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FEDERAL RESERVE SYSTEM

Opportunities Exist to Strengthen Policies and Processes for Managing Emergency Assistance

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GAO Accountability * Integrity * Reliability

Highlights

Highlights of GAO-12-122T, a testimony before the Subcommittee on Domestic Monetary Policy and Technology, Committee on Financial Services, House of Representatives

Why GAO Did This Study

The Dodd-Frank Wall Street Reform and Consumer Protection Act directed GAO to conduct a one-time audit of the emergency loan programs and other assistance authorized by the Board of Governors of the Federal Reserve System (Federal Reserve Board) during the recent financial crisis. This testimony summarizes the results of GAO's July 2011 report (GAO-11-696) examining the emergency actions taken by the Federal Reserve Board from December 1, 2007, through July 21, 2010. For these actions, where relevant, this statement addresses (1) accounting and financial reporting internal controls; (2) the use, selection, and payment of vendors; (3) management of conflicts of interest; (4) policies in place to secure loan repayment; and (5) the treatment of program participants. To meet these objectives, GAO reviewed program documentation, analyzed program data, and interviewed officials from the Federal Reserve Board and Reserve Banks (Federal Reserve System).

What GAO Recommends

GAO made seven recommendations to the Federal Reserve Board to strengthen policies for managing noncompetitive vendor selections, conflicts of interest, risks related to emergency lending, and documentation of emergency program decisions. The Federal Reserve Board agreed that GAO's recommendations would benefit its response to future crises and agreed to strongly consider how best to respond to them.

View GAO-12-122T or key components.
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What GAO Found

On numerous occasions in 2008 and 2009, the Federal Reserve Board invoked emergency authority under the Federal Reserve Act of 1913 to authorize new broad-based programs and financial assistance to individual institutions to stabilize financial markets. Loans outstanding for the emergency programs peaked at more than $1 trillion in late 2008. The Federal Reserve Board directed the Federal Reserve Bank of New York (FRBNY) to implement most of these emergency actions. In a few cases, the Federal Reserve Board authorized a Reserve Bank to lend to a limited liability corporation (LLC) to finance the purchase of assets from a single institution. In 2009 and 2010, FRBNY also executed large-scale purchases of agency mortgage-backed securities to support the housing market. The Reserve Banks' and LLCs' financial statements, which include the emergency programs' accounts and activities, and their related financial reporting internal controls, are audited annually by an independent auditing firm. These independent financial statement audits, as well as other audits and reviews conducted by the Federal Reserve Board, its Inspector General, and the Reserve Banks' internal audit function, did not report any significant accounting or financial reporting internal control issues concerning the emergency programs.

The Reserve Banks, primarily FRBNY, awarded 103 contracts worth $659.4 million from 2008 through 2010 to help carry out their emergency activities. A few contracts accounted for most of the spending on vendor services. For a significant portion of the fees, program recipients reimbursed the Reserve Banks or the fees were paid from program income. The Reserve Banks relied more extensively on vendors for programs that assisted a single institution than for broad-based programs. Most of the contracts, including 8 of the 10 highest-value contracts, were awarded noncompetitively, primarily due to exigent circumstances. These contract awards were consistent with FRBNY's acquisition policies, but the policies could be improved by providing additional guidance on the use of competition exceptions, such as seeking as much competition as practicable and limiting the duration of noncompetitive contracts to the exigency period. To better ensure that Reserve Banks do not miss opportunities to obtain competition and receive the most favorable terms for services acquired, GAO recommended that they revise their acquisition policies to provide such guidance.

FRBNY took steps to manage conflicts of interest for its employees, directors, and program vendors, but opportunities exist to strengthen its conflict policies. In particular, FRBNY expanded its guidance and monitoring for employee conflicts, but new roles assumed by FRBNY and its employees during the crisis gave rise to potential conflicts that were not specifically addressed in the Code of Conduct or other FRBNY policies. For example, FRBNY's existing restrictions on its employees' financial interests did not specifically prohibit investments in certain nonbank institutions that received emergency assistance. To manage potential conflicts related to employees' holdings of such investments, FRBNY relied on provisions in its code that incorporate requirements of a federal criminal conflict of interest statute and its regulations. Given the magnitude of the assistance and the public's heightened attention to the appearance of conflicts related to Reserve Banks' emergency actions, existing policies and procedures for managing employee conflicts may not be sufficient to avoid the appearance of a conflict in all situations. As the Federal Reserve System considers revising its conflict policies given its new authority to regulate certain nonbank institutions, GAO recommended it consider how potential conflicts from emergency lending could inform any changes. FRBNY managed vendor conflict issues through contract protections and actions to help ensure compliance with relevant contract provisions, but these efforts had limitations. For example, while FRBNY negotiated important contract protections, it lacked written guidance on protections that should be included to help ensure vendors fully identify and remediate conflicts. Further, FRBNY's on-site reviews of vendor compliance in some instances occurred as far as 12 months into a contract. FRBNY implemented a new vendor management policy but has not yet finalized another new policy with comprehensive guidance on vendor conflict issues. GAO recommended FRBNY finalize this new policy to reduce the risk that vendors may not be required to take steps to fully identify and mitigate all conflicts.

While the Federal Reserve System took steps to mitigate risk of losses on its emergency loans, opportunities exist to strengthen risk management practices for future crisis lending. The Federal Reserve Board approved program terms and conditions designed to mitigate risk of losses and one or more Reserve Banks were responsible for managing such risk for each program. Reserve Banks required borrowers under several programs to post collateral in excess of the loan amount. For programs that did not have this requirement, Reserve Banks required borrowers to pledge assets with high credit ratings as collateral. For loans to specific institutions, Reserve Banks negotiated loss protections with the private sector and hired vendors to help oversee the portfolios that collateralized loans. The emergency programs that have closed have not incurred losses and FRBNY does not project any losses on its outstanding loans. To manage risks posed by these new lending activities, Reserve Banks implemented new controls and FRBNY strengthened its risk management function. In mid-2009, FRBNY created a new risk management division and enhanced its risk analytics capabilities. But neither FRBNY nor the Federal Reserve Board tracked total exposure and stressed losses that could occur in adverse economic scenarios across all emergency programs. Further, the Federal Reserve System's procedures for managing borrower risks did not provide comprehensive guidance for how Reserve Banks should exercise discretion to restrict program access for higher-risk borrowers that were otherwise eligible for the Term Auction Facility (TAF) and emergency programs for primary dealers. To strengthen practices for managing risk of losses in the event of a future crisis, GAO recommended that the Federal Reserve System document a plan for more comprehensive risk tracking and strengthen procedures to manage program access for higher-risk borrowers.

