

programs administered by a transferor agency that ceased to exist. Therefore, there are no annuitants that can elect FEGLI as a result of these provisions.

Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule is not considered a major rule because OPM expects that this rule will not impose costs of more than \$100 million in any one year.

List of Subjects on 5 CFR Part 870

Administrative practice and procedure, Government Employees, Life insurance.

U.S. Office of Personnel Management.
Katherine Archuleta,
Director.

For the reasons set forth in the preamble, the U.S. Office of Personnel Management proposes to amend 5 CFR Part 870 as follows:

Title 5—Administrative Personnel

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

Subpart A—Administration and General Provisions

■ 1. The authority citation for Part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251, and section 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106-522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110-279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8708(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110-177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104-106, 110 Stat. 521;

■ 2. In § 870.701, add paragraph (f) to read as follows:

§ 870.701 Eligibility for life insurance.

* * * * *

(f) An individual's period of coverage in a life insurance plan is credited to the 5 years of service under (a)(2) of this section if: (1) He/she participated in the Office of Thrift Supervision (OTS) life insurance plan and transferred to the Office of the Comptroller of the Currency/Federal Deposit Insurance Corporation under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, or he/she transferred to the Consumer Financial Protection Bureau under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 and did not have a prior FEGLI election opportunity at their former agency from which they transferred, and (2) elected FEGLI coverage during the special enrollment period between June 1, 2012 and July 29, 2012. Evidence of the non-FEGLI period of continuous coverage will be documented in a manner designated by OPM.

* * * * *

[FR Doc. 2013-31498 Filed 1-3-14; 8:45 am]
BILLING CODE 6325-63-P

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: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board invites public comment on proposed amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) that would implement sections 1101 and 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). These provisions of the Dodd-Frank Act amend the emergency lending authority of the Federal Reserve Banks under section 13(3) of the Federal Reserve Act (the "FRA"), and require the Board, in consultation with the Secretary of the Treasury, to establish by regulation certain policies and procedures with respect to emergency lending under that section.

DATES: Comments must be submitted by March 7, 2014.

ADDRESSES: You may submit comments, identified by Docket No. R-1476, by any of the following methods:

- **Agency Web site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

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

- **Email:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

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

- **Mail:** Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Street NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Laurie S. Schaffer, Associate General Counsel (202) 452-2272, Sophia H. Allison, Senior Counsel (202) 452-3565, or Jay R. Schwarz, Counsel (202) 452-2970, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to 2010, section 13(3) of the FRA (12 U.S.C. 343) provided that the Board may authorize any Federal Reserve Bank ("Reserve Bank") to extend credit to any individual, partnership, or corporation subject to four principal conditions set forth in that section. These conditions required that (1) credit be extended only in unusual and exigent circumstances; (2) the Board act by the affirmative vote of at least five of its members; (3) the lending Reserve Bank obtain evidence before extending the credit that the borrower is unable to secure adequate accommodations from other banking institutions; and (4) the extension of credit be indorsed or otherwise secured to the satisfaction of the Reserve Bank. This statutory authority to extend credit 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 (Pub. L. 111–203, 124 Stat. 1376) made extensive amendments to section 13(3) of the FRA. In particular, section 1101 of the Dodd-Frank Act amended section 13(3) of the FRA to:

- Remove the general authority to lend to an individual, partnership, or corporation and limit the Federal Reserve's emergency lending authority to extending credit to participants in a program or facility with broad-based eligibility;
- require the Board to obtain the approval of the Secretary of the Treasury prior to extending emergency credit under section 13(3) of the FRA;
- 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, resolution under title II of the Dodd-Frank Act, or any other Federal or State insolvency proceeding, would not be considered a program or facility with broad-based eligibility; and
- require the Board, in consultation with the Secretary of the Treasury, to adopt by regulation policies and procedures that are designed to ensure that:
 - Any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial company;
 - the security for emergency loans is sufficient to protect taxpayers from losses;
 - any such program or facility is terminated in a timely and orderly fashion;
 - a Reserve Bank assigns, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for emergency loans; and
 - borrowing by insolvent borrowers is prohibited.

