United States House of Representatives
Committee on Financial Services
Subcommittee on Domestic Monetary Policy & Technology
Hearing on Federal Reserve Lending Disclosure: FOIA, Dodd-Frank, and the Data Dump
June 1, 2011

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Statement for the Record

Today's hearing deals with one of the most pressing issues this subcommittee will face during this Congress, the issue of Federal Reserve transparency. While the Federal Reserve is still far less transparent than it should be, recent disclosures of the Federal Reserve's lending programs have greatly increased our knowledge of the Fed's monetary policy during the height of the financial crisis.

In December 2010 and March 2011, a remarkable thing happened: the Fed disclosed information on its lending facilities and discount window operations, including who borrowed money, what amounts were loaned, maturity dates, interest rates, and collateral. It took an act of Congress, the Dodd-Frank Act, to bring about the December releases that discovered the details of the emergency lending facilities set up by the Fed during the crisis. The March 2011 disclosures covered discount window lending, the oldest Fed lending tool, whose operations had never before been disclosed. It took a three year legal battle regarding the Freedom of Information Act's (FOIA) applicability to the Fed in order to gain access to this information. The suits brought by Bloomberg and Fox News resulted in 29,000 pages of unorganized, heavily redacted documents being provided. Combining these two data releases has given us a fuller, if still woefully incomplete, picture of the Fed's operations during the financial crisis and the nearly $3 trillion balance sheet it has built up.

On November 25, 2008, the Fed created the Term Asset-Backed Securities Loan Facility (TALF) which was intended to "lend up to $200 billion... to holders of certain AAA-rated ABS [asset-backed securities]." When the Fed released TALF data in December of 2010, 18% of TALF loans were backed by subprime credit card and auto loan securities, 17% of TALF loans were backed by "legacy", a.k.a. troubled, commercial real estate securities, and 13% of TALF loans were backed by student loan securities. On March 11, 2008, the Fed created the Term Securities Lending Facility (TSLF) to "lend up to $200 billion...to primary dealers... secured... by... securities, including federal agency debt, federal agency residential mortgage-backed securities (MBS), and non-agency AAA/Aaa-rated private-label residential MBS." When the Fed released TSLF data in December of 2010, 26% of loans were backed by AAA/Aaa-rated securities, 17% were backed by non-AAA-rated securities, and 57% of loans were backed by collateral whose rating was not published by the Fed.

Recent news reports have brought to light the existence of a previously undisclosed Fed lending program known as "single-tranche open market operations" (ST OMO). This program loaned money at rates as low as 0.01% to major firms such as Goldman Sachs, and was essentially a free loan to these politically well-connected firms. Data about this program was not published, but instead was gleaned through examination of charts published in March as a result of the Fed's Freedom of Information Act (FOIA) disclosure. The charts were found within a 327-page document which had 81% of its content redacted.

Out of the funds loaned through the Fed's credit facilities, nearly one-third was loaned to foreign banks. Some facilities and programs, such as the Mortgage-Backed Securities Purchase Program, the Commercial Paper Funding Facility, and the TSLF, provided more than half of their funding to foreign banks. During the peak of the financial crisis, up to 88% of overall discount window lending went to foreign banks, and nearly 100% of the New York Fed's discount window lending went to foreign banks.

Not surprisingly, these data disclosures have raised significant new questions about the Fed's behavior. Among many questions raised are: Why did foreign firms receive such a large percentage of Fed lending? What advantages were given to large financial institutions that had access to multiple lending facilities for prolonged periods of time? Did extending loans to non-financial firms go beyond the Fed's emergency lending authority? Why did investors who participated in TALF have to have a relationship with the Fed's primary dealers, and did this give an unfair advantage to wealthy investors, such as the wives of two Morgan Stanley executives? Why did the Fed set up single-tranche open-market operations (ST OMO) which gave primary dealers access to $80 billion at rates as low as 0.01%, essentially providing a direct government subsidy to these firms, and why did the Fed only disclose this information in chart form? Are there other programs that have yet to be disclosed? Why were so many pages redacted in the 327-page document that alluded to ST OMO? Can you really claim to be in compliance with FOIA when such significant portions of documents are redacted? How can we trust that this data was "not responsive" to the FOIA request? Are we to trust the non-transparent Fed that we really don't need to see that information? If the Fed claims to lend against AAA collateral and then does not, can we trust anything the Fed publishes in a press release? Can we trust that collateral classified by the Fed as AAA really is AAA?

More issues emerge from the Fed's handling of the FOIA requests brought by Bloomberg and Fox News. The Fed used several arguments in refusing to comply. Among them was the Fed's claim that it was a private institution and not subject to FOIA, since the documents requested were held by the New York Fed, a private bank, and thus exempt. Fortunately for the American people, the court rejected that assertion. But what exactly is the legal relationship between the private regional banks and the Board of Governors? The Fed also claimed that lending records of discount window borrowers were privileged or confidential information that could cause imminent competitive harm if disclosed, or even cause a run on banks, and therefore should be exempt from FOIA. This has been the Fed's long-standing defense of the secrecy of the discount window. One of the judges in the case summed up the Fed's secrecy succinctly: "[T]he risk of looking weak to competitors and shareholders is an inherent risk of market participation; information tending to increase that risk does not make the information privileged or confidential."

Given the massive amount of data released last December and this March, and the fact that much information in the March data release was redacted, it is all but certain that there remains much to be discovered about the Fed's bailouts through the discount window and its credit facilities. The Federal Reserve's actions in bailing out Wall Street through credit facilities and quantitative easing provoked a backlash among the American people and among many members of Congress. Trillions of dollars worth of loans and guarantees were provided to rich bankers and their worthless holdings of mortgage debt were snapped up by the Fed, while Main Street Americans continued to suffocate under harsh taxation and the prospect of increasing inflation. These events have awakened many Americans to the problems with the Fed's loose monetary policy, the bubbles it has created in the past, and the potential hyperinflation it might cause in the future. We should not neglect the fundamental need for more transparency of the Fed and a thorough audit that can help shed light on operations of the Federal Reserve System. We need stronger audit authority over the Fed, both looking back at previous market interventions and also ensuring that any future credit facilities, bailout vehicles, or large-scale asset purchase programs are subject to oversight.

At this hearing we hope to receive substantive answers from the Fed about its lending behavior during the worst part of the financial crisis, and we hope to receive assurances about the Fed's future compliance with the Dodd-Frank bill's requirements for public access to lending information. Aside from our ability to ask questions at the hearing, the hearing record will remain open for 30 days to allow the Fed time to respond to our written questions. At a time when the Fed's balance sheet is rapidly approaching the $3 trillion dollar mark, it is absolutely imperative that the Fed come clean with the details of its open market operations, lending operations, and asset purchases. Pumping trillions of dollars into the banking system with no oversight by Congress and no accountability to the American people cannot be allowed to continue.