While the Federal Reserve System took steps to promote consistent treatment of eligible program participants, it did not always document processes and decisions related to restricting access for some institutions. Reserve Banks generally offered assistance on the same terms to institutions that met announced eligibility requirements. For example, all eligible borrowers generally could borrow at the same interest rate and against the same types of eligible collateral. Because Reserve Banks lacked specific procedures that staff should follow to exercise discretion and document actions to restrict higher-risk eligible borrowers for a few programs, the Federal Reserve System lacked assurance that Reserve Banks applied such restrictions consistently. Also, the Federal Reserve Board did not fully document its justification for extending credit on terms similar to the Primary Dealer Credit Facility (PDCF) to affiliates of a few PDCF-eligible institutions and did not provide written guidance to Reserve Banks on types of program decisions that would benefit from consultation with the Federal Reserve Board. In 2009, FRBNY allowed one entity to continue to issue to the Commercial Paper Funding Facility, even though a change in program terms by the Federal Reserve Board likely would have made it ineligible. FRBNY staff said they consulted the Federal Reserve Board regarding this situation, but did not document this consultation and did not have any formal guidance as to whether such continued use required approval by the Federal Reserve Board. To better ensure an appropriate level of transparency and accountability for decisions to extend or restrict access to emergency assistance, GAO recommended that the Federal Reserve Board set forth its process for documenting its rationale for emergency authorizations and document its guidance to Reserve Banks on program decisions that require consultation with the Federal Reserve Board.

Chairman Paul, Ranking Member Clay, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the emergency assistance the Federal Reserve System provided to certain financial markets and financial institutions during the financial crisis that began in summer 2007.[1] From late 2007 through mid-2010, Reserve Banks provided more than a trillion dollars in emergency loans to the financial sector to address strains in credit markets and to avert failures of individual institutions believed to be a threat to the stability of the financial system. The scale and nature of this assistance amounted to an unprecedented expansion of the Federal Reserve System's traditional role as lender-of-last-resort to depository institutions. In March 2008, the Federal Reserve Board cited "unusual and exigent circumstances" in invoking its emergency authority under section 13(3) of the Federal Reserve Act of 1913 to authorize a Reserve Bank to extend credit to nondepository institutions. For the first time since the Great Depression, a Reserve Bank extended credit under this authority. The Federal Reserve Board would invoke this authority on three other occasions within that month and on several occasions in late 2008 when the failure of Lehman Brothers Holdings Inc. (Lehman Brothers) triggered a severe intensification of the financial crisis.[2] The Federal Reserve Bank of New York (FRBNY), which operated most of these programs under authorization from the Federal Reserve Board, faced a number of unique operational challenges related to implementation and oversight for numerous emergency programs, many of which required large vendor procurements to fill gaps in Federal Reserve System expertise. To date, most of the Reserve Banks' emergency loans have been repaid, and FRBNY projects repayment on all outstanding loans.

[1]The Federal Reserve System consists of the Board of Governors of the Federal Reserve System—a federal agency—and 12 regional Reserve Banks. For this testimony, I use Federal Reserve Board to refer to the federal agency and Federal Reserve System to refer collectively to the federal agency and one or more of the Reserve Banks.

[2]Lehman Brothers was an investment banking institution that offered equity, fixed-income, trading, investment banking, asset management, and other financial services. According to the bankruptcy examiner appointed by the bankruptcy court, Lehman Brothers originated mortgages, securitized them, and then sold the securitized assets. Although headquartered in New York, Lehman Brothers operated globally. Lehman Brothers had $639 billion in total assets and $613 billion in total debts as of May 31, 2008, the date of its last audited financial statements.

My statement today is based on our July 2011 report.[3] We completed this work in response to a mandate contained in Title XI of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Table 1 lists all programs covered by our review, including the broad-based programs and assistance extended to individual institutions. For these emergency programs or actions, where relevant, I will discuss (1) the Reserve Banks' controls over financial reporting and accounting; (2) the Reserve Banks' policies and practices for the use, selection, and payment of vendors; (3) the effectiveness of policies and practices for identifying and managing conflicts of interest for Reserve Bank employees, Reserve Bank vendors, and members of Reserve Banks' boards of directors; (4) the effectiveness of security and collateral policies in place to mitigate risk of losses; and (5) the extent to which program implementation resulted in consistent and equitable treatment of eligible participants.

Table 1: List of Federal Reserve Emergency Programs and Assistance Covered by Our Review

Programs and Assistance	Description	Reserve Bank
Broad-based programs		
Term Auction Facility *(Dec. 12, 2007)*	Auctioned one-month and three-month discount window loans to eligible depository institutions	All 12 Reserve Banks
Dollar Swap Lines *(Dec. 12, 2007)*	Exchanged dollars with foreign central banks for foreign currency to help address disruptions in dollar funding markets abroad	FRBNY
Term Securities Lending Facility *(Mar. 11, 2008)*	Auctioned loans of U.S. Treasury securities to primary dealers against eligible collateral	FRBNY
Primary Dealer Credit Facility *(Mar. 16, 2008)*	Provided overnight cash loans to primary dealers against eligible collateral	FRBNY[a]
Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility *(Sept. 19, 2008)*	Provided loans to depository institutions and their affiliates to finance purchases of eligible asset-backed commercial paper from money market mutual funds	Federal Reserve Bank of Boston
Commercial Paper Funding Facility *(Oct. 7, 2008)*	Provided loans to a special-purpose vehicle to finance purchases of new issues of asset-backed commercial paper and unsecured commercial paper from eligible issuers	FRBNY
Money Market Investor Funding Facility *(Oct. 21, 2008, but never used)*	Created to finance the purchase of eligible short-term debt obligations held by money market mutual funds	FRBNY

[3]GAO, *Federal Reserve System: Opportunities Exist to Strengthen Policies and Processes for Managing Emergency Assistance,* GAO-11-696 (Washington, D.C.: July 21, 2011).

Programs and Assistance	Description	Reserve Bank
Term Asset-Backed Securities Loan Facility *(Nov. 25, 2008)*	Provided loans to eligible investors to finance purchases of eligible asset-backed securities	FRBNY
Assistance to individual institutions		
Bear Stearns Companies, Inc. acquisition by JP Morgan Chase & Co.		
Bridge Loan *(Mar. 14, 2008)*	Overnight loan provided to JP Morgan Chase & Co. bank subsidiary, with which this subsidiary made a direct loan to Bear Stearns Companies, Inc.	FRBNY
Maiden Lane *(Mar. 16, 2008)*	Special purpose vehicle created to purchase approximately $30 billion of Bear Stearns's mortgage-related assets	FRBNY
American International Group, Inc. (AIG)		
Revolving Credit Facility *(Sept. 16, 2008)*	Revolving loan for the general corporate purposes of AIG and its subsidiaries, and to pay obligations as they came due	FRBNY
Securities Borrowing Facility *(Oct. 8, 2008)*	Provided collateralized cash loans to reduce pressure on AIG to liquidate residential mortgage-backed securities (RMBS) in its securities lending portfolio	FRBNY
Maiden Lane II *(Nov.10, 2008)*	Special purpose vehicle created to purchase residential mortgage-backed securities from the securities lending portfolios of AIG subsidiaries	FRBNY
Maiden Lane III (Nov.10, 2008)	Special purpose vehicle created to purchase collateralized debt obligations on which AIG Financial Products had written credit default swaps	FRBNY
Life Insurance Securitization *(March 2, 2009, but never used)*	Authorized to provide credit to AIG that would be repaid with cash flows from its life insurance businesses	FRBNY
Credit extensions to affiliates of some primary dealers *(Sept. 21, 2008)*	Loans provided to broker-dealer affiliates of four primary dealers on terms similar to those for Primary Dealer Credit Facility	FRBNY
Citigroup lending commitment *(Nov. 23, 2008)*	Commitment to provide nonrecourse loan to Citigroup against ring-fence assets if losses on asset pool reached $56.2 billion	FRBNY
Bank of America lending commitment *(Jan. 16, 2009)*	Commitment to provide nonrecourse loan facility to Bank of America if losses on ring- fence assets exceeded $18 billion (agreement never finalized)	Federal Reserve Bank of Richmond
Open market operations		
Agency Mortgage-Backed Securities Purchase Program *(Nov. 25, 2008)*	Purchased agency mortgage-backed securities to provide support to mortgage and housing markets and to foster improved conditions in the financial markets more generally	FRBNY

