

**Supporting Statement for the
Reporting Requirements Associated with Emergency Lending Under Section 13(3)
(FR A; OMB No. 7100-0373)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated from the Office of Management and Budget (OMB), has revised the Reporting Requirements¹ Associated with Emergency Lending Under Section 13(3) (FR A; OMB No. 7100-0373), pursuant to its authority to approve temporarily a collection of information without providing opportunity for public comment.

The FR A information collection is being revised to contain three parts. The first part of the FR A, the FR A-1, pertains to reporting requirements resulting from Regulation A - Extensions of Credit by Federal Reserve Banks (12 CFR Part 201), which sets out the Board's policies and procedures with respect to emergency lending under section 13(3) of the Federal Reserve Act (section 13(3)). When an individual emergency lending facility is established by the Board, the Board may impose additional information collections. In this regard, the second part of the FR A, the FR A-2, pertains to reporting requirements associated with implementation of requirements under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The third part of the FR A, the FR A-3, pertains to reporting requirements specific to the Main Street Expanded Loan Facility (MSELF), Main Street New Loan Facility (MSNLF), and Main Street Priority Loan Facility (MSPLF) (collectively, the Main Street Lending Program).

The current estimated total annual burden for the FR A is 40 hours, and will increase to 1,032,134 hours. The revisions will result in an increase of 1,032,094 hours. There are no formal reporting forms for this information collection.

Background and Justification

Section 13(3) provides that the Board may authorize any Federal Reserve Bank to extend credit to an individual, partnership, or corporation, subject to conditions. 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.

The Board's Regulation A (12 CFR part 201) establishes policies and procedures with respect to emergency lending under section 13(3) of the Federal Reserve Act, as required by sections 1101 and 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Included in those policies and procedures are two reporting requirements. First, the regulations allow a Reserve Bank to rely on a written certification from a participant in a facility to meet the requirement that the Reserve Bank not lend to persons or entities that are insolvent.² Second, the regulations allow a Reserve Bank to rely on a written certification from a participant in a facility

¹ This information collection is defined as a reporting requirement, as the public's providing information to a federal agency is considered "reporting" burden under the Paperwork Reduction Act.

² 12 CFR 201.4(d)(5)(iv)(A).

to meet the requirement that the Reserve Bank obtain evidence that, under the prevailing circumstances, participants in a facility are unable to secure adequate credit accommodations from other banking institutions.³

On March 27, 2020, the CARES Act⁴ was enacted to provide emergency assistance for individuals, families, and businesses affected by the 2020 COVID-19 (coronavirus) pandemic. Among other actions, the CARES Act authorized the Secretary of the Treasury to make loans, loan guarantees or other investments in support of eligible businesses, states, or municipalities.⁵ A facility in which the Secretary makes an investment shall only purchase obligations from or make loans to a United States business.⁶ Any entity seeking to enter into a transaction that is funded by the Secretary under the CARES Act must certify that it is eligible to engage in that transaction.⁷

Since March of 2020, the Board has established eleven lending facilities under section 13(3) to support the flow of credit to households, businesses, and employers and authorized Federal Reserve Banks to lend under the programs. The eleven facilities that collect FR A-1 certifications are the Commercial Paper Funding Facility (CPFF), Main Street Lending Program, Money Market Mutual Fund Liquidity Facility (MMLF), Municipal Liquidity Facility (MLF), Paycheck Protection Program Liquidity Facility (PPPLF), Primary Dealer Credit Facility (PDCF), Primary Market Corporate Credit Facility (PMCCF), Secondary Market Corporate Credit Facility (SMCCF), and Term Asset-Backed Securities Loan Facility (TALF).

Description of Information Collection

The written certifications contained in Regulation A, described above, will be designated as FR A-1, for internal purposes.

Of the eleven lending facilities that the Board has established, six included information collection requirements in their term sheets related to CARES Act provisions. As indicated, these collections have been designated the FR A-2 for internal purposes. Participants in the Main Street Lending Program, PMCCF, SMCCF, and TALF must satisfy the conflicts-of-interest requirements of section 4019 of the CARES Act, which includes a requirement that the participant certify that the entity is eligible to engage in that transaction, including that the entity is not a covered entity under section 4019 of the CARES Act.

The Main Street Lending Program has additional information collections in its term sheet. As indicated, these collections have been designated as the FR A-3 for internal purposes. Under the MSELF, an eligible lender⁸ must certify that the methodology used for calculating the eligible borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA)—in order to determine the maximum loan size—is the methodology the lender

³ 12 CFR 201.4(d)(8)(ii).

⁴ P.L. 116-136.

⁵ See section 4003 of the CARES Act.

⁶ Section 4003(c)(3)(C) of the CARES Act.

⁷ Section 4019(c) of the CARES Act.

