

FEDERAL RESERVE TRANSPARENCY ACT OF 2017

SEPTEMBER 21, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOWDY, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 24]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 24) to require a full audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks by the Comptroller General of the United States, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 24 directs the Government Accountability Office (GAO) to conduct a full audit of the Federal Reserve within a year of enactment. GAO must also provide a report on this audit to Congress ninety days after the audit is complete.

BACKGROUND AND NEED FOR LEGISLATION

Congress delegated its power to regulate the supply and value of money to the Federal Reserve System (the Fed) under Article I, Section 8, of the Constitution. Compared to other government agencies, the Federal Reserve System enjoys a unique degree of independence from Congress and the President. Generally, economists consider this arrangement to lead to better policy outcomes.¹ Over the years, the Fed's quasi-public structure has created an inherent tension between the need for oversight and transparency and the need for the Fed to have operational independence to effectively deliberate on monetary policy.

As an instrument of monetary policy, the Fed was designed to be politically independent. However, this has created challenges in conducting congressional oversight. For example, unlike most other government agencies, the Fed is self-financing and its budget is not subject to the appropriations or authorization process.² There is no congressional budgetary oversight of the Fed and no regular process for Congress to ensure the Fed is properly utilizing its funds.³ Unlike other government agencies, under the current system Congress is unable to use control over the Fed's resources as leverage to achieve its goals.⁴

In 2007, the Fed took several steps in its aggressive response to the financial crisis that led it to impact more political policy areas. Specifically, the Fed took "a political strategy that emphasized direct involvement and commitment by the president to an early, large-scale, and preemptive recapitalization of the financial sector by using public funds."⁵ Further, the Fed provided hundreds of billions of dollars in loans to four select private entities through quantitative easing and the creation of dollar swap lines with the European Central Bank.⁶ In the process of doing so, the Fed expanded its balance sheet from \$850 billion to over \$4.4 trillion between September 2008 and September 2014.⁷ The Fed was able to undertake these measures by using the broad powers in section 13(3) of the Federal Reserve Act to take these steps without congressional input.⁸ These sweeping measures had a substantial impact on the

¹Marc Labonte, *Federal Reserve: Oversight and Disclosure Issues*, Mar. 27, 2017, (R42079) Cong. Research Serv., available at <https://fas.org/sgp/crs/misc/R42079.pdf>.

²*Id.*

³*Id.*

⁴*Id.*

⁵Phillip Y. Lipsy and Hirofumi Tankinami, *The Politics of Financial Crisis Response in Japan and the United States*, Japanese Journal of Political Science, Aug. 2013, available at <http://web.stanford.edu/~plipsy/LipsyTakinami.pdf>.

⁶Norbert J. Michel and Stephen Moore, *Quantitative Easing, The Fed's Balance Sheet, and Central Bank Insolvency*, Heritage Foundation (Aug. 2014), available at <http://www.heritage.org/research/reports/2014/08/quantitative-easing-the-feds-balance-sheet-and-central-bank-insolvency>.

⁷*Id.*

⁸Marc Labonte, *Federal Reserve: Emergency Lending*, Jan. 6, 2016, available at <https://fas.org/sgp/crs/misc/R44185.pdf>.

economic and fiscal health of the United States and, as such, led to greater interest in empowering Congress to conduct more stringent oversight over the Federal Reserve System.

Prior to 1978, GAO only was permitted to audit the Fed's role as an agent of the Treasury, under their authorization to audit the Treasury. The GAO has conducted audits of the Fed since 1978 under the Federal Banking Agency Audit Act of 1978.⁹ Although this law expanded GAO's access to the Fed's role in banking regulations and payment systems, it specifically prohibited GAO from investigating the following four areas of the Fed's operations:¹⁰

1. Transactions for or with a foreign central bank, government of a foreign country, or non-private international financing organization;

2. Deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, and open market operations;

3. Transactions made under the direction of the Federal Open Market Committee; [and]

4. A part of a discussion or communication among or between members of the [Federal Reserve Board of Governors] and officers and employees of the Federal Reserve System related to [the above three areas].¹¹

H.R. 24 authorizes GAO to audit several types of transactions that it is currently prohibited from investigating under current law. Specifically, GAO will be permitted to: investigate the Fed's transactions with foreign banks and countries; deliberations, decisions, or actions on monetary policy matters; transactions made under the direction of the Federal Open Market Committee; and discussions or communications among or between members of the Federal Reserve Board and the Federal Reserve System. H.R. 24 will not negatively impact the Fed's independence because this GAO oversight will not "under current law, release any confidential information identifying institutions that have borrowed from the Fed or the details of other transactions."¹²

LEGISLATIVE HISTORY

H.R. 24, the Federal Reserve Transparency Act of 2017, was introduced on January 3, 2017, by Representative Thomas Massie (R-KY) and referred to the Committee on Oversight and Government Reform. On March 28, 2017, the Committee considered H.R. 24 at a business meeting. The Committee ordered the bill favorably reported by voice vote.