Source: GAO summary of Federal Reserve Board documents.

Note: Dates in parentheses are the program announcement dates. On October 3, 2008, the Federal Reserve Board authorized the Direct Money Market Mutual Fund Lending Facility (DMLF) and rescinded this authorization one week later. DMLF was not implemented.

[a]PDCF was administered by FRBNY with operational assistance provided by the Federal Reserve Banks of Atlanta and Chicago.

To conduct the work for our report, we reviewed documentation supporting the Federal Reserve Board's authorizations for the emergency programs, Federal Reserve System documents and press releases describing the purpose of the programs, and other relevant program documentation, including announced terms and conditions. To assess Reserve Banks' controls over financial reporting and accounting, we developed an audit strategy designed to leverage, to the extent possible, the audit work specific to the emergency programs performed by the Federal Reserve System's external and internal auditors. For example, we reviewed the external auditor's key audit documentation including audit strategy, planning, and accounting memoranda; internal control and account balance testing audit procedures and results; and summary memoranda. We evaluated the quality of this documentation against relevant auditing standards. To evaluate the Reserve Banks' policies and practices for the use, selection, and payment of vendors, we analyzed Reserve Banks' acquisition policies and guidance, vendor contracts, and vendor payment information. To evaluate the effectiveness of Reserve Bank polices and practices for managing conflicts of interest, we reviewed relevant Reserve Bank policies, including FRBNY's Code of Conduct, and relevant statutory prohibitions on conflicts of interest that apply to federal government and Federal Reserve System employees and federal government guidance for agencies' management of employee conflicts of interest. To assess the effectiveness of security and collateral policies in place to mitigate risk of losses, we reviewed relevant documentation to identify key features of security and collateral policies and determine how these policies were designed to mitigate risk of losses for each emergency program. We obtained and analyzed documentation of steps taken by the Reserve Banks to develop risk governance structures and practices needed to manage the risks associated with the emergency programs. To examine the extent to which program implementation resulted in consistent and equitable treatment of eligible participants, we reviewed and analyzed documentation of the basis for the Federal Reserve Board's decisions about which types of institutions would be eligible to participate in the emergency programs. To determine the extent to which the Reserve Banks offered the same terms and conditions to all participants, which for some programs included financial institutions affiliated with Reserve Bank directors, we reviewed documentation of program terms and conditions and obtained and analyzed program transaction data. For parts of our methodology that involved the analysis of computer-processed data, we assessed the reliability of these data and determined that they were sufficiently reliable for our purposes. For all objectives, we interviewed staff at the Federal Reserve Board, FRBNY, the Federal Reserve Bank of Boston, and the Federal Reserve Bank of Richmond.

The work on which this statement is based was conducted from August 2010 through July 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Federal Reserve Act of 1913 established the Federal Reserve System as the country's central bank. The Federal Reserve System consists of the Federal Reserve Board located in Washington, D.C.; 12 Reserve Banks, which have 24 branches located throughout the nation; and the Federal Open Market Committee (FOMC), which is responsible for directing open market operations to influence the total amount of money and credit available in the economy. Each Reserve Bank is a federally chartered corporation with a board of directors. The Federal Reserve Act authorizes the Reserve Banks to make discount window loans, execute monetary policy operations at the direction of the FOMC, and examine bank holding companies and member banks under rules and regulations prescribed by the Federal Reserve Board, among other things.

The Federal Reserve Board and the Reserve Banks are self-funded entities that deduct their expenses from their revenue and transfer the remaining amount to Treasury.[4] Federal Reserve System revenues transferred to Treasury have increased substantially in recent years, chiefly as a result of interest income earned from the Federal Reserve System's large-scale emergency programs. To the extent that Reserve Banks suffer losses on emergency loans, these losses would be deducted from the excess earnings transferred to Treasury.

Between late 2007 and early 2009, the Federal Reserve Board created more than a dozen new emergency programs to stabilize financial markets and provided financial assistance to avert the failures of a few individual institutions. The Federal Reserve Board authorized most of this emergency assistance under emergency authority contained in section

