§ 592.510 Base time rate.

(a) For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the base time rate for inspection services, per hour per program employee, using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

(b) FSIS calculates the components of the base time rate (which are based on previous fiscal year's actual costs) using the following formulas:

(1) *Benefits Rate:* Direct benefits costs multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Saving Plan (TSP) retirement basic and matching contributions.

(2) *Travel and Operating Rate:* Total direct travel and operating costs multiplied by the percentage of inflation.

(3) *Overhead Rate:* All indirect costs plus the average information technology (IT) costs over the previous two years in the Public Health Data Communication Infrastructure System Fund plus the Office of Management Program cost in the Reimbursable and Voluntary Funds less any Greenbook costs (*i.e.,* costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection, divided by total direct hours (regular, overtime, and holiday) worked across all funds, multiplied by the percentage of inflation.

(4) *Allowance for Bad Debt Rate:* Total allowance for bad debt (for plants and establishments that declare bankruptcy) divided by total direct hours (regular, overtime, and holiday) worked.

(c) The cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

12. In § 592.520, revise the second sentence to read as follows:

§ 592.520 Overtime rate.

* * * The official plant must give reasonable advance notice to the inspector of any overtime service necessary. For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the overtime rate for inspection service, per hour per program employee, using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 1.5 plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt. FSIS calculates the benefits rate, travel and operating rate, overhead rate, and allowance for bad debt using the formulas in § 592.510(b), and the cost of living increases and percentage of inflation factors in § 592.510(b).

13. In 592.530, revise the second sentence to read as follows:

§ 592.530 Holiday rate.

* * * The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection service during such period and must pay the Agency for such holiday work at the hourly rate. For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the holiday rate for inspection service, per hour per program employee, using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 2, plus benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt. FSIS calculates the benefits rate, travel and operating rate, overhead rate, and allowance for bad debt using the formulas in § 592.510(b), and the cost of living increases and percentage of inflation factors in § 592.510(b).

Done in Washington, DC, on October 5, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–24283 Filed 10–7–09; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

[Regulation A; Docket No. R–1371]

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors (Board) is publishing for public comment a proposed amendment to Regulation A that would provide a process by which the Federal Reserve Bank of New York may determine the eligibility of credit rating agencies and the ratings they issue for use in the Term Asset-Backed Securities Loan Facility, which is maintained by the Federal Reserve Bank of New York and for which the Board has expressly set a particular credit rating requirement for collateral offered by the borrower. The proposed rule would not apply to discount window lending or other extensions of credit provided by the Federal Reserve System. In addition, the rule would only apply to asset-backed securities that are not backed by commercial real estate. This proposed amendment is designed to provide the Federal Reserve Bank of New York with a consistent framework for determining the eligibility of ratings issued by individual credit rating agencies when used in conjunction with a separate asset-level risk assessment process. The proposed amendment does not represent a change in the stance of monetary policy. The Board solicits comment on all aspects of the proposal, as well as specific aspects of the proposal as set out in the preamble.

DATES: Written comments on this notice of proposed rulemaking must be submitted on or before November 9, 2009.

ADDRESSES: You may submit comments, identified by Docket Number R–1371, by any of the following methods:

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

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*, as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: William R. Nelson, Associate Director (202/452–3579), Division of Monetary Affairs; Christopher W. Clubb, Senior Counsel (202/452–3904), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Credit rating agencies. Credit rating agencies assess the credit risk of corporate or government borrowers and issuers of bonds, debt securities, and other financial obligations.[1] A credit rating is a credit rating agency's opinion of how likely an issuer is to make timely payments on a financial obligation, based on a variety of information regarding the issuer, the market in which the issuer operates, the overall economy, and the nature of the security. Because issuers may issue different types of fixed-income securities, different securities by the same issuer may have different credit ratings according to their different risk profiles. Credit rating agencies issue credit ratings for debt securities of public companies, sovereign governments, and municipalities, and for structured products such as asset-backed securities.[2]

