

Press Release

November 30, 2015

Federal Reserve Board approves final rule specifying its procedures for emergency lending under Section 13(3) of the Federal Reserve Act

For immediate release

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The Federal Reserve Board on Monday approved a final rule specifying its procedures for emergency lending under Section 13(3) of the Federal Reserve Act. Since the passage of the Dodd-Frank Act in 2010, the Board's authority to engage in emergency lending has been limited to programs and facilities with "broad-based eligibility" that have been established with the approval of the Secretary of the Treasury. The Dodd-Frank Act also prohibits lending to entities that are insolvent and imposes certain other limitations. The rule provides greater clarity regarding the Board's implementation of these and other statutory requirements.

The final rule incorporates a number of changes from the original proposal made in response to comments received on the proposal. For example, the final rule defines "broad-based" to mean a program or facility that is not designed for the purpose of aiding any number of failing firms and in which at least five entities would be eligible to participate. These additional limitations are consistent with and provide further support to the revisions made by the Dodd-Frank Act that a program should not be for the purpose of aiding specific companies to avoid bankruptcy or resolution.

The Dodd-Frank Act requires the Board to establish procedures that prohibit emergency lending to insolvent borrowers. For this purpose, the final rule also broadens the definition of insolvency to cover borrowers who fail to pay undisputed debts as they become due during the 90 days prior to borrowing or who are determined by the Board or lending Reserve Bank to be insolvent. Commenters urged the Board to adopt a broad definition of insolvency that includes situations where a company has not yet entered formal bankruptcy or resolution proceedings, but may be insolvent from an accounting or other perspective.

Like the proposal, the final rule incorporates the requirement in the Dodd-Frank Act that all lending programs under 13(3) also be approved by the Secretary of the Treasury. The Board must still find that "unusual and exigent circumstances" exist as a pre-condition to authorizing emergency credit programs.

The Board's practice 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. The final rule has been changed from the original proposal to incorporate this practice by requiring the interest rate for credit extended under section 13(3) be set 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 circumstances normalize.

"Emergency lending is a critical tool that can be used in times of crisis to help mitigate extraordinary pressures in financial markets that would otherwise have severe adverse consequences for households, businesses, and the U.S. economy," said Chair Janet L. Yellen.

As required by statute, the Board consulted with the Treasury in developing the final rule. The final rule will take effect January 1, 2016.

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