In the 114th Congress, Representative Massie introduced H.R. 24, the Federal Reserve Transparency Act of 2015, on January 6, 2015, and it was referred to the Committee on Oversight and Government Reform. On May 17, 2016, the Committee considered H.R. 24 at a business meeting. The Committee ordered the bill favorably reported, as amended, by voice vote.

In the 113th Congress, Representative Paul Broun (R-GA) introduced H.R. 24, the Federal Reserve Transparency Act of 2014, on

⁹ 31 U.S.C. § 714.

¹⁰ *Federal Reserve: Oversight and Disclosure Issues*, *supra* note 1.

¹¹ 31 U.S.C. § 714(b).

¹² *Federal Reserve: Oversight and Disclosure Issues*, *supra* note 1.

January 3, 2013, which was referred to the Committee on Oversight and Government Reform and in addition to the Committee on Financial Services. The Committee on Oversight and Government Reform considered H.R. 24 at a business meeting on July 24, 2014. The Committee ordered the bill favorably reported, as amended, by voice vote. On September 16, 2014, the Committee on Financial Services discharged the bill. On September 17, 2014, the House passed H.R. 24 under suspension of the rules by a vote of 332 to 92.

In the 112th Congress, Representative Ron Paul (R-TX) introduced H.R. 459, the Federal Reserve Transparency Act of 2012, on January 26, 2011. H.R. 459 was referred to the Committee on Oversight and Government Reform and in addition to the Committee on Financial Services. The Committee on Oversight and Government Reform considered H.R. 459 at a business meeting on June 27, 2012, and ordered the bill favorably reported, as amended, by voice vote. On July 18, 2012, the Committee on Financial Services discharged the bill. On July 25, 2012, the House passed H.R. 459, as amended, under suspension of the rules by a vote of 327 to 98.

SECTION-BY-SECTION

Section 1. Short title

The short title of the bill is the “Federal Reserve Transparency Act of 2017.”

Section 2. Audit reform and transparency for the Board of Governors of the Federal Reserve System

Subsection (a) requires the Comptroller General of the United States to complete an audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks within 12 months after the date of enactment.

Subsection (b) requires a report be submitted to Congress within 90 days of completing the audit and making the report available to the Speaker of the House, the majority and minority leaders of the House of Representatives, the majority and minority leaders of the Senate, the Chairman and the Ranking Member of the Committee and each subcommittee of jurisdiction in the House of Representatives and the Senate, as well as any other Members of Congress who request the report.

Paragraph (2) of subsection (b) requires the report to include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit, along with recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

Subsection (c) amends section 714 of title 31, United States Code, by striking the second sentence in subsection (b), which prohibits GAO audits of the Board of Governors of the Federal Reserve System and Federal reserve banks from including:

1. Transactions for or with a foreign central bank, government of a foreign country, or non-private international financing organization;
2. Deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of

member banks, securities credit, interest on deposits, and open market operations;

3. Transactions made under the direction of the Federal Open Market Committee; and

4. A part of a discussion or communication among or between members of the Board and officers and employees of the Federal Reserve System related to the above items.

Subsection (d) makes various technical and conforming amendments to section 714 of title 31, United States Code.

COMMITTEE CONSIDERATION

On March 28, 2017, the Committee met in open session and ordered reported favorably the bill, H.R. 24, by voice vote, a quorum being present.

ROLL CALL VOTES

There were no roll call votes during Full Committee consideration of H.R. 24.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill requires a full audit of the Board of Governors of the Federal Reserve System and the Federal Reserve banks by the Comptroller General of the United States. As such, this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to improve congressional oversight of the Federal Reserve System without impacting operational independence.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of section 551 or title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement, the Committee has included below a letter received from the Congressional Budget Office.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974, which the Committee has included below.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 18, 2017.