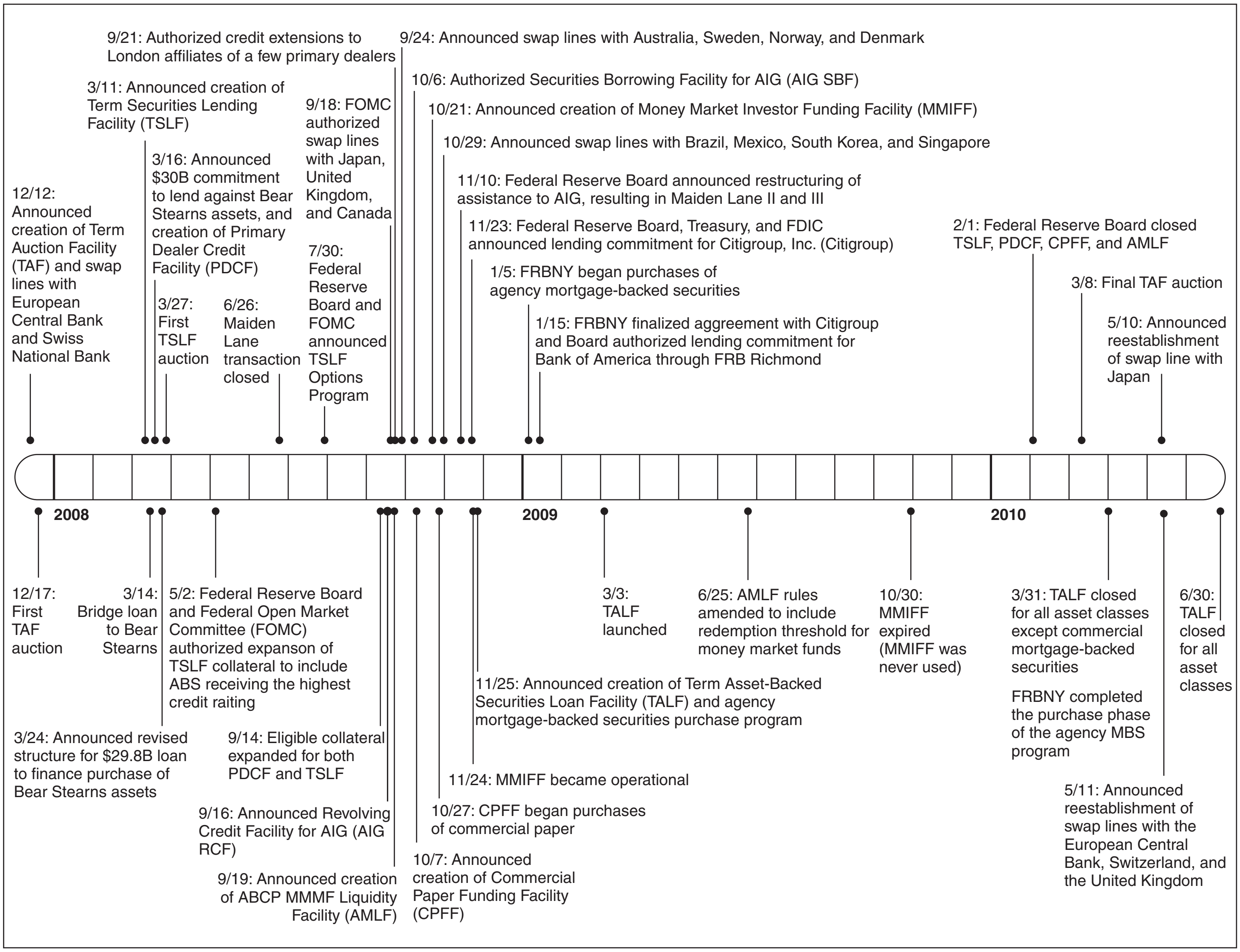
[4] These excess earnings remitted to Treasury consist of Reserve Bank earnings after providing for operating expenditures, capital paid out in dividends to banks that are members of the Federal Reserve System, and an amount reserved by Reserve Banks to equate surplus with capital paid in.

13(3) of the Federal Reserve Act.[5] Three of the programs covered by this review—the Term Auction Facility, the dollar swap lines with foreign central banks, and the Agency Mortgage-Backed Securities Purchase Program—were authorized under other provisions of the Federal Reserve Act that do not require a determination that emergency conditions exist, although the swap lines and the Agency MBS program did require authorization by the FOMC. In many cases, the decisions by the Federal Reserve Board, the FOMC, and the Reserve Banks about the authorization, initial terms of, or implementation of the Federal Reserve System's emergency assistance were made over the course of only days or weeks as the Federal Reserve Board sought to act quickly to address rapidly deteriorating market conditions. FRBNY implemented most of these emergency activities under authorization from the Federal Reserve Board. In a few cases, the Federal Reserve Board authorized FRBNY to lend to a limited liability corporation (LLC) to finance the purchase of assets from a single institution. The LLCs created to assist individual institutions were Maiden Lane, Maiden Lane II, and Maiden Lane III. In 2009, FRBNY, at the direction of the FOMC, began large-scale purchases of mortgage-backed securities (MBS) issued by the housing government-sponsored enterprises, Fannie Mae and Freddie Mac, or guaranteed by Ginnie Mae.[6] Purchases of these agency MBS were intended to provide support to the mortgage and housing markets and to foster improved conditions in financial markets more generally. Most of the Federal Reserve Board's broad-based emergency programs closed on February 1, 2010. Figure 1 provides a timeline for the establishment, modification, and termination of Federal Reserve System emergency programs subject to this review.

[5]At the time of these authorizations, section 13(3) allowed the Federal Reserve Board, in "unusual and exigent circumstances," to authorize any Reserve Bank to extend credit in the form of a discount to individuals, partnerships, or corporations when the credit was indorsed or otherwise secured to the satisfaction of the Reserve Bank, after obtaining evidence that the individual, partnership, or corporation was unable to secure adequate credit accommodations from other banking institutions. As a result of amendments to section 13(3) made by the Dodd-Frank Act, the Federal Reserve Board can now authorize 13(3) lending only through programs or facilities with broad-based eligibility.

[6]Mortgage-backed securities are securities that represent claims to the cash flows from pools of mortgage loans, such as mortgages on residential property.

Figure 1: Timeline of Federal Reserve Emergency Actions, December 2007–June 2010



Source: Federal Reserve System documents and press releases.

The Federal Reserve System and Its Emergency Activities Were Subject to Multiple Audits and Reviews

The Reserve Banks' and LLCs' financial statements, which include the emergency programs' accounts and activities, and their related financial reporting internal controls, are audited annually by an independent auditing firm. In addition, the Federal Reserve System has a number of internal entities that conduct audits and reviews of the Reserve Banks, including the emergency programs. As shown in figure 2, these other audits and reviews were conducted by the Federal Reserve Board's Division of Reserve Bank Operations and Payment Systems (RBOPS), the Federal Reserve Board's Office of Inspector General, and individual Reserve Bank's internal audit function. The independent financial statement audits and other reviews did not identify significant accounting or financial reporting internal control issues concerning the emergency programs.

Figure 2: Audit and Review Coverage of the Emergency Programs

Program	External auditor[a]	Internal audit function	Reserve Bank Operations and Payment Systems	Office of Inspector General
Agency MBS	✓	✓	✓	
AIG[b]	✓		✓	
AMLF	✓	✓		✓
Bank of America Corporation	✓			
Citigroup, Inc.	✓			
CPFF	✓	✓	✓	✓
Swap Lines	✓	✓	✓	
Maiden Lane LLC	✓	✓	✓	
Maiden Lane II LLC	✓	✓	✓	
Maiden Lane III LLC	✓	✓	✓	
MMIFF	✓			✓
PDCF[c]	✓	✓	✓	✓
TAF	✓	✓		
TALF	✓	✓	✓	✓
TSLF	✓	✓	✓	✓

Source: GAO analysis of audit reports and reviews.

Note: See figure 1 for abbreviations of program names. This figure does not include the Bear Stearns bridge loan, which was a one-time loan and was not a program.

[a]Audit coverage was provided as part of the overall audit of the Reserve Bank or LLC financial statements.

[b]Includes the AIG RCF, AIG SBF, and Life Insurance Securitization.

[c]Includes the credit extensions to affiliates of some primary dealers.

Reserve Banks Would Benefit From Strengthening Guidance for Noncompetitive Contracts Awarded in Exigent Circumstances

Reserve Banks Relied Extensively on Vendors to Establish and Operate the Emergency Programs, Particularly Those Designed to Assist Single Institutions

From 2008 through 2010, vendors were paid $659.4 million across 103 contracts to help establish and operate the Reserve Banks' emergency programs. The 10 largest contracts accounted for 74 percent of the total amount paid to all vendors. FRBNY was responsible for creating and operating all but two emergency programs and assistance and therefore awarded nearly all of the contracts.[7] See table 2 for the total number and value of contracts for the emergency programs and assistance.