⁸ Under the Main Street Lending Program, the Reserve Banks will purchase loan participations from eligible lenders related to loans to eligible borrowers.

previously used for adjusting EBITDA when originating or amending the eligible loan on or before April 24, 2020. In addition, an eligible lender under the MSNLF or MSPLF must certify that the methodology used for calculating the eligible borrower's adjusted 2019 EBITDA in order to determine maximum loan size is the methodology it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020. Under all Main Street Lending Program facilities, an eligible borrower must certify that it has a reasonable basis to believe that, as of the date of entering into the relevant transaction and after entering into that transaction, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.

Depending on the requirements of a particular lending facility, there may be a need to vary the certifications, depending on the facts and circumstances.

No other federal law mandates reporting of the information required in the FR A. As a result, this information is not available from other sources.

Respondent Panel

The total FR A panel comprises persons or entities borrowing under an emergency lending program or facility established pursuant to section 13(3).

CPFF. Eligible issuers are U.S. issuers of commercial paper, including municipal issuers and U.S. issuers with a foreign parent company.

Main Street Lending Program (MSELF, MSNLF, and MSPLF)

MSELF. Eligible lenders are U.S. federally insured depository institutions, U.S. branches or agencies of foreign banks, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies of foreign banking organizations, and U.S. subsidiaries of any of the foregoing. Eligible borrowers are Businesses⁹ that are not Ineligible Businesses¹⁰ with up to 15,000 employees or up to \$5 billion in 2019 annual revenues. Each eligible borrower must be a business that was established prior to March 13, 2020, and that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States. Eligible borrowers that participate in the MSELF may not also participate in the MSNLF, the MSPLF, or the PMCCF or receive specific support pursuant to Subtitle A of Title IV of the CARES Act.

⁹ For purposes of the Main Street Lending Program, a Business is an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49 percent participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C. § 657a(b)(2)(C), except that "small business concern" in that paragraph should be replaced with "Business" as defined herein. Other forms of organization may be considered for inclusion as a Business under the Facility at the discretion of the Federal Reserve.

¹⁰ For purposes of the Main Street Lending Program, an Ineligible Business is a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the Paycheck Protection Program established by section 1102 of the CARES Act (PPP) on or before April 24, 2020. The application of these restrictions to the Facility may be further modified at the discretion of the Federal Reserve.

MSNLF. Eligible lenders are U.S. federally insured depository institutions, U.S. branches or agencies of foreign banks, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies of foreign banking organizations, and U.S. subsidiaries of any of the foregoing. Eligible borrowers are Businesses that are not Ineligible Businesses with up to 15,000 employees or up to \$5 billion in 2019 annual revenues. Each eligible borrower must be a business that was established prior to March 13, 2020, and that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States. Eligible borrowers that participate in the MSNLF may not also participate in the MSELF, the MSPLF, or the PMCCF or receive specific support pursuant to Subtitle A of Title IV of the CARES Act.

MSPLF. Eligible lenders are U.S. federally insured depository institutions, U.S. branches or agencies of foreign banks, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies of foreign banking organizations, and U.S. subsidiaries of any of the foregoing. Eligible borrowers are Businesses that are not Ineligible Businesses with up to 15,000 employees or up to \$5 billion in 2019 annual revenues. Each eligible borrower must be a business that was established prior to March 13, 2020, and that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States. Eligible borrowers that participate in the MSPLF may not also participate in the MSELF, the MSNLF, or the PMCCF or receive specific support pursuant to Subtitle A of Title IV of the CARES Act.

MMLF. All U.S. depository institutions, U.S. bank holding companies (parent companies incorporated in the United States or their U.S. broker-dealer subsidiaries), or U.S. branches and agencies of foreign banks are eligible to borrow under the MMLF.

MLF. An eligible issuer is a State, City, or County (or an instrumentality thereof that issues on behalf of the State, City, or County for the purpose of managing its cash flows), in each case subject to review and approval by the Federal Reserve. Only one issuer per State, City, or County is eligible.

PPPLF. All depository institutions that originate PPP Loans are eligible to borrow under the PPPLF. The Board is working to expand eligibility to other lenders that originate PPP Loans in the near future.

PDCF. Primary dealers of the Federal Reserve Bank of New York are eligible to participate in the PDCF.

PMCCF. Eligible issuers from which the PMCCF may purchase eligible corporate bonds are U.S. companies headquartered in the United States and with material operations in the United States. The scope of eligible issuers may be expanded in the future. Eligible issuers do not include companies that are expected to receive direct financial assistance under pending federal legislation.

SMCCF. Eligible issuers for direct purchases of individual corporate bonds on the secondary market are U.S. businesses with material operations in the United States. Eligible issuers do not include companies that are expected to receive direct financial assistance under pending federal legislation.