Some credit rating agencies emphasize quantitative models based on statistical analysis of an issuer's financial disclosures to derive their ratings, while other credit rating agencies review both quantitative and qualitative indicators (including information that may be provided by the issuer and other sources) to form an assessment that is recommended to a rating committee, which then assigns the rating. While the exact processes used by a credit rating agency to derive a credit rating may be proprietary in some cases, credit rating agencies generally provide public statements outlining their rating philosophy or general methodology for a particular asset class. After the credit rating is issued, the credit rating agency will generally continue to monitor the issuer and/or its securities on an ongoing basis, although the U.S. Securities and Exchange Commission (SEC) has found that such monitoring tends to be less comprehensive than the initial review.[3]

NRSRO credit ratings. The term ''nationally recognized statistical rating organization'' was originally adopted by the SEC in 1975 for use in determining capital charges for broker-dealers on different grades of debt securities.[4] The concept of ratings by ''nationally recognized statistical rating organizations'' has been incorporated into a range of state and federal legislation and regulations.[5]

The Credit Rating Agency Reform Act of 2006 (CRARA) sets out a statutory definition of ''nationally recognized statistical rating organization'' (NRSRO) and provides the SEC with the authority to implement registration and oversight rules with respect to registered credit rating agencies.[6] The CRARA's provisions, and the grants of SEC rulemaking authority under these provisions, establish a voluntary registration process and regulatory program for credit rating agencies opting to have their credit ratings qualify for purposes of laws and rules using the term ''nationally recognized statistical rating organization.''[7] Such credit rating agencies are required to register with the SEC; make public certain information to help persons assess their credibility; make and retain certain records; furnish the SEC with certain financial reports; implement policies and manage the handling of material non-public information and conflicts of interest; and abide by certain prohibitions against unfair, coercive, or abusive practices. The CRARA also prohibits the SEC from evaluating the quality of rating methodologies in making a determination about whether a credit rating agency is an NRSRO. The SEC has promulgated regulations to implement the CRARA statutory provisions.[8]

Like other participants in the financial markets, the Federal Reserve System is an active user of NRSRO credit ratings. Credit ratings are used to support the efforts of several System programs, including discount window lending and recent specialized System liquidity and securities lending programs in response to the financial crisis.[9] Reserve Banks make credit available to depository institutions through the discount window to meet various liquidity needs. Under the Board's Regulation A, the Reserve Banks have the discretion to determine when a discount window advance to a depository institution is adequately secured.[10]

TALF. The Term Asset-backed Securities Lending Facility (TALF) is a funding facility to help market participants meet the credit needs of households and businesses by supporting the issuance of new asset-backed securities (ABS) collateralized by loans of various types to consumers and businesses of all sizes.[11] The underlying credit exposures of TALF-eligible ABS must be auto loans, student loans, credit card receivables, equipment loans, floorplan loans, insurance premium finance loans, receivables related to residential mortgage servicing advances (servicing advance receivables), or commercial mortgages.[12] The TALF was established under section 13(3) of the Federal Reserve Act, which permits the Board of Governors of the Federal Reserve Board, in unusual and exigent circumstances, to authorize Reserve Banks to extend credit to individuals, partnerships and corporations that are unable to obtain adequate credit accommodations. The Board has determined the terms and conditions for TALF borrowing and eligible collateral, including minimum credit ratings and the set of credit rating agencies whose ratings may be accepted

[1] *See* International Organization of Securities Commissions, *Report on the Activities of Credit Rating Agencies*, (Sept. 2003).

[2] *See* Securities and Exchange Commission, Proposed Rule: *Oversight of Credit Rating Agencies as Nationally Recognized Statistical Rating Organizations*, 72 FR 6378–01 (Feb. 9, 2007) (herein ''CRA Proposed Rule'').

[3] U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC's Role Regarding and Oversight of Nationally Recognized Statistical Rating Organizations* (*NRSROs*), (Sept. 2009) p. 44.

[4] U.S. Securities and Exchange Commission, *Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets*, (Jan. 2003) p. 6.

[5] *See, e.g.*, 12 U.S.C. 24a(a)(3)(A)(i) (financial subsidiaries of national banks); 12 U.S.C. 1831e(d)(4)(A) (activities of savings associations); 15 U.S.C. 78c(a)(41) (definition of ''mortgage related security''); 15 U.S.C. 80a–6(a)(5)(A)(iv)(I) (exemption from Investment Company Act provisions); and 29 U.S.C. 1341(b)(5)(B)(i)(I) (ERISA termination of single employer plans); Cal. Gov. Code § 53601 (West 2009); N.Y. Gen. Municipal Law § 10 (McKinney 2009).