[7] The Federal Reserve Bank of Boston entered into a single $25,000 contract for AMLF and the Federal Reserve Bank of Richmond entered into three contracts totaling $22.8 million for the Bank of America ring-fencing agreement.

Table 2: Number of Contracts and Fees Paid, By Emergency Program, Calendar Years 2008–2010

Dollars in millions

	Program	Number of contracts[a]	Total fees paid
Broad-based programs	Agency MBS program	6	**$81.4**
	AMLF	1	**0.025**
	CPFF	5	**43.4**
	MMIFF	1	**0.4**
	TALF	18	**29.2**
Programs that assisted a single institution	AIG Revolving Credit Facility	19	**$212.9**
	Bank of America lending commitment	3	**22.8**
	Citigroup lending commitment	3	**21.4**
	Maiden Lane (Bear Stearns)	42	**158.4**
	Maiden Lane II (AIG)	9	**27.9**
	Maiden Lane III (AIG)	12	**57.0**
	General[b]	4	**4.5**
Total		**103**	**$659.4**

Source: GAO analysis of Reserve Bank data.

Note: Reserve Bank programs and assistance listed include only those for which the Reserve Banks used vendors. See figure 1 for abbreviations of program names.

[a]Because some contracts included work on multiple programs, the sum of the contracts for each program is greater than the 103 total contracts identified in the table. Also, 36 subvendors were paid $3.3 million for the three Maiden Lane programs, CPFF, and TALF. The table does not include fees for subcontracts.

[b]Of the four general contracts, two were for advisory services related to how FRBNY managed the emergency programs overall. The other two included work on multiple programs, but FRBNY could not separate out what proportion of the total fees was assigned to each program.

As shown in table 2, the Reserve Banks relied on vendors more extensively for programs that assisted single institutions than for broad-based emergency programs. The assistance provided to individual institutions was generally secured by existing assets that either belonged to or were purchased from the institution, its subsidiaries, or counterparties.[8] The Reserve Banks did not have sufficient expertise available to evaluate these assets and therefore used vendors to do so. For example, FRBNY used a vendor to evaluate divestiture scenarios

[8]Any loans made under the Bank of America or Citigroup ring-fencing agreements were to be secured by specified pools of assets belonging to each institution. However, no loans were extended under the programs.

associated with the assistance to AIG. It also hired vendors to manage assets held by the Maiden Lanes. For the broad-based emergency programs, FRBNY hired vendors primarily for transaction-based services and collateral monitoring. Under these programs, the Reserve Banks purchased assets or extended loans in accordance with each program's terms and conditions. Because of this, the services that vendors provided for these programs were focused more on assisting with transaction execution than analyzing and managing securities, as was the case for the single institution assistance.

Reserve Banks Awarded Largest Contracts Noncompetitvely and Would Benefit From Additional Guidance on Seeking Competition

Most of the contracts, including 8 of the 10 highest-value contracts, were awarded noncompetitively, primarily due to exigent circumstances. These contract awards were consistent with FRBNY's existing acquisition policy, which applied to all services associated with the emergency programs and single-institution assistance.[9] Under FRBNY policy, noncompetitive processes can be used in special circumstances, such as when a service is available from only one vendor or in exigent circumstances. FRBNY cited exigent circumstances for the majority of the noncompetitive contract awards.[10] FRBNY officials said that the success of a program was often dependent on having vendors in place quickly to begin setting up the operating framework for the program. FRBNY's policy did not provide additional guidance on the use of competition exceptions, such as seeking as much competition as practicable and limiting the duration of noncompetitive contracts to the exigency period. To better ensure that Reserve Banks do not miss opportunities to obtain competition and receive the most favorable terms for services acquired, we recommended that they revise their acquisition policies to provide such guidance.

Vendor Fees Generally Came from Program Income or Participants

From 2008 through 2010, vendors were paid $659.4 million through a variety of fee structures. For a significant portion of the fees, program recipients reimbursed the Reserve Banks or the fees were paid from program income. The Reserve Banks generally used traditional market conventions when determining fee structures. For example, investment managers were generally paid a percentage of the portfolio value and law

[9] FRBNY is a private corporation and not subject to the Federal Acquisition Regulation.

[10] Of the noncompetitive contracts we reviewed, FRBNY awarded three under the sole-source exception, when a service was available from only one vendor.

firms were generally paid an hourly rate. Fees for these contracts were subject to negotiation between the Reserve Banks and vendors. For some of the large contracts that were awarded noncompetitively, FRBNY offered vendors a series of counterproposals and was able to negotiate lower fees than initially proposed.

Opportunities Exist to Strengthen Conflict Policies for Employees, Directors, and Program Vendors

During the crisis, FRBNY took steps to manage conflicts of interest related to emergency programs for its employees, program vendors, and members of its Board of Directors, but opportunities exist to strengthen its conflicts policies.

During the Crisis, FRBNY Expanded Its Efforts to Manage Employee Conflicts

Historically, FRBNY has managed potential and actual conflicts of interest for its employees primarily through enforcement of its Code of Conduct, which outlines broad principles for ethical behavior and specific restrictions on financial interests and other activities, such as restrictions on employees' investments in depository institutions and bank holding companies, and incorporates the requirements of a federal criminal statute and its regulations. During the crisis, FRBNY expanded its guidance and monitoring for employee conflicts. However, while the crisis highlighted the potential for Reserve Banks to provide emergency assistance to a broad range of institutions, FRBNY has not yet revised its conflict policies and procedures to more fully reflect potential conflicts that could arise with this expanded role. For example, specific investment restrictions in FRBNY's Code of Conduct continue to focus on traditional Reserve Bank counterparties—depository institutions or their affiliates and the primary dealers—and have not been expanded to further restrict employees' financial interests in certain nonbank institutions that have participated in FRBNY emergency programs and could become eligible for future ones, if warranted. Given the magnitude of the assistance and the public's heightened attention to the appearance of conflicts related to Reserve Banks' emergency actions, existing policies and procedures for managing employee conflicts may not be sufficient to avoid the appearance of a conflict in all situations. During our review, Federal Reserve Board and FRBNY staff told us that the Federal Reserve System plans to review and update the Reserve Banks' Codes of Conduct as needed given the Federal Reserve System's recently expanded role in regulating systemically significant financial institutions. In light of this ongoing effort, we recommended that the Federal Reserve System consider how potential conflicts from emergency lending could inform any changes.