Hon. JASON CHAFFETZ,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 24, the Federal Reserve Transparency Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Nathaniel Frentz.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 24—Federal Reserve Transparency Act of 2017

H.R. 24 would amend federal law regarding audits of the Federal Reserve System. Specifically, the bill would direct the Government Accountability Office (GAO) to prepare, within 12 months of enactment, an audit of the Board of Governors of the Federal Reserve System and the Federal Reserve banks. The bill would also repeal prohibitions under current law that prevent GAO from auditing the Federal Reserve's monetary policy and any of the Federal Reserve's transactions involving a foreign central bank, the government of a foreign country, or a nonprivate international financing organization. CBO expects that the removal of those prohibitions would result in future requests from Members of Congress for GAO to conduct additional oversight and analysis of the Federal Reserve System on a periodic basis.

Based on an analysis of information from GAO regarding the amount of effort required for its previous audit of the Federal Reserve, which was required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), CBO estimates that implementing H.R. 24 would cost \$6 million over the 2018-2022 period; such spending would be subject to the availability of appropriated funds. That cost would cover full-time and part-time GAO employees plus administrative expenses necessary to prepare the audit required by the bill as well as additional oversight and analysis that CBO expects would result from implementing the bill.

In addition, based on information provided by the Federal Reserve and on information provided by GAO regarding the likely costs of similar proposals aimed at oversight of the Federal Reserve, CBO estimates that enacting H.R. 24 would increase costs of the Federal Reserve starting in 2018, and thus decrease federal revenues by \$3 million over the 2018-2027 period. That estimate of revenue reductions reflects higher costs of the Federal Reserve System associated with coordination of the initial audit and future oversight and analysis by GAO. Because enacting H.R. 24 would affect revenues, pay-as-you-go procedures apply. CBO estimates that enacting H.R. 24 would not affect direct spending.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 24, AS ORDERED REPORTED BY THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM ON MARCH 28, 2017

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017– 2022	2017– 2027
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	1	0	0	0	0	0	0	0	0	0	2	3

Note: Components may not sum to totals because of rounding.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 24 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for the estimate is Nathaniel Frentz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis, and John McClelland, Assistant Director for Tax Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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SUBTITLE I—GENERAL

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CHAPTER 7—GOVERNMENT ACCOUNTABILITY OFFICE

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SUBCHAPTER II—GENERAL DUTIES AND POWERS

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**§ 714. Audit of Financial Institutions Examination Council,
Federal Reserve Board, Federal reserve banks,
Federal Deposit Insurance Corporation, and Office
of Comptroller of the Currency**

(a) In this section, “agency” means the Financial Institutions Examination Council, the Board of Governors of the Federal Reserve System (in this section referred to as the “Board”), Federal reserve banks, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

(b) Under regulations of the Comptroller General, the Comptroller General shall audit an agency, but may carry out an onsite examination of an open insured bank or bank holding company

only if the appropriate agency has consented in writing. [Audits of the Board and Federal reserve banks may not include—]

[(1) transactions for or with a foreign central bank, government of a foreign country, or nonprivate international financing organization;

[(2) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, and open market operations;

[(3) transactions made under the direction of the Federal Open Market Committee; or

[(4) a part of a discussion or communication among or between members of the Board and officers and employees of the Federal Reserve System related to clauses (1)-(3) of this subsection.]

(c)(1) Except as provided in this subsection, an officer or employee of the Government Accountability Office may not disclose information identifying an open bank, an open bank holding company, or a customer of an open or closed bank or bank holding company. The Comptroller General may disclose information related to the affairs of a closed bank or closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence.

(2) An officer or employee of the Office may discuss a customer, bank, or bank holding company with an official of an agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(3) Except as provided under paragraph (4), an officer or employee of the Government Accountability Office may not disclose to any person outside the Government Accountability Office information obtained in audits or examinations conducted under subsection (e) and maintained as confidential by the Board or the Federal reserve banks.

(4) This subsection shall not—

(A) authorize an officer or employee of an agency to withhold information from any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee; or

(B) limit any disclosure by the Government Accountability Office to any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee.

(d)(1) To carry out this section, all records and property of or used by an agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General. The Comptroller General shall have access to the officers, employees, contractors, and other agents and representatives of an agency and any entity established by an agency at any reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate.

The Comptroller General shall give an agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(2) The Comptroller General shall prevent unauthorized access to records, copies of any record, or property of or used by an agency or any person or entity described in paragraph (3)(A) that the Comptroller General obtains during an audit.