[6] CRARA (Pub. L. No. 109–291, 120 Stat. 1327) is primarily codified at 15 U.S.C. 78o–7.

[7] The CRARA replaced the existing SEC staff approval system with ''a transparent and voluntary registration system that favors no particular business model, thus encouraging purely statistical models to compete with the qualitative models of the dominant rating agencies and investor-based models to compete with fee-based models.'' S. Rep. No. 109–326 at p. 7.

[8] *See* 17 CFR 240.17g–1 through 240.17g–6.

[9] In addition to the use of ratings in helping to manage the credit risk of the Federal Reserve's balance sheet, credit ratings also play a role in the Federal Reserve's banking supervision and regulation function.

[10] Regulation A states that a Reserve Bank's advance to a depository institution must be secured to the satisfaction of the Reserve Bank. 12 CFR 201.3(a)(2).

[11] For the terms and conditions and frequently asked question of the TALF, refer to *http://www.federalreserve.gov/monetarypolicy/talf.htm*.

[12] Small business loans whose principal and interest payments are fully guaranteed by the full faith and credit of the United States are also accepted at the TALF, however, no credit rating is required for ABS backed by such loans.

for purposes of TALF by the Federal Reserve Bank of New York.

In authorizing the TALF, the Board directed that TALF-eligible collateral must be ABS denominated in U.S. dollars that has a credit rating in the highest long-term or short-term investment-grade rating category from two or more eligible NRSROs and does not have a credit rating below the highest investment-grade category from an eligible NRSRO. When TALF was established, the Board and the Federal Reserve Bank of New York accepted credit ratings from three NRSROs (Standard & Poor's, Moody's Investors Service, and Fitch Ratings). The Federal Reserve put a high priority on making the TALF available expeditiously while ensuring appropriate protection against credit risk for the U.S. taxpayer. In its efforts to provide liquidity to TALF ABS sectors as expeditiously as possible, the Board recognized that market participants have continued to rely upon the ratings of these NRSROs, generally to the exclusion of those with less experience rating ABS.

Since the establishment of TALF, the Federal Reserve has been conducting a broader review of its approach to using rating agencies encompassing the ratings of securities of all types accepted as collateral at all of the Federal Reserve's recently established credit facilities as well as collateral accepted to secure regular discount window loans. In May 2009, the Board announced an extension of eligible TALF collateral to include certain high-quality newly issued and legacy commercial mortgage-backed securities (CMBS).[13] Due to concerns about the historical accuracy of CMBS ratings, the role of ratings in the evaluation of legacy CMBS (which depend on the NRSROs continued monitoring activities), and the presence of two additional NRSROs with substantial experience rating CMBS, the Board and the Federal Reserve Bank of New York conducted a review of the five NRSROs who expressed interest in having their ratings accepted for CMBS pledged to the TALF. The review concluded that the ratings of these five NRSROs were of sufficient quality to provide useful information in the Federal Reserve Bank of New York's verification of the credit quality on the most senior classes of newly issued and legacy CMBS when used in conjunction with a separate asset-level risk assessment process. As a result, the Board amended the terms of the TALF to provide that TALF-eligible CMBS must have a triple-A long-term rating from at least two of those five NRSROs, and not have a lower rating from any of the other five NRSROs. Due to the factors listed above, particularly the importance of verifying the monitoring capabilities of the NRSROs that rate CMBS, the rule proposed in this notice will not apply to the NRSRO ratings that are accepted for CMBS pledged to the TALF.

II. Proposed Rule

The proposed rule presented in this notice is another step in the Federal Reserve's process of reviewing the appropriate use of NRSROs in its credit facilities. By this notice, the Board is proposing an amendment to the Board's Regulation A to govern the Federal Reserve Bank of New York's acceptance of credit ratings in connection with TALF ABS other than CMBS. As noted above, the proposed rule would apply only to the acceptance of credit ratings with respect to ABS pledged to the TALF and does not apply to general discount window lending under the primary, secondary, or seasonal credit facilities established in Regulation A, or any other credit facilities. Extensions of credit through the discount window are structured differently from those extended under TALF and the approach presented in the proposed rule would likely not be feasible in the discount window scenario. In such cases, the Reserve Banks would continue to ensure that they are adequately secured as otherwise provided in Regulation A.[14] The Federal Reserve will continue to review the use of credit ratings with respect to its other credit facilities.