FRBNY Primarily Used Contract Protections to Manage Risks Related to Vendor Conflicts, and the Lack of a Comprehensive Policy Created Certain Limitations

FRBNY managed risks related to vendor conflicts of interest primarily through contract protections and oversight of vendor compliance with these contracts, but these efforts have certain limitations. For example, while FRBNY's Legal Division negotiated contract provisions intended to help ensure that vendors took appropriate steps to mitigate conflicts of interest related to the services they provided for FRBNY, FRBNY lacked written guidance on protections that should be included to help ensure vendors fully identify and remediate conflicts. Rather than requiring written conflict remediation plans that were specific to the services provided for FRBNY, FRBNY generally reviewed and allowed vendors to rely on their existing enterprisewide policies for identifying conflicts. However, in some situations, FRBNY requested additional program-specific controls be developed. Further, FRBNY's on-site reviews of vendor compliance in some instances occurred as far as 12 months into a contract. In May 2010, FRBNY implemented a new vendor management policy but had not yet finalized more comprehensive guidance on vendor conflict issues. As a result, we recommended that FRBNY finalize this new policy to reduce the risk that vendors may not be required to take steps to fully identify and mitigate all conflicts.

Reserve Bank Directors Are Generally Subject to the Same Conflict Rules as Federal Employees and a Few Directors Played a Limited Role in Risk Oversight of the Programs

Individuals serving on the boards of directors of the Reserve Banks are generally subject to the same conflict-of-interest statute and regulations as federal employees. A number of Reserve Bank directors were affiliated with institutions that borrowed from the emergency programs, but Reserve Bank directors did not participate directly in making decisions about authorizing, setting the terms, or approving a borrower's participation in the emergency programs. Rather FRBNY's Board of Directors assisted the Reserve Bank in helping ensure risks were managed through FRBNY's Audit and Operational Risk Committee.[11] According to the Federal Reserve Board

[11]FRBNY's Audit and Operational Risk Committee, which includes directors, is appointed by its Board of Directors to assist the board in monitoring, (1) the integrity of the financial statements of the Reserve Bank, (2) the Reserve Bank's external auditor's qualifications and independence, (3) the performance of the Reserve Bank's internal audit function and external auditors, (4) internal controls and the measurement of operational risk, and (5) the compliance by the Reserve Bank with legal and regulatory requirements. The Audit and Operational Risk Committee also assesses the effectiveness of (2), (3), (4), and (5).

officials, Reserve Banks granted access to borrowing institutions affiliated with Reserve Bank directors only if these institutions satisfied the proper criteria, regardless of potential director-affiliated outreach or whether the institution was affiliated with a director. Our review of the implementation of several program requirements did not find evidence that would indicate a systemic bias towards favoring one or more eligible institutions.

Opportunities Exist to Strengthen Risk Management Policies and Practices for Future Emergency Programs

The Federal Reserve Board approved key program terms and conditions that served to mitigate risk of losses and delegated responsibility to one or more Reserve Banks for executing each emergency lending program and managing its risk of losses. The Federal Reserve Board's early broad-based lending programs—Term Auction Facility, Term Securities Lending Facility, and Primary Dealer Credit Facility—required borrowers to pledge collateral in excess of the loan amount as well as other features intended to mitigate risk of losses.[12] The Federal Reserve Board's broad-based programs launched in late 2008 and early 2009 employed more novel lending structures to provide liquidity support to a broader range of key credit markets. These later broad-based liquidity programs included Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, Commercial Paper Funding Facility, Money Market Investor Funding Facility, and Term Asset-Backed Securities Loan Facility. These liquidity programs, with the exception of the Term Asset-Backed Securities Loan Facility, did not require overcollateralization. To help mitigate the risk of losses, the Term Asset-Backed Securities Loan Facility, as well as the programs that did not require overcollateralization, accepted only highly-rated assets as collateral. In addition, Commercial Paper Funding Facility, Money Market Investor Funding Facility, and Term Asset-Backed Securities Loan Facility incorporated various security features, such as the accumulation of excess interest and fee income to absorb losses, to provide additional loss protection. Also, for the assistance to specific institutions, the Reserve Banks negotiated loss protections with the institutions and hired vendors to help oversee the portfolios collateralizing loans. For each of the Maiden Lane transactions, FRBNY extended a senior loan to the LLC and this loan was collateralized by the portfolio of assets held by the LLC. JP Morgan Chase & Co. agreed to take a first loss

[12]We use the term "overcollateralized" to refer to Reserve Bank lending for which borrowers were required to pledge collateral in excess of the loan amount. By using this term, we do not intend to suggest that the amount of excess collateral required was inappropriately excessive given the Federal Reserve Board's policy objectives.

position of $1.15 billion for Maiden Lane and AIG agreed to assume a similar first loss position for Maiden Lanes II and III. As of July 2011, most of the Federal Reserve Board's emergency loan programs had closed and all of those that had closed had closed without losses. Moreover, currently, the Federal Reserve Board does not project any losses on FRBNY's outstanding loans to Term Asset-Backed Securities Loan Facility borrowers and the Maiden Lane LLCs.

Opportunities Exist for the Reserve Banks to Continue to Strengthen Policies for Future Emergency Programs

To manage risks posed by the emergency programs, Reserve Banks developed new controls and FRBNY strengthened its risk management practices over time. In particular, FRBNY expanded its risk management function and enhanced its risk reporting and risk analytics capabilities. For example, in summer 2009, FRBNY expanded its risk management capabilities by adding expertise that would come to be organized as two new functions, Structured Products and Risk Analytics. Although FRBNY has improved its ability to monitor and manage risks from emergency lending, opportunities exist for FRBNY and the Federal Reserve System as a whole to strengthen risk management procedures and practices for any future emergency lending. Specifically, neither FRBNY nor the Federal Reserve Board tracked total potential exposures in adverse economic scenarios across all emergency programs. Moreover, the Federal Reserve System's existing procedures lack specific guidance on how Reserve Banks should exercise discretion to restrict or deny program access for higher-risk borrowers that were otherwise eligible for the Term Auction Facility and emergency programs for primary dealers. To strengthen practices for managing risk of losses in the event of a future crisis, we recommended that the Federal Reserve System document a plan for more comprehensive risk tracking and strengthen procedures to manage program access for higher-risk borrowers.

While the Federal Reserve Board Took Steps to Promote Consistent Treatment of Participants, It Lacked Guidance and Documentation for Some Access Decisions

The Federal Reserve Board and the Reserve Banks took steps to promote consistent treatment of eligible program participants and generally offered assistance on the same terms and conditions to eligible institutions in the broad-based emergency programs. However, in a few programs, the Reserve Banks placed restrictions on some participants that presented higher risk but lacked specific guidance to do so. Further, certain Federal Reserve Board decisions to extend credit to certain borrowers were not fully documented.