TALF. All U.S. companies that own eligible collateral and maintain an account relationship with a primary dealer are eligible to borrow under the TALF. A U.S. company would be defined as a U.S. business entity organized under the laws of the United States or a political subdivision or territory thereof (including such an entity that has a non-U.S. parent company), or a U.S. branch or agency of a foreign bank.

Adopted Revisions

The delegation of authority to the Board from OMB that permits the Board to approve collections of information under the Paperwork Reduction Act includes the authority to temporarily approve a collection of information without seeking public comment. To exercise this authority, the Board must determine that a change to an existing collection must be instituted quickly and that public participation in the approval process would substantially interfere with the Board's ability to perform its statutory obligation. Following the temporary approval of an information collection, the Board will conduct a normal delegated review of the collection within six months, including publishing in the *Federal Register* a notice seeking public comment.

The FR A-1 is being revised to include a second certification in Regulation A, which was inadvertently omitted previously and serves as evidence that a person or entity is unable to secure adequate credit accommodations from other banking institutions.

The FR A-2 is a new reporting requirement within the FR A collection established through the adoption of the term sheets for the Main Street Lending Program, PMCCF, SMCCF, and TALF. As explained above, participants in the facilities must certify that they are eligible to engage in a transaction under the facility, including that the entity is not a covered entity under section 4019 of the CARES Act.

The FR A-3 is a new reporting requirement within the FR A collection established through the adoption of the term sheets for the Main Street Lending Program. As explained above, an eligible lender under the MSELF must certify that the methodology used for calculating the eligible borrower's adjusted 2019 EBITDA, in order to determine the maximum loan size, is the methodology the eligible lender previously used for adjusting EBITDA when originating or amending the eligible loan on or before April 24, 2020. In addition, an eligible lender under MSNLF or MSPLF must certify that the methodology used for calculating the eligible borrower's adjusted 2019 EBITDA in order to determine maximum loan size is the methodology it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020. Under all Main Street Lending Program facilities, an eligible borrower must certify that it has a reasonable basis to believe that, as of the date of entering into the relevant transaction and after entering into that transaction, it has the ability to meet its financial obligations for at least the next 90 days and

does not expect to file for bankruptcy during that time period. All eligible lenders in the Main Street Lending Program facilities must collect certifications from borrowers.

Time Schedule for Information Collection

The FR A is an event-driven information collection. The certification must be filed at or before the time the person or entity borrows under the program or facility.

Public Availability of Data

There are no data related to this information collection available to the public.

Legal Status

The FR A is authorized pursuant to section 13(3), which authorizes the Board to set terms and conditions for lending under emergency lending facilities¹¹. A Federal Reserve Bank may not lend to an entity that have not complied with the application information collections. The obligation to respond, therefore, is required to obtain a benefit.

The information collected under FR A may be kept confidential under exemption 4 for the Freedom of Information Act, which protects commercial or financial information obtained from a person that is privileged or confidential.¹²

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On March 2, 2020, the Board published an initial notice in the *Federal Register* (85 FR 12295) requesting public comment for 60 days on the extension, without revision, of the FR A. The comment period for that notice expired on May 1, 2020. Now that revisions are required for a temporary approval of this information collection, the Board will conduct a normal delegated review of the collection within six months, including publishing in the *Federal Register* a notice seeking public comment which will be combined with the March notice.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR A is 40 hours, and will increase to 1,032,134 with the adopted revisions that cover eleven new section 13(3) facilities. The average hours per response for FR A-1 was originally slightly high. The current average of 8 hours is an appropriate estimate of the added certification to FR A-1: evidence of

¹¹ 12 U.S.C. § 343(3).

¹² 5 U.S.C. § 552(b)(4).

inability to secure adequate credit accommodations elsewhere. These reporting requirements represent 11.6 percent of the Board’s total paperwork burden.

FR A	<i>Estimated number of respondents¹³</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current				
FR A	5	1	8	40
Revised Reporting				
FR A-1				
Eleven section 13(3) facilities	11,281	1	8	90,248
FR A-2				
Six section 13(3) facilities	6,449	1	40	257,960
FR A-3				
Main Street Lending Program:				
Lender Certifications	4,026	1	151	607,926
Borrower Certifications	9,500	1	8	<u>76,000</u>
	<i>Total</i>			1,032,134
	<i>Change</i>			1,032,094

The estimated total annual cost to the public for the FR A is \$2,310, and will increase to \$84,118,921 with the adopted revisions.¹⁴

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.

¹³ Of these respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets), <https://www.sba.gov/document/support--table-size-standards>.

¹⁴ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (50% Lawyers at \$70 and 50% Chief Executives at \$93). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2019*, published March 31, 2020, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.