The proposed rule adopts an objective minimal experience-based approach specific to the types of assets accepted as collateral in TALF. The proposed rule is intended to strike a balance between the goal of promoting competition among NRSROs and the goal of ensuring appropriate protection against credit risk for the U.S. taxpayer. As explained below, an additional risk assessment by the Federal Reserve Bank of New York with respect to TALF collateral is an important complement to the proposed rule's broadening of the set of eligible NRSROs.

As a threshold requirement, the proposed rule states that the Federal Reserve Bank of New York may only accept a credit rating issued by a credit rating agency that is registered with the SEC as an NRSRO for issuers of asset-backed securities pursuant to the CRARA. The proposed rule would leverage off of the NRSRO framework established by CRARA and the SEC regulations. A registered NRSRO must comply with SEC rules regarding the prevention of misuse of material nonpublic information; conflicts of interest; and prohibitions against unfair, coercive, or abusive practices. In particular, an NRSRO is expressly prohibited from having certain types of conflicts of interest relating to the issuance of credit ratings (such as the NRSRO being paid by issuers to determine credit ratings with respect to securities they issue) unless the conflicts are publicly disclosed in the NRSRO's registration materials and the NRSRO establishes and enforces written policies and procedures to address and manage the conflict of interest.[15] In addition, SEC rules prohibit NRSROs from having certain enumerated conflicts of interest under any circumstances (such as the NRSRO directly owning securities of the organization that is subject to the credit rating).[16] The Board believes that these disclosure provisions and conflict of interest prohibitions are prudent and relevant to the evaluation of credit rating agencies with respect to TALF.

Registration with the SEC as an NRSRO is not, however, a guarantee of the quality of the credit ratings issued. The CRARA expressly prohibits the SEC and any state from regulating the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings.[17] Therefore, the Board believes additional criteria should be established to ensure that the Federal Reserve Bank of New York only accepts credit ratings that are reasonably likely to assist in the Federal Reserve Bank of New York's risk assessment to determine eligibility of ABS pledged as collateral to the TALF. The Board specifically solicits public comment regarding whether NRSRO registration is an appropriate threshold requirement for being accepted at TALF and whether NRSRO registration should be the sole requirement for eligibility for use in TALF. In responding, a commenter should explain how credit risk can be controlled with NRSRO registration as the sole criterion.

The Board is proposing a rule for reviewing the acceptability of a particular NRSRO generally by reference to certain experience-based criteria. The experience requirement is consistent

[13] Only ABS issued on or after January 1, 2009 may qualify for TALF funding except for ABS guaranteed by the Small Business Administration, which can be issued on or after January 1, 2008. All outstanding CMBS meeting the other TALF requirements may qualify for TALF funding.

[14] 12 CFR 201.3(a)(2).

[15] SEC Form NRSRO (SEC 1541) (4–09) Exhibits 6 and 7. *See also* 17 CFR 240.17g–5(a) and (b); 15 U.S.C. 78o–7(h).

[16] 17 CFR 240.17g–5(c)(2).

[17] 15 U.S.C. 78o–7(c)(2).

with the intent of CRARA, which requires a measure of market acceptance for NRSRO designation as well as the SEC rules regarding the NRSRO designation that require market acceptance within a defined asset category. Rather than requiring attestations from a particular number of Qualified Institutional Buyers (QIBs) that they rely upon an NRSRO's ratings, the rule would require that the NRSRO had issued ratings on at least ten transactions within a specified asset category. The asset categories are:

- Category 1—auto loans, floorplan loans, and equipment loans TALF sectors;
- Category 2—credit card receivables and insurance premium finance loans TALF sectors;
- Category 3—mortgage servicing advance receivables TALF sector;[18] and
- Category 4—student loans TALF sector.

The Board believes that experience in any of the TALF sectors grouped together in an asset category provides similar experience for each of the TALF sectors within that asset category. For example, Category 1 includes the auto loans, floorplan loans, and equipment loans TALF sectors. The Board believes that the ABS sectors within each category are similar in terms of the types of collateral, the manner in which the collateral is typically evaluated, and typical transactional structures and legal features. Experience across asset categories would not, however, be permitted to be aggregated under the proposed rule because the Board believes that the competencies required for ratings of ABS across different categories are not sufficiently similar.

