

S. 3217—Federal Reserve Provisions: 13(3), GAO Audit and Governance

Section 13(3) Authority

- Only Broad-Based Facilities Permitted. Section 13(3) is modified to remove the authority to extend credit to specific individuals, partnerships and corporations. Instead, the Board may authorize credit under section 13(3) only under a program or facility with “broad-based eligibility.”
 - As introduced, the Dodd bill would have permitted the Federal Reserve to also extend 13(3) credit to a financial market utility designated as systemically important by the Council. This authority was removed by the Manager’s Amendment. However, as noted in Part VIII, the Board may provide designated financial market utilities access to the discount window under section 10B just like a depository institution.
- Treasury Consent. Approval of the Secretary of the Treasury is required to establish any “program or facility” under section 13(3).
- Policies. The Board must establish, by rule, policies and procedures governing 13(3) lending “as soon as practicable” after enactment and in consultation with the Secretary of the Treasury.
 - These policies and procedures must be designed to ensure that (1) credit is extended to provide liquidity to the financial system, and not to aid a failing financial company; and (2) collateral received is of sufficient quality to protect taxpayers from losses.
- Unlike the House-passed bill, the Dodd bill does not—
 - Require Council approval of 13(3) loans;
 - Impose an aggregate cap on 13(3) loans;
 - Require that Board members certify that there is at least a 99 percent certainty that loans will be repaid fully; or
 - Require Treasury approval of foreign currency swap arrangements.

13(3) Reporting and Disclosures

- The bill retains and expands the requirement in existing law that the Federal Reserve provide immediate notice (within 7 days) and periodic reports (every 30 days thereafter) to Congress regarding any 13(3) lending.
- The bill allows the Board to withhold from these reports the names of borrowers (as well as participant-specific borrowing amounts and collateral information) for—
 - Up to 1 year *after the participant first received assistance under the facility*, if the Board determines that disclosure likely would—
 - Reduce the effectiveness of the program or facility in addressing or mitigating financial market disruptions, financial market conditions, or the other unusual and exigent circumstances sought to be addressed by the facility; or

- Otherwise have a significant effect on economic or financial market conditions; and
- Up to 1 year *after the effective date of the termination of the facility*, if the Board provides the House Financial Services Committee and Senate Committee on Banking, Housing, and Urban Affairs a written explanation for delaying disclosure beyond the 1-year date after assistance was first received. The Board must provide this explanation extending the nondisclosure period and annually thereafter until the disclosures are made.
 - A credit facility is deemed terminated if there is no borrowing under the facility for 2 years.

GAO Audits of Liquidity Facilities

- The bill would allow the GAO to audit any current or future credit facility established under section 13(3) solely for the purpose of assessing—
 - The operational integrity, accounting, financial reporting, and internal controls of the credit facility;
 - The effectiveness of the facility’s collateral policies in mitigating risk to the Federal Reserve and taxpayers;
 - Whether the facility “inappropriately favors” one or more specific participants over other institutions eligible to use the facility; and
 - The policies governing the use, selection, and payment of contractors by or for the facility.
- The GAO is prohibited from disclosing—even to Congress—the names of participants in a facility, amounts borrowed by specific participants, and identifying details regarding any assets or collateral held under or in connection with a credit facility until the later of—
 - The date the Federal Reserve makes the information public; or
 - 1 year after the effective date of termination of the facility.
- The bill expressly provides that these nondisclosure restrictions do not apply to the Maiden Lane entities which, like other facilities established for a “single and specific” company, would remain subject to the existing provisions that allow and govern GAO audit of these facilities.¹

¹ Under these existing provisions, GAO must keep as confidential any information about the Maiden Lane facilities treated as confidential by the Federal Reserve, but may not withhold this information from Congress.