(3)(A) For purposes of conducting audits and examinations under subsection (e) **【or (f)】**, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things or property belonging to or in use by—

(i) any entity established by any action taken by the Board or the Federal Reserve banks described under subsection (e) **【or (f)】**;

(ii) any entity participating in or receiving assistance from any action taken by the Board or the Federal Reserve banks described under subsection (e) **【or (f)】**, to the extent that the access and request relates to that assistance; and

(iii) the officers, directors, employees, independent public accountants, financial advisors and any and all representatives of any entity described under clause (i) or (ii); to the extent that the access and request relates to that assistance;

(B) The Comptroller General shall have access as provided under subparagraph (A) at such time as the Comptroller General may request. The Comptroller General may make and retain copies of books, accounts, and other records provided under subparagraph (A) as the Comptroller General deems appropriate. The Comptroller General shall provide to any person or entity described in subparagraph (A) a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out a audit or examination under this subsection.

(C) Each contract, term sheet, or other agreement between the Board or any Federal reserve bank (or any entity established by the Board or any Federal reserve bank) and an entity receiving assistance from any action taken by the Board described under subsection (e) **【or (f)】** shall provide for access by the Comptroller General in accordance with this paragraph.

(e) Notwithstanding subsection (b), the Comptroller General may conduct audits, including onsite examinations when the Comptroller General determines such audits and examinations are appropriate, of any action taken by the Board under **【the third undesignated paragraph of section 13】** *section 13(3)* of the Federal Reserve Act (12 U.S.C. 343); with respect to a single and specific partnership or corporation.

【(f) AUDITS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

【(1) DEFINITIONS.—In this subsection, the following definitions shall apply:

【(A) CREDIT FACILITY.—The term “credit facility” means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal re-

serve bank, authorized by the Board of Governors under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), that is not subject to audit under subsection (e).

[(B) COVERED TRANSACTION.—The term “covered transaction” means any open market transaction or discount window advance that meets the definition of “covered transaction” in section 11(s) of the Federal Reserve Act.

[(2) AUTHORITY FOR AUDITS AND EXAMINATIONS.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board of Governors of the Federal Reserve System or any Federal reserve bank, the Comptroller General of the United States may conduct audits, including onsite examinations, of the Board of Governors, a Federal reserve bank, or a credit facility, if the Comptroller General determines that such audits are appropriate, solely for the purposes of assessing, with respect to a credit facility or a covered transaction—

[(A) the operational integrity, accounting, financial reporting, and internal controls governing the credit facility or covered transaction;

[(B) the effectiveness of the security and collateral policies established for the facility or covered transaction in mitigating risk to the relevant Federal reserve bank and taxpayers;

[(C) whether the credit facility or the conduct of a covered transaction inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and

[(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility or to conduct any covered transaction.

[(3) REPORTS AND DELAYED DISCLOSURE.—

[(A) REPORTS REQUIRED.—A report on each audit conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed.

[(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusions of the Comptroller General with respect to the matters described in paragraph (2) that were audited and are the subject of the report, together with such recommendations for legislative or administrative action relating to such matters as the Comptroller General may determine to be appropriate.

[(C) DELAYED RELEASE OF CERTAIN INFORMATION.—

[(i) IN GENERAL.—The Comptroller General shall not disclose to any person or entity, including to Congress, the names or identifying details of specific participants in any credit facility or covered transaction, the amounts borrowed by or transferred by or to specific participants in any credit facility or covered transaction, or identifying details regarding assets or collateral held or transferred by, under, or in connection with any credit facility or covered transaction,

and any report provided under subparagraph (A) shall be redacted to ensure that such names and details are not disclosed.

[(ii) DELAYED RELEASE.—The nondisclosure obligation under clause (i) shall expire with respect to any participant on the date on which the Board of Governors, directly or through a Federal reserve bank, publicly discloses the identity of the subject participant or the identifying details of the subject assets, collateral, or transaction.

[(iii) GENERAL RELEASE.—The Comptroller General shall release a nonredacted version of any report on a credit facility 1 year after the effective date of the termination by the Board of Governors of the authorization for the credit facility. For purposes of this clause, a credit facility shall be deemed to have terminated 24 months after the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board of Governors.

[(iv) EXCEPTIONS.—The nondisclosure obligation under clause (i) shall not apply to the credit facilities Maiden Lane, Maiden Lane II, and Maiden Lane III.

[(v) RELEASE OF COVERED TRANSACTION INFORMATION.—The Comptroller General shall release a nonredacted version of any report regarding covered transactions upon the release of the information regarding such covered transactions by the Board of Governors of the Federal Reserve System, as provided in section 11(s) of the Federal Reserve Act.]