The revisions made to section 13(3) by the Dodd-Frank Act focus this emergency lending authority on programs and facilities that relieve liquidity pressures in financial markets through broad-based liquidity facilities. The Dodd-Frank Act did not change the requirements already contained in section 13(3) that the Board authorize lending under that section only in unusual and exigent circumstances and upon a vote of at least five of its members, the Reserve Bank be secured to its satisfaction, and the Reserve Bank obtain evidence that other bank credit

accommodations are not generally available.

Because these rules establish procedures governing lending activity, the Board does not believe that the Administrative Procedure Act requires publication of the proposed rule or impedes lending in accordance with the statutory provisions of section 13(3) as amended by the Dodd-Frank Act prior to adoption of the final rule. Nevertheless, the Board also believes that there is significant value in obtaining public comment on the proposed rule in this instance. Consequently, the Board invites comment on all aspects of the proposed amendments to Regulation A set forth below to implement the requirements of the Dodd-Frank Act. As required by the Dodd-Frank Act, the Board consulted with the Secretary of the Treasury in the development of the proposed amendments.

II. Section by Section Summary of Proposed Rule

A. Section 201.4(d)—Emergency Credit for Others

1. Authorization To Extend Credit

Section 201.4(d)(1) of the proposed rule sets forth the process that the Board must undertake to authorize a Reserve Bank to extend credit under section 13(3) of the FRA. First, section 201.4(d)(1)(i) provides that the Board may authorize credit under section 13(3) of the FRA only if it determines that unusual and exigent circumstances exist upon the affirmative vote of not less than five members of the Board unless fewer are authorized pursuant to section 11(r) of the FRA. This requirement in section 13(3) was not changed by the Dodd-Frank Act. Section 201.4(d)(1)(ii) of the proposed rule provides that the Board may not establish a program or facility under section 13(3) without the prior approval of the Secretary of the Treasury.

Section 201.4(d)(1)(i) of the proposed rule also provides that credit may be extended by any Reserve Bank only through a program or facility with broad-based eligibility. This requirement conforms the regulation with the limitations in the Dodd-Frank Act. In addition, section 201.4(d)(1)(i) provides that any credit extended under section 13(3) of the FRA is subject to such other conditions as the Board may determine.

Section 201.4(d)(1)(iii) of the proposed rule provides that the Board must, at the time of the authorization or as soon thereafter as is reasonably practicable, document the justification for its authorization, including

describing the unusual and exigent circumstances that exist and the intended effect of the program or facility. Section 201.4(d)(1)(iii) of the proposed rule further requires that the Board (and the authorized Reserve Bank or Reserve Banks, as appropriate) make publicly available, as soon as is reasonably practicable, a description of the program or facility and the terms and conditions for participation in the program or facility.

2. Definitions of Broad-Based Eligibility and Insolvency

Section 201.4(d)(2) of the proposed rule sets forth the definition of a program or facility “with broad-based eligibility.” As part of this definition, it also sets forth the definition of “insolvent.”

Proposed section 201.4(d)(2)(i) incorporates three requirements established by the Dodd-Frank Act for a program or facility to have “broad-based eligibility” for purposes of section 13(3) of the FRA. Under subparagraph (A) of proposed section 201.4(d)(2)(i), in order for a program or facility to have “broad-based eligibility,” it must be designed to provide liquidity to a market or sector of the financial system. As required by the Dodd-Frank Act, proposed section 201.4(d)(2)(i)(B) provides that a program or facility must not be for the purpose of aiding a failing financial company and must not be structured to remove assets from the balance sheet of a single and specific company. In addition, proposed section 201.4(d)(2)(i)(C) incorporates the requirement of the Dodd-Frank Act that a program or facility not be established for the purpose of 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.

Proposed section 201.4(d)(2)(ii) authorizes the Board to determine the type of facility 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.

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 State insolvency proceeding.”¹

The proposed rule adopts these statutory provisions. Accordingly, proposed section 201.4(d)(2)(iii) provides that a Reserve Bank must 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.

As provided by the Dodd-Frank Act, the proposed rule includes a certification process for establishing that a person or entity is not “insolvent” for purposes of the rule. Proposed section 201.4(d)(2)(iii)(B) provides that a 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. As also provided in section 1101 of the Dodd-Frank Act, the proposed rule provides that a person or entity that submits a written certification must immediately notify the lending Reserve Bank if the information in the certification changes. Section 201.4(d)(2)(iii)(C) of the proposed rule 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.

