



## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 201**

**[Docket No. R-1585; RIN 7100-AE 90]**

#### **Regulation A: Extensions of Credit by Federal Reserve Banks**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of Proposed Rulemaking.

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**SUMMARY:** The Board of Governors of the Federal Reserve System (“Board”) is proposing to amend its Regulation A to; revise the provisions regarding the establishment of the primary credit rate in a financial emergency, and to delete the provisions relating to the use of credit ratings for collateral for extensions of credit under the former Term Asset-Backed Securities Loan Facility (TALF). The proposed amendments are intended to allow the regulation to address circumstances in which the Federal Open Market Committee has established a target range for the federal funds rate rather than a single target rate, and to reflect the expiration of the TALF program.

**DATES:** Comments must be received no later than **[INSERT DATE**

**THIRTY DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by Docket Number R-1585; RIN 7100 AE-90, by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.
- Fax: (202) 452-3819 or (202) 452-3102.
- Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's Web site at [http:// www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm), as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Street NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Sophia H. Allison, Special Counsel, (202-452-3565), Legal Division, or Lyle Kumasaka, Senior Financial Analyst, 202-452-2382), Division of Monetary Affairs; for users of

Telecommunications Device for the Deaf (TDD) only, contact 202/263-4869; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Federal Reserve Banks make primary, secondary, and seasonal credit available to depository institutions subject to rules and regulations prescribed by the Board. The primary, secondary, and seasonal credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. Under the primary credit program, Federal Reserve Banks may extend credit on a very short-term basis, typically overnight, to depository institutions that are in generally sound condition in the judgment of the Federal Reserve Bank. In accordance with the Federal Reserve Act, the primary credit rate is established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board. The primary credit rate is set forth in section 201.51 of Regulation A.

### **I. Primary Credit Rate in a Financial Emergency**

Regulation A currently provides a procedure for establishing the primary credit rate in a financial emergency. Section 201.51(d) of Regulation A currently provides that the primary credit rate at a Federal Reserve Bank is “the target federal funds rate of the Federal Open Market Committee” if two

conditions are met.<sup>1</sup> First, in a financial emergency the Reserve Bank must have established the primary credit rate at that rate.<sup>2</sup> Second, the chairman of the Board of Governors (or, in the chairman's absence, the chairman's designee) must certify that a quorum of the Board is not available to act on the Reserve Bank's rate establishment.<sup>3</sup> Finally, Regulation A defines a "financial emergency" as "a significant disruption to the U.S. money markets resulting from an act of war, military or terrorist attack, natural disaster, or other catastrophic event."<sup>4</sup>

The Federal Open Market Committee (FOMC) currently establishes a target range for the federal funds rate. Accordingly, the Board proposes to amend section 201.51(d)(1) of Regulation A to provide that, in a financial emergency, the primary credit rate is the target federal funds rate or, if the FOMC has established a target range for the federal funds rate, a rate corresponding to the top of the target range.

## **II. Credit Ratings for TALF**

On November 25, 2008, the Board and Treasury announced the establishment of the TALF. The TALF was intended to assist financial markets in accommodating the credit needs of consumers and businesses of all sizes

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<sup>1</sup> Section 201.51(d)(1) of Regulation A, 12 CFR 201.51(d)(1).

<sup>2</sup> Section 201.51(d)(1)(i) of Regulation A, 12 CFR 201.51(d)(1)(i).

<sup>3</sup> Section 201.51(d)(1)(ii) of Regulation A, 12 CFR 201.51(d)(1)(ii).

<sup>4</sup> Section 201.51(d)(2) of Regulation A, 12 CFR 201.51(d)(2).

during the financial crisis by facilitating the issuance of asset-backed securities (“ABS”) collateralized by a variety of consumer and business loans; it was also intended to improve market conditions for ABS more generally. The Board authorized the TALF pursuant to the then-current provisions of section 13(3) of the Federal Reserve Act.<sup>5</sup> All TALF loans were extended by the Federal Reserve Bank of New York (“FRBNY”).<sup>6</sup>

On December 9, 2009, the Board adopted an amendment to Regulation A to provide a process by which the FRBNY could determine the eligibility of credit rating agencies and the ratings they issue for use in the TALF, for which the Board had expressly set a particular credit rating requirement for collateral offered by the borrower.<sup>7</sup> The purpose of the amendment was to provide the FRBNY with a consistent framework for determining the eligibility of ratings issued by individual credit rating agencies when used in conjunction with a separate asset-level risk assessment process. Pursuant to this process, FRBNY determined that ratings from five credit ratings agencies became eligible for use in TALF.

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<sup>5</sup> Former 12 U.S.C. 343.

<sup>6</sup> The U.S. Treasury Department--under the Troubled Assets Relief Program (TARP) of the Emergency Economic Stabilization Act of 2008--provided \$20 billion of credit protection to the FRBNY in connection with the TALF. *See* <https://www.federalreserve.gov/monetarypolicy/talf.htm>.

<sup>7</sup> 74 FR 65014 (December 9, 2009).

On June 30, 2010, the TALF was closed for new loan extensions, and the final outstanding TALF loan was repaid in full in October 2014.<sup>8</sup> Accordingly, the Board proposes to delete current section 201.3(d) of Regulation A as its provisions are no longer necessary.

