

12 CFR § 201.4 - Availability and terms of credit.

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§ 201.4 Availability and terms of credit.

(a) *Primary credit.* A Federal Reserve Bank may extend primary credit on a very short-term basis, usually overnight, as a backup source of funding to a depository institution that is in generally sound financial condition in the judgment of the Reserve Bank. Such primary credit ordinarily is extended with minimal administrative burden on the borrower. A Federal Reserve Bank also may extend primary credit with maturities up to a few weeks as a backup source of funding to a depository institution if, in the judgment of the Reserve Bank, the depository institution is in generally sound financial condition and cannot obtain such credit in the market on reasonable terms. Credit extended under the primary credit program is granted at the primary credit rate.

(b) *Secondary credit.* A Federal Reserve Bank may extend secondary credit on a very short-term basis, usually overnight, as a backup source of funding to a depository institution that is not eligible for primary credit if, in the judgment of the Reserve Bank, such a credit extension would be consistent with a timely return to a reliance on market funding sources. A Federal Reserve Bank also may extend longer-term secondary credit if the Reserve Bank determines that such credit would facilitate the orderly resolution of serious financial difficulties of a depository institution. Credit extended under the secondary credit program is granted at a rate above the primary credit rate.

(c) *Seasonal credit.* A Federal Reserve Bank may extend seasonal credit for periods longer than those permitted under primary credit to assist a smaller depository institution in meeting regular needs for funds arising from expected patterns of movement in its deposits and loans. An interest rate that varies with the level of short-term market interest rates is applied to seasonal credit.

(1) A Federal Reserve Bank may extend seasonal credit only if:

(i) The depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as a certain percentage, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year); and

(ii) The Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(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 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 paragraph (d).

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

(2) *Approval of the Secretary of the Treasury.* A program or facility may not be established under this paragraph (d) 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 paragraph (d), 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 paragraph (d) must have broad-based eligibility in accordance with terms established by the Board.

(ii) For purposes of this paragraph (d), 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 paragraph (d) 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 (Pub. L. 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 paragraph (d) 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 paragraph (d) 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 paragraph (d) 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 paragraph (d) if:

(A) The person or entity is 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;

(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 (d)(5), 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 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 (d)(5), is or has become insolvent, that participant is not eligible for any new extension of credit from a program or facility established under this paragraph (d) 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 (d)(5) or paragraph (d)(8)(ii) of this section that includes a knowing material misrepresentation in the certification, all extensions of credit made pursuant to this paragraph (d) 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 paragraph (d) 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 paragraph (d) 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 paragraph (d) 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 paragraph (d) are fulfilled.

(iv) In addition to the rate established and charged under this paragraph (d)(7), 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 paragraph (d) are unable to secure adequate credit accommodations from other banking institutions.

(ii) Evidence required under this paragraph (d)(8) 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 paragraph (d) 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 (d)(9)(ii) of this section.

(ii) A program or facility may be renewed upon the vote of not less than five members of the Board ² 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.

² Unless fewer are authorized pursuant to section 11(r) of the Federal Reserve Act. 12 U.S.C. 248(r).

(iii) The Board shall make the disclosures required under paragraph (d)(3) of this section to the public and the relevant congressional committees no later than 7 days after renewing a program or facility under this paragraph (d)(9).

(iv) The Board may at any time terminate a program or facility established under this paragraph (d). To ensure that the program or facility under this paragraph (d) 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 paragraph (d) 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 paragraph (d) 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 paragraph (d) 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 (d)(13), 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 (d)(13) 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.

(e) Term auction facility.

(1) A Federal Reserve Bank may make an advance to a depository institution pursuant to an auction conducted under this paragraph and at the rate specified in § 201.51(e) if, in the judgment of the Reserve Bank, the depository institution is in generally sound financial condition and is expected to remain in that condition during the term of the advance. An auction under this paragraph shall be conducted subject to such conditions, including conditions regarding the participants, size and duration of the facility, minimum bid amount, maximum bid amount, term of advance, minimum bid rate, use of proceeds, and schedule of auction dates, as the Board may establish from time to time in connection with the term auction facility. The Board may appoint one or more Reserve Banks or others to conduct the auction.

(2) Authorization for the term auction facility established by § 201.4(e)(1) shall expire on such date as set by the Board.

[Reg. A, 67 FR 67786, Nov. 7, 2002, as amended at 72 FR 71203, Dec. 17, 2007; 80 FR 78965, Dec. 18, 2015]

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