The four asset categories defined in the rule are significantly narrower than the ''ABS'' category in which a credit rating agency may be approved as an NRSRO by the SEC. Relying upon the issuance of a minimal number of ratings as opposed to attestations from QIBs in each of the four asset categories should ensure a minimal level of expertise in rating the types of assets for which the ratings will be accepted. Furthermore, the Board believes that credit rating agencies' expertise when rating collateral of any given type can increase considerably upon reviewing a modest number of transactions. The experience requirement, therefore, would ensure that TALF-eligible NRSROs have accumulated sufficient knowledge of the specific asset category. The Board specifically solicits comments on whether an experience-based approach is appropriate for determining the suitability of NRSROs for the TALF program.

In addition, the proposed rule would allow the Federal Reserve Bank of New York to accept credit ratings only from a credit rating agency that has a current and publicly available rating methodology specific to ABS in the particular TALF asset sector (as defined in the TALF haircut schedule) for which the credit rating agency wishes its ratings to be considered for TALF. The Board believes that this is a prudent requirement because it ensures that the NRSRO has carefully thought about its approach to the TALF sector and that market participants are aware of the methodology and have had an opportunity to provide feedback to the NRSRO. The Board requests comment on whether a published methodology specific to asset-backed securities in the relevant TALF sector is an appropriate requirement for credit rating agencies in the TALF program.

In specifying that only transactions denominated in U.S. dollars would qualify under the experience requirement, the Board recognizes that rating opinions rely heavily upon expert judgment regarding conditions in the market within which the collateral is originated, the legal environment in which lenders and borrowers operate (both at origination and in the event of default), and complex transactional features that have resulted as a response to legal and institutional considerations specific to the United States.[19]

The Board considered both the number of transactions and period within which they must have occurred in determining an appropriate experience threshold for the rule. The Board believes that, while the learning curve for rating ABS is relatively steep, developing expertise in assessing the credit risk of an ABS transaction requires exposure to a diversity of transactional features within a given asset category. The types of collateral backing the securities within each of the TALF ABS sectors is relatively more homogenous than other types of ABS (such as CMBS), and therefore a threshold of ten transactions within approximately a three-year period (a little more than three transactions per year) appeared to be appropriate. Recognizing that ABS has evolved and rating agencies have turnover that can degrade institutional memory, a three-year window appeared to be an appropriate amount of time within which past expertise would be generally applicable in the present.

The Board requests comment generally on whether the experience approach set out in the proposed rule is appropriate. In addition, the Board invites comment on whether ten transactions within the approximately three-year window is appropriate to achieve the goals of the proposed rule. The Board also requests comment on whether the TALF asset sectors grouped together in the asset categories set out in the proposed rule are sufficiently similar that experience gained by issuing ratings with respect to one of the TALF sectors in a asset category can act as a substitute for experience gained by issuing ratings with respect to the other TALF sectors in the category. The Board also solicits comment on whether experience issuing credit ratings with respect to residential mortgage-backed securities should be treated as a substitute for experience in issuing credit ratings in the mortgage servicing advances TALF sector. Finally, the Board requests comment on whether the experience requirement is appropriately limited to transactions denominated in U.S. dollars for the reasons set out above.

The proposed rule also describes the process whereby the Federal Reserve Bank of New York would determine whether an NRSRO becomes eligible to have its ratings accepted for TALF ABS. Under the proposal, a credit rating agency that wishes to have its ratings accepted for TALF ABS transactions would send a written notice to the Credit, Investment, and Payment Risk group of the Federal Reserve Bank of New York and include the information addressing the factors listed above (*i.e.*, registered NRSRO for ABS, published methodology, and experience issuing ratings in the TALF category) with respect to each TALF asset sector for which it wishes its ratings to be accepted. The Federal Reserve Bank of New York will review the submission and notify the NRSRO within five business days as to whether any additional information is necessary. After review of all information necessary to determine the eligibility of an NRSRO pursuant to the factors in the proposed rule, the Federal Reserve Bank of New York will notify the NRSRO regarding its eligibility to have its ratings accepted at the TALF. The Board

[18] The proposed rule would permit an NRSRO to aggregate ratings on residential mortgage-backed securities (not currently included in the TALF) for purposes of meeting the ten-transaction requirement for Category 3 (mortgage servicing advance loans TALF sector).

