

**Supporting Statement for the
Reporting and Disclosure 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 extended for three years, with revision, the Reporting and Disclosure Requirements Associated with Emergency Lending Under Section 13(3) (FR A; OMB No. 7100-0373)¹. This information collection comprises the following four parts:

- Regulation A Certifications (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)),
- CARES Act Certifications (FR A-2) pertains to reporting requirements associated with implementation of requirements under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),
- Main Street Lending Program Certifications (FR A-3) pertains to reporting requirements specific to the Main Street Expanded Loan Facility (MSELF), Main Street New Loan Facility (MSNLF), Main Street Priority Loan Facility (MSPLF), Nonprofit Organization Expanded Loan Facility (NOELF), and Nonprofit Organization New Loan Facility (NONLF) (collectively, the Main Street Lending Program), and
- Main Street Lending Program Disclosure (FR A-4) pertains to disclosure requirements associated with Main Street borrowers who participate in the Paycheck Protection Program (PPP).

The Board originally proposed an extension, without revision, of the FR A and published on March 2, 2020, an initial notice in the *Federal Register* (85 FR 12295) requesting public comment. The Board subsequently revised the FR A pursuant to its authority to approve temporarily a collection of information without providing opportunity for public comment on May 11, 2020, June 1, 2020, August 14, 2020, and January 28, 2021, to address information collections related to emergency lending facilities adopted in 2020. These revisions expanded this information collection to the four parts, above. Once each information collection was submitted to OMB, the Board was required to publish a notice in the *Federal Register* requesting public comment for 60 days on the temporary revisions within six months. The Board published these notices on May 15, 2020, June 4, 2020, August 21, 2020, and March 3, 2021 (85 FR 29447, 85 FR 34448, 85 FR 51715, and 86 FR 12465, respectively). The Board has now finalized this information collection as revised through the normal delegated review process.

The estimated total annual burden for the FR A is 257,305 hours.

¹ Part of this information collection is defined as a reporting requirement, as providing information to a federal agency is considered “reporting” burden under the Paperwork Reduction Act.

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 establishes policies and procedures with respect to emergency lending under section 13(3), 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 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 (Secretary) 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

During 2020, the Board established thirteen 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 thirteen facilities were the Commercial Paper Funding Facility (CPFF), the five facilities of the 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).

² 12 CFR 201.4(d)(5)(iv)(A).

³ 12 CFR 201.4(d)(8)(ii).

⁴ Pub.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.

Description of Information Collection

Regulation A Certifications (FR A-1)

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

CARES Act Certifications (FR A-2)

Of the thirteen lending facilities that the Board has established, seven included information collection requirements in their term sheets related to CARES Act provisions. As indicated, these collections have been designated as FR A-2 for internal purposes. Participants in the Main Street Lending Program, PMCCF and SMCCF 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.

Main Street Lending Program Certifications (FR A-3)

The Main Street Lending Program has additional information collections in its term sheets and that the Board has developed for its implementation. As indicated, these collections have been designated as FR A-3 for internal purposes. Under the term sheets for these facilities, eligible lenders must certify that the methodology used for calculating the eligible borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA) or, in the case of nonprofit organizations, earnings before interest, depreciation, and amortization (EBIDA) in order to determine the maximum loan size is the methodology the lender previously used for adjusting EBITDA or EBIDA when extending credit in similar circumstances on or before the date specified by the facility.

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. Additionally, eligible lenders are expected to collect the required certifications and covenants from each eligible borrower at the time of origination or upsizing of the eligible loan.

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

Main Street Lending Program Disclosure (FR A-4)

The Board and the U.S. Department of the Treasury (Treasury) developed an additional requirement that Main Street borrowers that also have outstanding PPP loans complete and disclose one of two forms to their Main Street Lender in order to exclude certain amounts of PPP

loans⁸ from the “existing outstanding and undrawn available debt” calculation under the Main Street Lending Program. These borrowers may submit either (1) the PPP loan forgiveness application form (SBA Form 3508, 3508EZ, or 3508S; OMB No. 3245-0407), if it has already been completed and submitted to its PPP lender or lender servicing its PPP loan or (2) the Exclusion of PPP Loan from Main Street “Outstanding Debt” form.

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, MSPLF, NOELF, and NONLF)

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.

⁸ Amounts of PPP loans may be excluded if the original principal amount of the PPP loan totals less than \$2 million, and either if the borrower has applied for forgiveness of its PPP loan, the “Forgiveness Amount” as reported by the Eligible Borrower on Line 11 of the SBA’s Form 3508, on Line 8 of Form 3508EZ, or on Form 3508S, as applicable, may be excluded, except to the extent the Eligible Borrower’s PPP lender or SBA has determined that such amount is ineligible for forgiveness, or if the borrower has not yet applied for forgiveness of its PPP loan, the amount of its PPP loan that its principal executive officer has a reasonable, good-faith basis to believe will be forgiven in accordance with applicable PPP requirements, after review of the SBA’s Form 3508, Form 3508EZ, or Form 3508S, as applicable, including the relevant instructions, may be excluded.

