discourages use of the program or facility as the unusual and exigent circumstances that motivated the program or facility recede and economic conditions normalize.

(iii) In determining the rate, the Board will consider the condition of affected markets and the financial system generally, the historical rate of interest for loans of comparable terms and maturity during normal times, the purpose of the program or facility, the risk of repayment, the collateral supporting the credit, the duration, terms and amount of the credit, and any other factor that the Board determines to be relevant to ensuring that the taxpayer is appropriately compensated for the risks associated with the credit extended under the program or facility and the purposes of this subsection are fulfilled.

(iv) In addition to the rate established and charged under this paragraph, the Board may require the payment of any fees, penalties, charges or other consideration the Board determines to be appropriate to protect and appropriately compensate the taxpayer for the risks associated with the credit extended under the program or facility.

(8) *Evidence regarding unavailability of adequate credit accommodation*. (i) Each lending Federal Reserve Bank must obtain evidence that, under the prevailing circumstances, participants in a program or facility established under this subsection are unable to secure adequate credit accommodations from other banking institutions.

(ii) Evidence required under this paragraph may be based on economic conditions in the market or markets intended to be addressed by the program or facility, 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, or other evidence from participants or other sources.

(9) *Termination of program or facility*. (i) A program or facility established under this subsection shall cease extending new credit no later than one year after the date of the first extension of credit under the program or facility or the date of any extension of the program or facility by the Board under paragraph (ii).

(ii) A program or facility may be renewed upon the vote of not less than five members of the Board[22] that unusual and exigent circumstances continue to exist and the program or facility continues to appropriately provide liquidity to the financial system, and the approval of the Secretary of the Treasury.

(iii) The Board shall make the disclosures required under paragraph (3) of this subsection to the public and the relevant congressional

[22] Unless fewer are authorized pursuant to section 11(r) of the Federal Reserve Act. 12 U.S.C. 248(r).

committees no later than 7 days after renewing a program or facility under this paragraph.

(iv) The Board may at any time terminate a program or facility established under this subsection. To ensure that the program or facility under this subsection is terminated in a timely and orderly fashion, the Board will periodically review, no less frequently than once every 6 months, the existence of unusual and exigent circumstances, the extent of usage of the program or facility, the extent to which the continuing authorization of the program or facility facilitates restoring or sustaining confidence in the identified financial markets, the ongoing need for the liquidity support provided by such program or facility, and such other factors as the Board may deem to be appropriate. The Board will terminate lending under a program or facility promptly upon finding that conditions no longer warrant the continuation of the program or facility or that continuation of the program or facility is no longer appropriate.

(v) A program or facility that has been terminated will cease extending new credit and will collect existing loans pursuant to the applicable terms and conditions.

(10) *Reporting requirements*. The Board will comply with the reporting requirements of 12 U.S.C. 248(s) and 12 U.S.C. 343(3)(C) pursuant to their terms.

(11) *No obligation to extend credit*. This subsection does not entitle any person or entity to obtain any credit or any increase, renewal or extension of maturity of any credit from a Federal Reserve Bank.

(12) *Participation in programs and facilities and vendor selection.*

(i) Participation in any program or facility under this subsection shall not be limited or conditioned on the basis of any legally prohibited basis, such as the race, religion, color, gender, national origin, age or disability of the borrower.

(ii) The selection of any third-party vendor used in the design, marketing or implementation of any program or facility under this subsection shall be without regard to the race, religion, color, gender, national origin, age or disability of the vendor or any principal shareholder of the vendor, and, to the extent possible and consistent with law, shall involve a process designed to support equal opportunity and diversity.

(13) *Short-term emergency credit secured solely by United States or agency obligations.* In unusual and exigent circumstances and after consultation with the Board, a Federal Reserve Bank may extend credit

under section 13(13) of the Federal Reserve Act if the collateral used to secure such credit consists solely of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or an agency thereof. Prior to extending credit under this paragraph, the Federal Reserve Bank must obtain evidence that credit is not available from other sources and failure to obtain such credit would adversely affect the economy. Credit extended under this paragraph may not be extended for a term exceeding 90 days, must be extended at a rate above the highest rate in effect for advances to depository institutions as determined in accordance with section 14(d) of the Federal Reserve Act, and is subject to such limitations and conditions as provided by the Board.

* * * * *

By order of the Board of Governors of the Federal Reserve System, [ ], 2015.

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Robert deV. Frierson,
Secretary of the Board.