3. 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.”² The Dodd-Frank Act retained this provision of the original statute and added two further requirements. First, the Dodd-Frank Act directs that the Board’s policies and procedures “be designed to ensure . . . that the security for emergency loans is sufficient to protect taxpayers from losses.”³ 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.⁴

Section 201.4(d)(3) of the proposed rule incorporates both of these requirements. Section 201.4(d)(3) provides that all credit extended under emergency lending programs and facilities must be indorsed or otherwise secured to the satisfaction of the lending Reserve Bank and that the Reserve Bank must, 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. As in section 13(3) of the FRA as amended, proposed section 201.4(d)(3)(ii) applies specifically to “collateral.”

The Reserve Banks have long assigned a lendable value to collateral at the time credit is extended by reviewing the collateral and applying discounts or “haircuts” to the value of the collateral. The Reserve Banks then determine, based on the lendable value of any collateral posted, the financial strength of the borrower, the presence of any indorsement, and other factors, whether the credit is satisfactorily secured. 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 Web site.⁵ The Board believes that these provisions of proposed section 201.4(d)(3) address the statutory requirement for policies and procedures that are designed to ensure protection for the taxpayer.

4. 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.⁶ In order to address this requirement, Section 201.4(d)(4) of the proposed rule provides that the Board will periodically review whether each emergency lending program should be terminated. The proposed rule further provides that, in conducting this review, 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 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 other appropriate factors. The Board will generally seek to terminate programs or facilities when their identified goals have been reached or once the Board determines that conditions have otherwise changed to warrant the termination of the program or facility.

5. Evidence Regarding Unavailability of Adequate Credit Accommodation

Section 13(3) has always required that a 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 incorporates this requirement that the Reserve Bank obtain evidence of the inability of participants to secure adequate credit accommodations, and recognizes 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.

6. Reporting Requirements

The Dodd-Frank Act contains detailed reporting requirements with respect to section 13(3) extensions of credit.⁷ The Board intends to comply with these statutory requirements as enacted. Therefore, the proposed 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.

7. No Obligation To Extend Credit

Section 201.4(d)(7) of the proposed rule recognizes that Reserve Banks have no obligation to extend credit to any particular person 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.

8. Short-Term Emergency Credit Secured Solely by United States or Agency Obligations

Section 201.4(d)(8) of the proposed rule retains, but relocates, an authorization already included in Regulation A that authorizes a Reserve Bank to extend credit under section 13(3) 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

¹ 124 Stat. 1376 at 2113–15.

² See 12 U.S.C. 343, 47 Stat. 715.

³ Dodd-Frank Act Section 1101(a)(6).

⁴ *Id.*

⁵ <http://www.frbdiscountwindow.org/index.cfm>.

⁶ Dodd-Frank Act Section 1101(a)(6).

⁷ Dodd-Frank Act Sections 1101(a)(6) and 1103(b).

United States. As under the current rule, under the proposed rule, the Reserve Bank would be authorized to extend credit under section 13(13) of the FRA in unusual and exigent circumstances, after consultation with the Board, and if the Reserve Bank has obtained evidence that credit is not available from other sources and failure to obtain credit would adversely affect the economy. As set forth in section 13(13) of the FRA, section 201.4(d)(8) of the proposed rule also provides that credit extended under this provision may not be extended for a term exceeding 90 days. Section 201.4(d)(8) retains the provision in current section 201.4(d) of Regulation A that extensions of credit under this section be at a rate above the highest rate in effect for advances to depository institutions.

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

Section 201.3(b) of the proposed rule reflects a technical change to conform the language of that section with the language of section 201.4(d)(7) of the proposed rule.

The Board invites comments on all aspects of its proposed rule.