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.

NOELF. Eligible lenders are U.S. federally insured depository institutions (including banks, savings associations, or credit unions), 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, or U.S. subsidiaries of any of the foregoing. Eligible borrowers are nonprofit organizations¹¹ that have more than 10 employees and either fewer than 15,000 employees or had 2019 annual revenues of \$5 billion or less. Each eligible borrower must have been continuously operated since January 1, 2015, not be an Ineligible Business, and have been 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. An eligible borrower must have an endowment of less than \$3 billion and meet certain financial criteria.¹² Eligible borrowers that participate in the NOELF may not also participate in the NONLF, MSNLF, MSPLF, MSELF, the PMCCF or the MLF or receive specific support pursuant to Subtitle A of Title IV of the CARES Act.

¹¹ For purposes of the Main Street Lending Program, a nonprofit organization is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC) or a tax-exempt veterans' organization described in section 501(c)(19) of the IRC. Other forms of organization may be considered for inclusion as a nonprofit organization under the NOELF or NONLF at the discretion of the Federal Reserve.

¹² The financial criteria for NOELF and NONLF eligible borrowers include having 1) total non-donation revenues equal to or greater than 60 percent of expenses for the period from 2017 through 2019; 2) a ratio of adjusted 2019 EBIDA to unrestricted 2019 operating revenue, greater than or equal to 2 percent; 3) a ratio (expressed as a number of days) of (i) liquid assets at the time of origination of the loan or upsized tranche to (ii) average daily expenses over the previous year, equal to or greater than 60 days; and 4) at the time of origination of the loan or upsized tranche, a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any loan under the facility, plus the amount of any CMS Accelerated and Advance payments, that is greater than 55 percent.

NONLF. Eligible lenders are U.S. federally insured depository institutions (including banks, savings associations, or credit unions), 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, or U.S. subsidiaries of any of the foregoing. Eligible borrowers are nonprofit organizations that have more than 10 employees and either fewer than 15,000 employees or had 2019 annual revenues of \$5 billion or less. Each eligible borrower must have been continuously operated since January 1, 2015, not be an Ineligible Business, and have been 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. An eligible borrower must have an endowment of less than \$3 billion and meet certain financial criteria. Eligible borrowers that participate in the NONLF may not also participate in the NOELF, MSNLF, MSPLF, MSELF, the PMCCF or the MLF 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 approved lenders in the Small Business Administration's PPP are eligible to participate in the PPPLF.

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.

Revisions to the FR A

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 approvals of the information collection, the Board is finalizing the collection through the normal delegated review process.

Time Schedule for Information Collection

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

Public Availability of Data

No data collected pursuant to this information collection is made available to the public by the Board.

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 facilities (12 U.S.C. § 343(3)). A Federal Reserve Bank may not lend to an entity that has 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 of the Freedom of Information Act, which protects commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. § 552(b)(4)).

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.

On May 15, 2020, following the temporary approval of revisions to this information collection, the Board published a notice in the *Federal Register* (85 FR 29447) requesting public comment for 60 days on those temporary revisions. The comment period for that notice expired on July 14, 2020.

On June 4, 2020, following the temporary approval of revisions to this information collection, the Board published a notice in the *Federal Register* (85 FR 34448) requesting public comment for 60 days on those temporary revisions. The comment period for that notice expired on August 3, 2020.

On August 21, 2020, following the temporary approval of revisions to this information collection, the Board published a notice in the *Federal Register* (85 FR 51715) requesting public comment for 60 days on those temporary revisions. The comment period for that notice expired on October 20, 2020.

On March 3, 2021, following the temporary approval of revisions to this information collection, the Board published a notice in the *Federal Register* (86 FR 12465) requesting public comment for 60 days on those temporary revisions. The comment period for that notice expired on May 3, 2021.

One comment was received and it did not address the burden of the information collection as outlined in the notice or in 5 CFR 1320.8. The Board is now conducting a normal delegated review of the collection including publishing a notice in the *Federal Register*. On July 29, 2021, the Board published a final notice in the *Federal Register* (86 FR 40842).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR A is 257,305 hours. These reporting and disclosure requirements represent approximately 3.3 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>
Reporting				
FR A-1	4,914	1	8	39,312
FR A-2	3,073	1	40	122,920
FR A-3:				
Lender certifications	650	2.36	2	3,068
Borrower certifications:				
For-profit businesses	9,500	1	8	76,000
Nonprofit organizations	2,000	1	8	16,000
Disclosure				
FR A-4	5	1	1	<u>5</u>
	<i>Total</i>			257,305

¹³ Of these respondents, 1,160 FR A-1 respondents are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets or populations of less than 50,000), <https://www.sba.gov/document/support-table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

The estimated total annual cost to the public for the FR A is \$15,219,591.¹⁴

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 \$83,100.

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 (30% Office & Administrative Support at \$20, 45% Financial Managers at \$73, 15% Lawyers at \$72, and 10% Chief Executives at \$95). 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 2020*, published March 31, 2021, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.