* * * * *

FEDERAL RESERVE ACT

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SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a)(1) To examine at its discretion the accounts, books and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case

of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State savings associations that are insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), State non-member banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) the Comptroller of the Currency in the case of any Federal savings association which is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

(b) To permit, or, on the affirmative vote of at least five members of the Board of Governors of the Federal Reserve System to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board of Governors of the Federal Reserve System.

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this Act.

(d) To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be delivered by the Secretary of the Treasury to the Federal reserve agents applying therefor.

(e) To add to the number of cities classified as Reserve cities under existing law in which national banking associations are subject to the Reserve requirements set forth in section twenty of this Act; or to reclassify existing Reserve cities or to terminate their designation as such.

(f) To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith communicated in writing by the Board of Governors of the Federal Reserve System to the removed officer or director and to said bank.

(g) To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

(h) To suspend, for the violation of any of the provisions of this Act, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

(i) To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve

notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this Act, and make all rules and regulations necessary to enable said board effectively to perform the same.

(j) To exercise general supervision over said Federal reserve banks.

(k) To delegate, by published order or rule and subject to the Administrative Procedure Act, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe. The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.

(l) To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board. All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

(n) To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this Act.

(o) **AUTHORITY TO APPOINT CONSERVATOR OR RECEIVER.**—The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 11(c)(9) of the Federal Deposit Insurance Act.

(p) **AUTHORITY.**—The Board may act in its own name and through its own attorneys in enforcing any provision of this title, regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956), or other entity, or the administration of its operations.

(q) **UNIFORM PROTECTION AUTHORITY FOR FEDERAL RESERVE FACILITIES.**—

(1) Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve

bank, and operations conducted by or on behalf of the Board or a reserve bank.

(2) The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank's premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.

(3) Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

(4) For purposes of this subsection, the term "law enforcement officers" means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

(5) The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General.

(r)(1) Any action that this Act provides may be taken only upon the affirmative vote of 5 members of the Board may be taken upon the unanimous vote of all members then in office if there are fewer than 5 members in office at the time of the action.

(2)(A) Any action that the Board is otherwise authorized to take under section 13(3) may be taken upon the unanimous vote of all available members then in office, if—

(i) at least 2 members are available and all available members participate in the action;

(ii) the available members unanimously determine that—

(I) unusual and exigent circumstances exist and the borrower is unable to secure adequate credit accommodations from other sources;

(II) action on the matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system of the United States;

(III) despite the use of all means available (including all available telephonic, telegraphic, and other electronic means), the other members of the Board have not been able to be contacted on the matter; and

(IV) action on the matter is required before the number of Board members otherwise required to vote on the matter can be contacted through any available means (including all available telephonic, telegraphic, and other electronic means); and

(iii) any credit extended by a Federal reserve bank pursuant to such action is payable upon demand of the Board.

(B) The available members of the Board shall document in writing the determinations required by subparagraph (A)(ii), and such written findings shall be included in the record of the action and in the official minutes of the Board, and copies of such record shall be provided as soon as practicable to the members of the Board who were not available to participate in the action and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Chairman of the Committee on Financial Services of the House of Representatives.

(s) FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.—

(1) IN GENERAL.—In order to ensure the disclosure in a timely manner consistent with the purposes of this Act of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)—

(A) the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;

(B) the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;

(C) the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and

(D) information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.

(2) MANDATORY RELEASE DATE.—In the case of—

(A) a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and

(B) a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.

(3) EARLIER RELEASE DATE AUTHORIZED.—The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph (2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) CREDIT FACILITY.—The term “credit facility” [has the same meaning as in section 714(f)(1)(A) of title 31, United States Code] *means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board*

of Governors under section 13(3), that is not subject to audit under section 714(e) of title 31, United States Code.

(B) COVERED TRANSACTION.—The term “covered transaction” means—

- (i) any open market transaction with a nongovernmental third party conducted under the first undesignated paragraph of section 14 or subparagraph (a), (b), or (c) of the 2nd undesignated paragraph of such section, after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and
- (ii) any advance made under section 10B after the date of enactment of that Act.

(5) TERMINATION OF CREDIT FACILITY BY OPERATION OF LAW.—A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.

(6) CONSISTENT TREATMENT OF INFORMATION.—Except as provided in this subsection or section 13(3)(D), [or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title,] *the information described in paragraph (1)* shall be confidential, including for purposes of section 552(b)(3) of title 5 of such Code, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.

(7) PROTECTION OF PERSONAL PRIVACY.—This subsection [and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and], *section 13(3)(C), and* subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 502 of the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.