III. Administrative Law Matters

A. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (“RFA”), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The 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. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with section 1101 and 1103 of the Dodd-Frank Act, the Board is proposing amendments to 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 proposed rule are described in the Supplementary Information. The Board does not believe that the proposed 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 \$35.5 million or less in assets to \$500 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. Consequently, financial firms with asset sizes of \$175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the proposed 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 emergency loans from the Federal Reserve. It is not possible to ascertain at this time the number of small entities that might participate in these programs and facilities or what requirements will be imposed on them if they do so. At a minimum, it is likely that participants would be required to pay interest on loans extended to them and to keep records of the use of loan proceeds. However, the positive economic impact of receiving such a loan 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 proposed rule, if adopted in final form, would have a significant negative economic impact on a substantial number of small entities. Nonetheless, the Board invites comment on whether (a) the Finance and Insurance sector constitutes a reasonable universe of firms for establishing the definition of “small entity” and (b) the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with sections 1101 and 1103 of the Dodd-Frank Act.

B. Paperwork Reduction Act Analysis

Office of Management and Budget (OMB) regulations implementing the Paperwork Reduction Act (PRA) state that agencies must submit “collections of information” contained in proposed rules published for public comment in the *Federal Register* in accordance with

OMB regulations.⁸ OMB regulations define a “collection of information” as obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency “by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.”⁹

In accordance with the PRA, the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The collection of information that would be required by this notice of proposed rulemaking is found in section 201.4(d)(2)(iii)(B). Under this section a 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. In addition, a person or entity that submits such a written certification must immediately notify the lending Reserve Bank if the information in the certification changes. The Federal Reserve believes that compliance with this requirement should require minimal effort on the part of the respondent, thus the burden associated would be considered negligible.

Comments are invited regarding (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve’s functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve’s estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Secretary, Board of Governors of the Federal Reserve System,

⁸ 5 CFR 1320.11. The PRA is codified at 44 U.S.C. 3506 et seq.

⁹ 5 CFR 1320.11(c).

Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

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, 2000.¹⁰ The Board invites comment on whether the proposed rule is clearly stated and effectively organized, and how the Board might make the text of the rule easier to understand.

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 is proposing to amend 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:

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 section does not entitle any person or entity to obtain credit from a Federal Reserve Bank.

* * * * *

■ 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.* (i) 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 section at rates established in accordance with the provisions of section 14, subdivision (d) of the Federal Reserve Act (12 U.S.C. 357).

(ii) The Board may not establish any program or facility under this section without obtaining the prior approval of the Secretary of the Treasury.

(iii) At the time of any authorization under paragraph (d)(1)(i) of this section or as soon thereafter as is reasonably practicable, the Board will document the justification for its authorization, including a description of the unusual and exigent circumstances that exist and the intended effect of the program or facility. 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 and the terms and conditions for participation in the program or facility as soon as is reasonably practicable.

(2) *Broad-based eligibility; insolvency.*

(i) A program or facility established under this section must have broad-based eligibility in accordance with terms established by the Board. For purposes of this section, a program or facility has broad-based eligibility only if the program or facility—

(A) Is designed to provide liquidity to an identifiable market or sector of the financial system;

(B) Is not for the purpose of aiding a failing financial company and is not structured to remove assets from the balance sheet of a single and specific company; and

(C) Is not established for the purpose of assisting a single and specific company to 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.

(ii) A Federal Reserve Bank may extend credit through a program or facility with broad-based eligibility established under this section through such mechanism or vehicle as the Board determines would facilitate the extension of such credit.

(iii) A Federal Reserve Bank may not extend credit through a program or facility established under this section to any person or entity that is insolvent.

(A) A person or entity is “insolvent” for purposes of this section if 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) In determining for purposes of this section whether a person or entity is insolvent, 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 a program or facility hereunder, that the person or entity is not in bankruptcy or in a resolution or other insolvency proceeding described in paragraph (d)(2)(iii)(A) of this section. The person or entity submitting such a written certification must immediately notify the lending Federal Reserve Bank if the information in the certification changes.

(C) Upon a finding by the Federal Reserve Bank that a participant, including a participant that has provided a certification under paragraph (d)(2)(iii)(B) of this section, is or has become insolvent, that participant is not eligible for any new extension of credit from a program or facility established under this section until such time as the Federal Reserve Bank determines that such participant is no longer insolvent.

(3) *Indorsement or other security.* (i) All credit extended under a program or facility established under this section must be indorsed or otherwise secured 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 section 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.

(4) *Termination of program or facility.* To ensure that the program or facility under this section is terminated in a timely and orderly fashion, the Board will periodically 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.