The Federal Reserve Board Designed Program Eligibility Requirements to Target Assistance to Groups of Institutions Facing Liquidity Strains

The Federal Reserve Board created each broad-based emergency program to address liquidity strains in a particular credit market and designed program eligibility requirements primarily to target significant participants in these markets. The emergency programs extended loans both directly to institutions facing liquidity strains and through intermediary borrowers. For programs that extended credit directly, the Federal Reserve Board took steps to limit program eligibility to institutions it considered to be generally sound. For example, Term Auction Facility loans were auctioned to depository institutions eligible to borrow from the discount window and expected by their local Reserve Bank to remain primary-credit-eligible during the term the Term Auction Facility loan would be outstanding.[13] For programs that provided loans to intermediary borrowers, the Federal Reserve Board based eligibility requirements in part on the ability of borrowing institutions, as a group, to channel sufficient liquidity support to eligible sellers. For example, eligible Term Asset-Backed Securities Loan Facility borrowers included a broad range of institutions ranging from depository institutions to U.S. organized investment funds. Federal Reserve Board officials told us that broad

[13]The Reserve Banks extend discount window credit to U.S. depository institutions (including U.S. branches and agencies of foreign banks) under three programs, one of which is the primary credit program. Primary credit is available to generally sound depository institutions, typically on an overnight basis. To assess whether a depository institution is in sound financial condition, its Reserve Bank can regularly review the institution’s condition, using supervisory ratings and data on adequacy of the institution’s capital.

participation in Term Asset-Backed Securities Loan Facility was intended to facilitate the program goal of encouraging the flow of credit to consumers and small businesses.

While Reserve Banks Generally Offered the Same Terms to Eligible Participants, Some Programs Lacked Documented Procedures to Systematically Apply Special Restrictions

The Federal Reserve Board promoted consistent treatment of eligible participants in its emergency programs by generally offering assistance on the same terms and conditions to all eligible participants. For example, institutions that met the announced eligibility requirements for a particular emergency program generally could borrow at the same interest rate, against the same types of collateral, and where relevant, with the same schedule of haircuts applied to their collateral. As previously discussed, for a few programs, FRBNY's procedures did not have specific guidance to help ensure that restrictions were applied consistently to higher-risk borrowers. Moreover, the Federal Reserve Board could not readily provide documentation of all Term Auction Facility restrictions placed on individual institutions. By having written procedures to guide decision-making for restrictions and suggestions for documentation of the rationale for such decisions, the Federal Reserve Board may be able to better review such decisions and help ensure that future implementation of emergency lending programs will result in consistent treatment of higher-risk borrowers. Our review of Federal Reserve System data for selected programs found that incorrect application of certain program requirements was generally infrequent and that cases of incorrect application of criteria did not appear to indicate intentional preferential treatment of one or more program participants.

The Federal Reserve Board Did Not Fully Document the Basis for Extending Credit to a Few Affiliates of Primary Dealers

The Federal Reserve Board did not fully document the basis for its decisions to extend credit on terms similar to those available at PDCF to certain broker-dealer affiliates of four of the primary dealers. In September and November of 2008, the Federal Reserve Board invoked section 13(3) of the Federal Reserve Act to authorize FRBNY to extend credit to the London-based broker-dealer subsidiaries of Merrill Lynch, Goldman Sachs, Morgan Stanley, and Citigroup, as well as the U.S. broker-dealer subsidiaries of Merrill Lynch, Goldman Sachs, and Morgan Stanley. Federal Reserve Board officials told us that the Federal Reserve Board did not consider the extension of credit to these subsidiaries to be a legal extension of PDCF but separate actions to specifically assist these four primary dealers by using PDCF as an operational tool. Federal Reserve Board officials told us that the Federal Reserve Board did not draft detailed memoranda to document the rationale for all uses of section 13(3) authority but that unusual and exigent circumstances existed in each of these cases as critical funding markets were in crisis. However, without more complete documentation, how assistance to these broker-dealer subsidiaries satisfied the statutory requirements for using this authority remains unclear. Moreover, without more complete public disclosure of the basis for these actions, these decisions may not be subject to an appropriate level of transparency and accountability. The Dodd-Frank Act includes new requirements for the Federal Reserve Board to report to Congress on any loan or financial assistance authorized under section 13(3), including the justification for the exercise of authority; the identity of the recipient; the date, amount, and form of the assistance; and the material terms of the assistance. To address these new reporting requirements, we recommended that the Federal Reserve Board set forth its process for documenting its rationale for emergency authorizations.

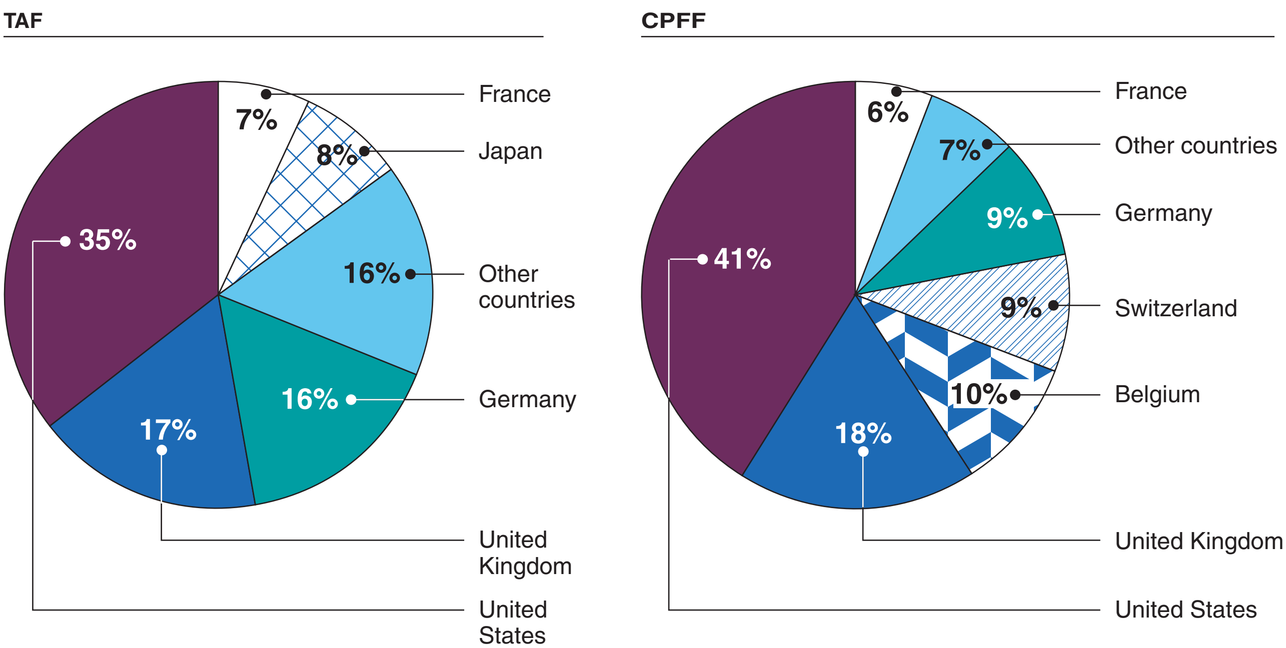
The Federal Reserve Board Generally Has Not Provided Documented Guidance to Reserve Banks on Types of Program Decisions That Require Consultation with the Federal Reserve Board

In authorizing the Reserve Banks to operate its emergency programs, the Federal Reserve Board has not provided documented guidance on the types of program policy decisions—including allowing atypical uses of broad-based assistance—that should be reviewed by the Federal Reserve Board. Standards for internal control for federal government agencies provide that transactions and other significant events should be authorized and executed only by persons acting within the scope of their authority. Outside of the established protocols for the discount window, FRBNY staff said that the Federal Reserve Board generally did not provide written guidance on expectations for types of decisions or events requiring formal Federal Reserve Board review, although program decisions that deviated from policy set by the Federal Reserve Board were generally understood to require Board staff consultation. In 2009, FRBNY allowed an AIG-sponsored entity to continue to issue to the Commercial Paper Funding Facility, even though a change in program terms by the Federal Reserve Board likely would have made it ineligible. FRBNY staff said they consulted the Federal Reserve Board regarding this situation, but did not document this consultation and did not have any formal guidance as to whether such continued use required approval by the Federal Reserve Board. To better ensure an appropriate level of transparency and accountability for decisions to extend or restrict access to emergency assistance, we recommended that the Federal Reserve Board document its guidance to Reserve Banks on program decisions that require consultation with the Federal Reserve Board.

