



## FINANCIAL REGULATORY REFORMS UPDATE

### Title XI — Federal Reserve System Provisions

- **Federal Reserve Emergency Lending Procedures.** The Act directs the Federal Reserve to establish policies and procedures governing emergency lending.
- **GAO Audits of Emergency Lending and Federal Reserve Governance.** The Act authorizes the GAO to conduct audits of emergency credit facilities and covered transactions and the governance of the Federal Reserve bank system.
- **FDIC Debt Guarantee Program.** The Act establishes procedures and requirements for the establishment of a debt guarantee program by the FDIC if a liquidity event is determined to exist.

#### Federal Reserve Emergency Lending Authority

- *Emergency Lending Policies and Procedures.* The Act requires the Federal Reserve, in consultation with the Treasury Department, to establish policies and procedures governing emergency lending under Section 13(3) of the Federal Reserve Act designed to ensure that emergency lending is used to provide liquidity to the financial system and not to aid failing financial companies and that collateral for emergency loans is sufficient to protect taxpayers from losses. The Act requires that such procedures prohibit borrowing from programs and facilities by insolvent borrowers.
- *Treasury Approval.* Programs and facilities may not be established under Section 13(3) without prior approval of the Treasury Secretary.
- *Reporting Requirements.* The Act requires the Federal Reserve to provide initial and periodic reports to Congress on programs or facilities created under Section 13(3).
- *GAO Audit Authority.* The Act authorizes the GAO to conduct audits of credit facilities established under Section 13(3) and certain open market transactions or discount window advances (“covered transactions”).
  - The scope of such audits is limited to assessing:
    - the operational integrity, accounting, financial reporting and internal controls of the programs, facilities or covered transactions;
    - the effectiveness of the security and collateral policies for the facility or covered transaction in mitigating risk to the Federal Reserve bank and the taxpayers;

- whether the credit facility or the conduct of a covered transaction favors participants over other eligible institutions; and
- the policies governing the use, selection or payment of third-party contractors for any credit facility or covered transaction.
- The GAO must report to Congress the results of such audits and recommendations for legislative or administrative action.
- *Public Disclosure.*
  - The Act requires the Federal Reserve to publish on its Website certain information, including GAO audit reports of Section 13(3) programs, facilities or covered transactions, annual financial statements prepared by an independent auditor and reports to Congress on Section 13(3) programs, facilities or covered transactions.
  - The Act requires the Federal Reserve to disclose the names and identifying details of each borrower, participant or counterparty in any credit facility or covered transaction, the amount borrowed or transferred, the interest rate or discount paid and information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in the credit facility or covered transaction. Such disclosures shall take place one year following termination of a credit facility and on the last day of the eighth quarter following the quarter in which a covered transaction was conducted.

### **One-Time GAO Audit of Pre-enactment Federal Reserve Assistance and Federal Reserve Governance**

- *GAO Audit of Emergency Lending.* The Act directs the GAO to conduct a one-time audit of all loans and other financial assistance provided by the Federal Reserve beginning December 1, 2007 through the date of enactment of the Act through the emergency programs created under Section 13(3) of the Federal Reserve Act (*e.g.*, TALF) to assess the same factors identified in the GAO Audit described above (*GAO Audit Authority*).
- *Public Disclosure of Certain Loans and Financial Assistance.* The Act directs the Federal Reserve to publish on its Website information on all loans and financial assistance provided from December 1, 2007 through the date of enactment pursuant to emergency programs created under Section 13(3) of the Federal Reserve Act.
- *GAO Audit of Federal Reserve Bank Governance.* The Act requires the GAO to complete an audit of the governance of the Federal Reserve bank system, including the appointment and election of Federal Reserve bank directors and establishment and operation of the loan and financial assistance facilities described above. Such audit must be completed within one year after the date of enactment.

### **FDIC Debt Guarantee**

- *Establishment of Debt Guarantee Program.* If, upon the request of the Treasury Secretary two-thirds of the members of each of the FDIC and the Federal Reserve Board determine that a liquidity event exists to warrant the use of the debt guarantee program, then upon the written consent of the Secretary, the FDIC shall create a widely available program to guarantee the obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof) during times of severe economic distress. A liquidity event is defined as: (1) an exceptional and broad reduction in the general ability of financial participants to sell financial assets without an unusual and significant discount, or to borrow using financial assets as collateral without an unusual and significant increase in margin or (2) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.
- *Restrictions on Debt Guarantee Program.* The Act directs the FDIC, in consultation with and with the concurrence of the Secretary, to establish policies and procedures governing the issuance of debt guarantees.

- The guarantee of obligations may not include the provision of equity in any form.
- The policies and procedures may include a requirement of collateral as a condition of any such guarantee.
- The Secretary, in consultation with the President, must establish a maximum amount of debt that the FDIC may guarantee under a debt guarantee program, which must be approved by a joint resolution of Congress under statutorily prescribed procedures.
- A guarantee of a deposit is not treated as a debit guarantee program.
- *Funding of a Debit Guarantee Program.* The Act directs the FDIC to charge fees and other assessments to participants in the debt guarantee program in such amounts as are necessary to offset projected losses and administrative amounts, including amounts borrowed from the Treasury Department to carry out a debt guarantee program. The Act permits the FDIC to borrow funds from the Treasury Department to carry out a debt guarantee program, but prohibits the FDIC from borrowing from the Deposit Insurance Fund for such purpose.
- *Default under an FDIC Guarantee.* If a participant in an FDIC debt guarantee program defaults on an obligation guaranteed by the FDIC, the Act requires the FDIC to appoint itself as receiver for an insured depository institution participant; and, for participants that are not insured depository institutions, the Act requires consideration of whether the company should be resolved under Section 203 of the Act and file a petition for bankruptcy or file a petition for involuntary bankruptcy of the company.

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