### **III. Administrative Law Matters**

#### *A. Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) to address concerns related to the effects of agency rules on small entities and the Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration (SBA), a depository institution is a “small entity” if it is an institution with assets of \$550 million or less, determined by averaging the assets reported on its four quarterly financial statements for the preceding year. A credit rating agency is a “small entity” if it is a credit rating agency with \$15 million or less in assets.

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<sup>8</sup> <https://www.federalreserve.gov/monetarypolicy/talf.htm>.

1. *Description of Small Entities Affected*

*Section 201.51(d) of Regulation A.* The proposed amendment to section 201.51(d) of Regulation A would affect depository institutions that are able to request primary credit from a Federal Reserve Bank and that have \$550 million or less in assets, determined by averaging the assets reported on its four quarterly financial statements for the preceding year.<sup>9</sup> Currently, there are 1,567 depository institutions that are able to request primary credit that meet the definition of “small” business entity, out of a total of 2,808 institutions that are able to request primary credit.

*Section 201.3(d) of Regulation A.* The proposed amendment to section 201.3(d) of Regulation A, relates to use of credit ratings for borrowers under the TALF program. A small credit rating agency is one with \$15.0 million or less in assets.<sup>10</sup>

2. *Economic Impacts on Small Entities*

The Board certifies that the proposed amendments will have no economic impacts on any small entities.

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<sup>9</sup> U.S. Small Business Administration, Table of Small Business Size Standards (eff. Oct. 1, 2017) at 28 (NAICS Codes 52110 (Commercial Banking), 52120 (Savings Institutions), 52130 (Credit Unions), and 52190) (Other Depository Credit Intermediation); see id. at 41 n. 8 (calculation of asset size).

<sup>10</sup> U.S. Small Business Administration, Table of Small Business Size Standards (eff. Oct. 1, 2017) at 33 (NAICS Code 561450 (Credit Bureaus)).

*Section 201.51(d) of Regulation A.* The proposed amendments to section 201.51(d) of Regulation A relate to the establishment of a rate for primary credit in a financial emergency. The proposed amendments make a ministerial amendment to conform the provision to the current operating framework of the FOMC in establishing a target range for the federal funds rate. The provision subject to the proposed amendments affects the actions of the Federal Reserve Banks and the Board, and requires no action or changes in procedures for any depository institution, large or small, and so there are no costs associated with the proposed amendments. In addition, the proposed amendments clarify the operation of the provision for reducing the primary credit rate in a financial emergency from its current level to a lower level based on the target federal funds rate or the target range for the federal funds rate. Any economic impact of the proposed amendment on small entities would be beneficial because, if the emergency provision took effect, they would be able to obtain primary credit at an interest rate that would be lower than the existing primary credit rate. Accordingly, the Board believes that a reasonable basis exists for assuming costs would be *de minimis* or insignificant for small entities affected by the proposed amendment.

*Section 201.3(d) of Regulation A.* The proposed amendments to section 201.3(d) of Regulation A relate to deleting obsolete provisions

applicable to credit extended under the TALF program. Since the TALF program no longer exists, the deletion of regulatory provisions governing the use of credit ratings in it will have no impact, economic or otherwise, on any credit ratings agency. Accordingly, the Board believes that a reasonable basis exists for assuming costs would be *de minimis* or insignificant for small entities affected by the proposed amendment.

*B. Paperwork Reduction Act Analysis*

Office of Management and Budget (OMB) regulations implementing the Paperwork Reduction Act (PRA) state that agencies must submit “collections of information” contained in proposed rules published for public comment in the Federal Register in accordance with OMB regulations. OMB regulations define a “collection of information” as obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency “by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.”

In accordance with the PRA, the Board reviewed the proposed rule under the authority delegated to the Board by OMB.

*Section 201.51(d) of Regulation A.* The proposed amendments to section 201.51(d) contain no requirements subject to the PRA. Specifically, the proposed amendments do not require any change to any collection of information related to the primary credit program under Regulation A, but apply only to the process by which the Federal Reserve Banks and the Board establish the primary credit rate in a financial emergency.

*Section 201.3(d) of Regulation A.* The proposed amendments to section 201.3(d) of Regulation A contain no requirements subject to the PRA.

*C. Plain Language*

Each Federal banking agency, including the Board, is required to use plain language in all proposed and final rulemakings published after January 1, 2000. 12 U.S.C. 4809. The Board has sought to present the proposed amendments, to the extent possible, in a simple and straightforward manner. The Board invites comment on whether there are additional steps that could be taken to make the proposed amendments easier to understand, such as with respect to the organization of the materials or the clarity of the presentation.

**List of Subjects in 12 CFR Part 201**

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Chapter II as follows:

**PART 201 – EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 12 U.S.C. 248(i)-(j) and (s), 343 et seq., 347a, 347b, 347c, 348 et seq., 357, 374, 374a, and 461.

**§201.3 [Amended]**

2. Section 201.3 is amended by removing paragraph (e).

3. Section 201.51 is amended by revising paragraph (d)(1) introductory text to read as follows:

**§201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.**

\* \* \* \* \*

(d) \* \* \*

(1) The primary credit rate at a Federal Reserve Bank is the target federal funds rate of the Federal Open Market Committee or, if the Federal Open Market Committee has set a target range for the federal funds rate, the rate corresponding to the top of the target range, if:

\* \* \* \* \*

By the Board of Governors of the Federal Reserve System, December 1, 2017.

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**Ann E. Misback,**  
**Secretary of the Board.**

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