The Federal Reserve Board Took Steps to Prevent Use that Would Be Inconsistent with Its Policy Objectives

To assess whether program use was consistent with the Federal Reserve Board's announced policy objectives, we analyzed program transaction data to identify significant trends in borrowers' use of the programs. Our analysis showed that large global institutions were among the largest users of several programs. U.S. branches and agencies of foreign banks and U.S. subsidiaries of foreign institutions received over half of the total dollar amount of Commercial Paper Funding Facility and Term Auction Facility loans (see fig. 3).

Figure 3: Total Transaction Amount by Parent Company Country of Domicile for the Term Auction Facility and Commercial Paper Funding Facility

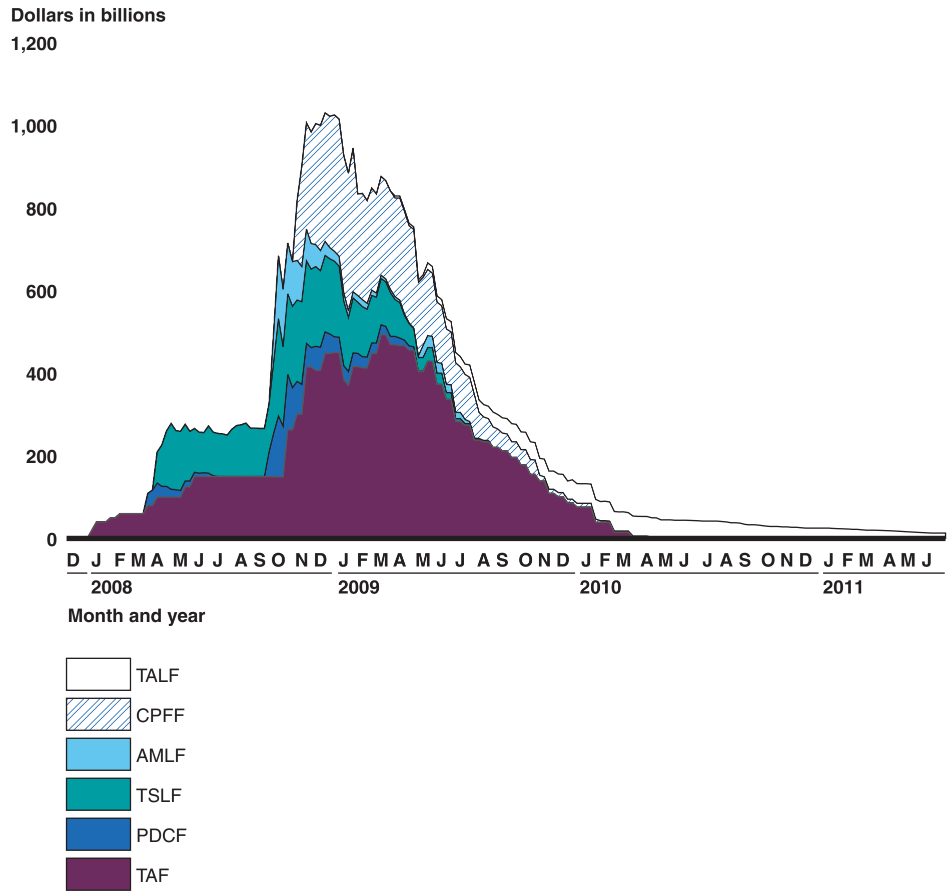


Source: GAO analysis of Federal Reserve System data.

Note: For Term Auction Facility, the total dollar amount of loans are aggregated at the level of the parent company for participating depository institutions. For Commercial Paper Funding Facility, the total dollar amount of issuance is aggregated at the parent company level and includes asset-backed commercial paper issuance by entities sponsored by the parent company or one of its subsidiaries. The country of domicile for parent companies is based on SNL Financial data.

According to Federal Reserve Board staff, they designed program terms and conditions to discourage use that would have been inconsistent with program policy objectives. Program terms—such as the interest charged and haircuts applied—generally were designed to be favorable only for institutions facing liquidity strains. Use of the programs generally peaked during the height of the financial crisis and fell as market conditions recovered (see fig. 4). Within and across the programs, certain participants used the programs more frequently and were slower to exit than others. Reserve Bank officials noted that market conditions and the speed with which the participant recovered affected use of the program by individual institutions. As a result of its monitoring of program usage, the Federal Reserve Board modified terms and conditions of several programs to reinforce policy objectives and program goals.

Figure 4: Total Loans Outstanding for Broad-Based Programs, December 1, 2007–June 29, 2011



Source: GAO analysis of Federal Reserve System data.

Note: See figure 1 for abbreviations of program names.

Concluding Observations

During the financial crisis that began in the summer of 2007, the Federal Reserve System took unprecedented steps to stabilize financial markets and support the liquidity needs of failing institutions that it considered to be systemically significant. To varying degrees, these emergency actions involved the Reserve Banks in activities that went beyond their traditional responsibilities. Over time, FRBNY and the other Reserve Banks took steps to improve program management and oversight for these emergency actions, in many cases in response to recommendations made by their external auditor, Reserve Bank internal audit functions, or the Federal Reserve Board's RBOPS. However, the Reserve Banks have not yet fully incorporated some lessons learned from the crisis into their policies for managing use of vendors, risk of losses from emergency lending, and conflicts of interest. Such enhanced policies could offer additional insights to guide future Federal Reserve System action, should it ever be warranted. We made seven recommendations to the Chairman of the Federal Reserve Board to further strengthen Federal Reserve System policies for selecting vendors, ensuring the transparency and consistency of decision making involving implementation of any future emergency programs, and managing risks related to these programs. In its comments on our report, the Federal Reserve Board agreed to give our recommendations serious attention and to strongly consider how to respond to them.

Mr. Chairman, Ranking Member Clay, and Members of the Subcommittee, this completes my prepared statement. I am prepared to respond to any questions you or other Members of the Subcommittee may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact me at (202) 512-8678 or williamso@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made major contributions to this statement include Karen Tremba (Assistant Director), Tania Calhoun, and John Fisher.

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