(8) STUDY OF FOIA EXEMPTION IMPACT.—

(A) STUDY.—The Inspector General of the Board of Governors of the Federal Reserve System shall—

- (i) conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount window lending programs, and open market operations; and
- (ii) make any recommendations on whether the exemption described in clause (i) should remain in effect.

(B) REPORT.—Not later than 30 months after the date of enactment of this section, the Inspector General of the Board of Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.

(9) RULE OF CONSTRUCTION.—Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), on or before the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(s) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

(2) COMPANIES.—The companies described in this paragraph are—

(A) all bank holding companies having total consolidated assets of \$50,000,000,000 or more;

(B) all savings and loan holding companies having total consolidated assets of \$50,000,000,000 or more; and

(C) all nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

* * * * *

MINORITY VIEWS

The United States Federal Reserve System is an independent central bank, and its monetary policy actions are not subject to approval by other entities. This independence is critical to the ability of the Board of Governors of the Federal Reserve to pursue monetary policies it considers most responsive to the nation's current economic conditions and most likely to fulfill its dual mandate of promoting maximum employment and stable prices.

The Federal Banking Agency Audit Act of 1978 established that the Federal Reserve System may be audited by the Government Accountability Office (GAO), and regular audits have been conducted since that date. However, that Act included protections now codified in 31 U.S.C. 714(b) to ensure that the Federal Reserve's monetary policymaking remains independent from outside political influence.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act expanded the types of audits GAO may conduct of the Federal Reserve, as well as the data that regularly must be disclosed to the public by the Federal Reserve.

For example, the Dodd-Frank Act required GAO to audit the emergency financial assistance provided by the Federal Reserve during the financial crisis. The Act also added a new subsection (f) to 31 U.S.C. 714 which opens the transactions and discount window operations authorized under section 11(s) of the Federal Reserve Act to audit so GAO can assess their operational integrity and internal controls, the effectiveness of security and collateral policies, the fairness to all institutions of such transactions, and the policies governing the use of third-party contractors engaged to manage such transactions.

The Dodd-Frank Act required the Federal Reserve to post on its website all GAO reports, annual financial statements, reports to Congress, and any other information "necessary or helpful to the public in understanding the accounting, financial reporting and internal controls of the Board and Federal Reserve banks."

In addition, the Dodd-Frank Act required the Federal Reserve to release information regarding borrowers and counterparties participating in emergency credit facilities, discount lending programs, and open market operations, including the names of the parties, the amount borrowed by or transferred to the participant or counterparty, the interest rate or discount and the collateral pledged. The information must be released within one year of the termination of a credit facility, and within two years of a discount lending transaction or open market operation.

The Dodd-Frank Act was carefully crafted to expand transparency surrounding the Federal Reserve's operations without impeding its ability to carry out the critical responsibility of independently setting our nation's monetary policy.

H.R. 24 would significantly alter this balance by permanently repealing the provisions in 31 U.S.C. 714(b). GAO would be permitted to audit the Federal Reserve's transactions with foreign central banks and transactions conducted under the direction of the Federal Open Market Committee. GAO also would be able to audit the Federal Reserve's internal deliberations on monetary policy matters, as well as discussions or communications Members of the Board have with each other and with staff of the Federal Reserve System regarding monetary policy.

There is significant concern that opening the Federal Reserve's monetary policy deliberations to GAO audit in this way—including audits conducted without any significant elapse of time from the point of decision—could influence how such deliberations are conducted and potentially even the policies that are chosen, thus degrading the independence of the Federal Reserve.

If all restrictions on GAO's ability to audit the Federal Reserve's deliberative processes are removed, members of Congress could actively seek to influence the Federal Reserve's deliberations by the types and subjects of audits they request of GAO. Members of Congress could also seek to obtain the materials GAO accesses when performing its audits, including documents related to the Federal Reserve's deliberations.

The Committee passed similar legislation in the 112th, 113th, and 114th Congresses (H.R. 459, H.R. 24, and H.R. 24). In those four Congresses, the Committee held only one hearing to examine the consequences of this legislation. The Committee's March 23, 2017, hearing titled "Legislative Proposals for Fostering Transparency" examined transparency-related legislation, including a brief discussion of H.R. 24. The Committee has not heard from a single witness from the Federal Reserve about how the legislation would impact the agency's operations.

Moving forward on this bill without calling a single witness from the Federal Reserve may result in many unforeseen and potentially damaging consequences.

ELIJAH E. CUMMINGS,
Ranking Member.