(5) *Evidence regarding unavailability of adequate credit accommodation.* Each lending Federal Reserve Bank must obtain evidence that, under the prevailing circumstances, participants in a program or facility established under this section are unable to secure adequate credit accommodations from other banking institutions. This evidence may be based on economic

¹⁰ 12 U.S.C. 4809.

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

conditions in the market or markets intended to be addressed by the program or facility, or other evidence from participants, or other sources.

(6) *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.

(7) *No obligation to extend credit.* This section does not entitle any person or entity to obtain credit from a Federal Reserve Bank.

(8) *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, December 23, 2013.

Robert deV. Frierson,
Secretary of the Board.

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DEPARTMENT OF DEFENSE

Department of the Navy

[No. USN-2011-0016]

RIN 0703-AA90

32 CFR Part 767

Guidelines for Permitting Archaeological Investigations and Other Activities Directed at Sunken Military Craft and Terrestrial Military Craft Under the Jurisdiction of the Department of the Navy

AGENCY: Department of the Navy, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy (DoN) is revising its rules to assist the Secretary in managing sunken military

craft under the jurisdiction of the DoN pursuant to the Sunken Military Craft Act (SMCA), and to issue revised application guidelines for research permits on terrestrial military craft under the jurisdiction of the DoN.

DATES: Interested parties should submit written comments on or before March 7, 2014.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket or RIN number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Neyland, Head, Underwater Archaeology Branch, Naval History & Heritage Command, Department of the Navy, 805 Kidder Breese Street SE., BL 57, Washington Navy Yard, DC 20374, email: NHHCUnderwaterArchaeology@navy.mil.

SUPPLEMENTARY INFORMATION:

Executive Summary

This proposed rule serves as a revision of the current 32 CFR part 767 and incorporates existing regulations together with the expanded authority provided to the Secretary of the Navy by the SMCA (Pub. L. 108-375, 10 U.S.C. 113 Note and 118 Stat. 2094-2098) in regards to permitting activities directed at sunken military craft that are otherwise prohibited by the SMCA (10 U.S.C. 1402(a)-1402(b)). The proposed rule replaces the current regulations and establishes a single permitting process for members of the public wishing to engage in activities that disturb, remove, or injure DoN sunken and terrestrial military craft for archaeological, historical, or educational purposes. As per the limitations on application expressed in (10 U.S.C. 1402(c)(1)), section 1402 shall not apply to actions taken by, or at the direction of, the United States.

The current rule is based on provisions of the National Historic Preservation Act (NHPA) (16 U.S.C. 470) which sets forth the responsibility for each agency to preserve and manage historic properties under their respective jurisdiction and control and 5 U.S.C. 301, which authorizes the DoN to promulgate regulations regarding the custody, use, and preservation of its records, papers and property. The rule institutes a permitting program that authorizes controlled access to disturb these historic properties, which remain property of the DoN, for prescribed purposes. It is the policy of the DoN to preserve these sites in situ unless site disturbance, removal, or injury is necessary for their protection or justified for research and educational purposes. Archaeological science and sound management principles support this strategy that affords the DoN the ability to efficiently oversee its more than 17,000 historic wrecks dispersed around the globe.

The existing regulations only apply to ships and aircraft that are classified as historic structures or archaeological sites, regardless of location, and do not carry the enforcement provisions necessary to serve as a deterrent to their unauthorized disturbance. The SMCA was enacted in 2004 and codified these existing principles of preservation of title and sovereign immunity in regards to sunken military craft. As defined in the SMCA, the term sunken military craft includes all sunken warships, all naval auxiliaries, and other vessels that were owned or operated by a government on military noncommercial service when they sank. The term also includes all sunken military aircraft or spacecraft owned or operated by a government when they sank. In addition, associated contents such as equipment, cargo, and the remains and personal effects of the crew and passengers are also protected if located within a craft's debris field. It is important to note that the SMCA is not limited to historic sunken military craft of the United States. All U.S. sunken military craft are covered, regardless of location or time of loss, while all foreign sunken military craft in U.S. waters, consisting of U.S. internal waters, the U.S. territorial sea, and the U.S. contiguous zone, are also afforded protection from disturbance by the SMCA. A permitting process may be implemented by the Secretary of a military department or the department in which the Coast Guard is operating in order to permit activities directed at sunken military craft that are otherwise prohibited.