TITLE XI: Federal Reserve System Provisions

A. Amendments to the Fed's Emergency Lending Authority

1. Emergency Lending by the Fed Under Section 13(3)

Title XI amends Section 13(3) of the FR Act, which allows the Fed to lend "under unusual and exigent" circumstances to companies that are not depository institutions. Under this current law, in unusual and exigent circumstances, the Fed may authorize a Reserve Bank to provide emergency credit to individuals, partnerships, and corporations that are not depository institutions. Such lending may occur only when, in the judgment of the Reserve Bank, credit is not available from other sources and failure to provide credit would adversely affect the economy. Specific approval by the Fed is required.

The Fed used this authority in several programs and actions taken during the fall of 2008, including to provide financial assistance to American International Group and to establish the Term Asset Backed Securities Loan Facility ("TALF"), Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility ("AMLF"), and Commercial Paper Funding Facility ("CPFF"). The Federal Reserve declined to use its Section 13(3) authority to assist Lehman Brothers.

The Act amends Section 13(3) of the FR Act to provide that the Fed may authorize such emergency credit to a participant in any program or facility with broad-based eligibility. Further, the Act requires the Fed to establish, by regulation and in consultation with the Secretary, the polices and procedures governing emergency lending under Section 13(3). Such policies and procedures are required to ensure that the purpose of the emergency lending program is providing liquidity to the financial system and not to aid a failing financial company and that the collateral for emergency loans is of sufficient quality to protect taxpayers from losses. The Fed will not be permitted to establish an emergency lending program without prior approval from the Secretary. **Sec. 1101 (pp. 750-753)**.

2. Reports by the Fed to Congress

The Fed must provide a report to the Senate Banking Committee and the House Financial Services Committee containing:

i. The justification for the exercise of the Fed's authority to provide emergency assistance;

ii. The identity of the recipients of such assistance;

iii. The date and amount of the assistance and the form in which it was provided; and

iv. The material terms of the assistance (including duration, collateral pledged, interest and fees collected) and requirements imposed.

Once every thirty days, the Fed is required to provide written updates with respect to outstanding loans or financial assistance, which detail the value of the collateral, the amount of interest and fees received, and the expected or final cost to taxpayers. **Sec. 1101 (pp. 750-753).**

Upon written request of the Fed Chairman, however, the Fed may keep confidential the identity of participants in an emergency lending program, the amounts borrowed, and identifying details concerning assets or collateral held in connection with such lending facility. In these cases, such information will be made available only to the Chairs and Ranking Members of Senate Banking Committee and House Financial Services Committee. **Sec. 1101 (pp. 750-753).**

B. GAO Audits of Special Federal Reserve Credit Facilities

Under the Act, the GAO is authorized to conduct audits, including onsite examinations of the Fed, a Federal Reserve Bank, or a credit facility if the GAO determined such an audit was appropriate for assessing the operational integrity, effectiveness, and fairness of such a credit facility or covered transaction. A "credit facility" is defined as any utility, facility, or program authorized by the Fed under Section 13(3) of the FR Act. A "covered transaction" is defined as any open market transaction the Fed conducts with a private third party under Section 14 of the FR Act or a discount window advance under Section 10B of the FR Act. **Sec. 1102 (pp. 753-755)**.

1. Reporting Requirements

The GAO is required to submit reports on such audits to the Congress within 90 days of completing the audit. The report must include a detailed description of the findings and conclusions of the GAO as well as recommendations for legislative or administrative action as appropriate. The GAO may not disclose the names or identifying details of specific participants in any credit facility and the report would be redacted to ensure that names and details are not disclosed. However, if the Fed has publicly disclosed such details, then the GAO's non-disclosure obligation will not apply. Additionally, the GAO will be required to release a non-redacted version of the report one year after the Fed has terminated the authorization for the credit facility. If a credit facility's authorization has not yet expired and the Fed has not yet formally terminated the facility, such facility will be deemed terminated two years after the date on which the facility ceases to make extensions of credit and loans. **Sec. 1102 (pp. 753-755)**.

2. Public Access to Information

The Act amends Section 2B of the FR Act to require that the Fed make such information publicly available, including the reports prepared by the GAO, the annual financial statements prepared by an independent auditor of the Fed, and the reports provided to Congress regarding the emergency lending authority, as well as any other information the Fed believes is necessary or helpful to the public. **Sec. 1103 (pp. 755-757)**.

The Act also amends Section 11 of the FR Act to require the Fed to disclose, with respect to credit facilities and covered transactions, the:

- Identity of the borrower, participant, or counterparty;

- Amount borrowed;
- Interest rate or discount paid by the borrower, participant, or counterparty; and
- Information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in a credit facility or covered transaction.

For credit facilities, the Fed must disclose the above information about participants in the program one year after the termination of the credit facility. For covered transactions, the Fed must disclose details about counterparties to such transactions two years after the transaction was conducted. The Fed Chairman may release this information to the public earlier if he determines that such disclosure would be in the public interest and would not harm the effectiveness of the credit facility or the purpose of the covered transactions. Such information is also protected from FOIA disclosure until it is released in accordance with this provision. The provision, however, requires the Fed's Inspector General to submit a report to the House Financial Services Committee and the Senate Banking Committee about the impact of the FOIA exemption on the public's ability to access information on emergency credit facilities and open market operations. **Sec. 1103 (pp. 755-757)**.

C. GAO Audit of Fed

The Act requires the GAO to conduct a single, limited, independent audit of the Fed. This one time audit contrasts with an alternative proposal that would have subjected the Fed to perpetual GAO audits. **Sec. 1109 (pp. 764-766)**.

D. FDIC Emergency Financial Stabilization Program

1. Liquidity Event Determination

The Act establishes parameters under which the FDIC will be allowed to create an emergency financial stabilization program. First, the FDIC and the Fed must determine whether a liquidity event exists, which requires a vote of at least two-thirds of the members of each institution. The determination must include an evaluation of the evidence that a liquidity event exists, that a failure to take action would have serious adverse effects on financial stability or economic conditions in the United States, and that an emergency financial stabilization program is needed to avoid or mitigate potential adverse effects on the U.S. financial system. **Sec. 1104(a-b) (pp. 757-758)**.

The Secretary also must provide his or her written consent, as well as maintain written documentation for each determination and provide this documentation to the GAO for its review. The GAO must review and report to Congress on any liquidity event determination, including the basis for the determination and the likely effect of the actions taken. **Sec. 1104(c) (p. 758)**.

For the purposes of this section, a "liquidity event" is defined as either: (1) an exceptional and broad reduction in the general ability of financial market participants to sell a type of financial asset without a significant reduction in price or to borrow using that asset as collateral without a significant increase in margin; or (2) an unusual and significant reduction in the usual ability of financial and nonfinancial market participants to obtain unsecured credit.

Sec. 1105(g)(3) (p. 762).

2. Creation of Emergency Financial Stabilization Program

Upon such a determination, the FDIC will be authorized to create a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies if necessary to prevent systemic financial instability during times of severe economic distress. Such guarantees, however, may not include the provision of equity in any form. **Sec. 1105(a) (p. 758)**. As soon as practicable, the FDIC must establish by regulation, with the concurrence of the Secretary, policies and procedures governing the issuance of these guarantees. **Sec. 1155(c) (pp. 758-759)**.

3. Maximum Debt Guaranteed

The Secretary, in consultation with the President, determines the maximum amount of debt outstanding that the FDIC will be allowed to guarantee under this program. The President must then transmit a plan with the maximum delineated guarantee amount to Congress, which would then consider the plan under a fast-track procedure and pass a joint resolution approving the plan before it may take effect. **Sec. 1105(c)(1) (pp. 758-759)**. If the Secretary, in consultation with the President, determines that the maximum guarantee amount should be raised, and the FDIC concurs, then the President can transmit a written report to Congress about the plan to issue guarantees up to the increased maximum debt guarantee amount. Again, Congress must consider the President's request under a fast-track process and pass a joint resolution of approval before the increased guarantees may take effect. **Sec. 1105(c)(2) (p. 759)**. The procedures governing fast-track consideration of the President's requests are outlined in Dodd-Frank. **Sec. 1105(d) (pp. 759-761)**.

4. Funding

The FDIC must charge fees and other assessments to all participants in the program in amounts necessary to offset projected losses and administrative expenses. If such fees are insufficient, the FDIC is permitted to impose a special assessment on participants in the program. If there are excess funds at the conclusion of the program, the funds would be deposited in the General Fund of the Treasury. **Sec. 1105(e) (pp. 761-762)**.

The FDIC is also authorized to borrow funds from the Secretary of the Treasury and issue obligations of the FDIC to the Secretary for amounts borrowed in order to carry out a financial stabilization program. The obligations issued must be repaid in full with interest through fees and charges paid by participants. The Secretary may purchase any obligations so issued. **Sec. 1105(e) (pp. 761-762)**.

E. Additional Related Amendments

1. Suspension of Parallel FDI Act Authority

Upon enactment, the FDIC would be prohibited from exercising its authority under Section 13(c)(4)(G)(i) to establish any widely available debt guarantee program, such as that provided for under Section 1105 of the Act. **Sec. 1106(a) (pp. 762-763)**.

2. Effect of Default on an FDIC Guarantee

If an insured depository institution or depository institution holding company participating in the emergency stabilization program defaults on any obligation guaranteed by the FDIC, the FDIC could appoint itself as receiver for the insured depository institution that defaults. With respect to a participating company that is not an insured depository institution and defaults, the FDIC could require consideration of whether a determination may be made under Section 203 to resolve the company under Section 202 (the provisions concerning enhanced dissolution authority). If the FDIC is not appointed receiver pursuant to Title II within 30 days of default, the FDIC could require the company to file a petition for bankruptcy under Section 301 of the Code, which is amended to allow for such an involuntary petition for bankruptcy. **Sec. 1106(c) (pp. 762-763)**.

F. Federal Reserve Bank Governance and Supervision

Currently, all members of the Board of Directors of a regional Federal Reserve Bank may vote in selecting the Federal Reserve Bank president. The Act permits only Class B and Class C directors to vote. Class A directors, who are selected by member banks to represent member bank interests, will not be permitted to participate in the selection of a Federal Reserve Bank president. **Sec. 1107 (p. 763)**.

Further, the Act would establish the position of Vice Chairman for Supervision at the Fed. The Vice Chairman of Supervision would be responsible for developing policy recommendations for the Fed regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Fed, and would oversee the supervision and regulation of such firms. The Vice Chairman would be required to appear before the Senate Banking Committee and House Financial Services Committee at annual hearings. Additional amendments are made to the FR Act stating that the Fed may not delegate its functions regarding the supervision and regulation of depository institution holding companies and other financial firms to a Federal Reserve Bank. **Sec. 1108 (pp. 763-764)**.