[19] Such legal and institutional considerations include: legal standards for recognition of ''true sale'' of assets into a special purpose vehicle; legal standards for determining substantive consolidation and their impact on the rights of creditors and the management of ''clawback risk''; treatment of issuer bankruptcies across different regulators; and tax considerations.

requests comment on whether this process will be efficient for purposes of NRSROs wishing to have their ratings accepted at TALF and, in particular, whether the proposed time frames are appropriate.

Under the proposed rule, the Federal Reserve Bank of New York could, at any time, review the continued use of ratings from a credit rating agency in one or more TALF ABS sectors and determine that such credit ratings were no longer acceptable if the credit rating agency no longer met the eligibility requirements or conditions. The NRSRO would be notified by the Federal Reserve Bank of New York of its concerns.

Finally, the proposed rule sets out two conditions that the Federal Reserve Bank of New York must ensure are met by an NRSRO in order for an NRSRO to have its credit ratings accepted for TALF ABS. First, the NRSRO must agree to discuss with the Federal Reserve its views of the credit risk of any transaction within the TALF asset sector that has been submitted to TALF and upon which the NRSRO is being or has been consulted by the issuer. The Board recognizes that qualitative analysis and expert judgment constitutes much of the value provided to investors by credit rating agencies and therefore can assist the Federal Reserve Bank of New York in the risk assessment process. In addition, issuers typically consult with several NRSROs about a transaction, but request formal ratings from only a subset. The condition will enable the Federal Reserve to learn the views of NRSROs consulted but ultimately not hired by the issuer to provide a rating. Second, the NRSRO must agree to provide any information requested by the Federal Reserve regarding the credit rating agency's continued eligibility for its ratings to be accepted at TALF under the factors set out in the proposed rules. Submission of this information is necessary to ensure that NRSROs that are accepted for TALF continue to meet the eligibility requirements for TALF under the proposed rule. The Board solicits comment on whether these conditions are appropriate for NRSROs submitting credit ratings for purposes of TALF.

Additional risk assessment. Expanding the set of NRSROs accepted at TALF could increase credit risk in the program by increasing the risk of less rigorous credit rating standards or by increasing the risk of ''rating-shopping.'' To address this and to protect against TALF accepting excessive risk, the Federal Reserve Bank of New York will implement an additional risk assessment process for TALF ABS transactions.[20] The business reasons for the additional risk assessment process are independent of an expansion of the set of NRSROs accepted for purpose of TALF, but the Board believes that such a risk assessment could serve to mitigate any increase in credit risk to the U.S. taxpayer that could potentially result from an expansion of the set of NRSROs accepted at TALF.

In order for the Federal Reserve Bank of New York to be able to conduct the additional risk assessment in a timely manner, the TALF ABS terms and conditions include a provision that each issuer wishing to bring a TALF-eligible ABS transaction to market is required to provide to the Reserve Bank, at least three weeks prior to the subscription date of the transaction, a specific set of information, including, but not limited to, all data the issuer has provided to any NRSRO regarding the transaction. The Federal Reserve Bank of New York (along with the TALF collateral monitor) will use that information to assist in its risk assessment process. Issuers would also be required to submit an executed waiver or consent for each prospective TALF transaction that would authorize any NRSRO from which the issuer has sought preliminary ratings or any other form of feedback on the transaction to share its view of the credit quality of the transaction with the Federal Reserve Bank of New York. This provision is intended to mitigate the credit risk associated with ''rating shopping.''

III. Administrative Law Matters

A. Initial Regulatory Flexibility Analysis

Congress enacted the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities and the Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration (SBA), a small credit rating agency includes those institutions with $7 million in assets.[21] In accordance with section 3(a) of the RFA, the Board has reviewed the proposed rule. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared in accordance with the RFA.[22]

The Board encourages comments with respect to any aspect of this IRFA, including comments with respect to the number of small entities that may be affected by the proposed rule. Comments should specify the costs of compliance with the proposed rule and suggest alternatives that would accomplish the goals of the rules, including an estimate of any cost savings. Comments will be considered in determining whether a Final Regulatory Flexibility Analysis (FRFA) is required and will be placed in the same public file as comments on the proposed rule. Comments should be submitted to the Board at the addresses previously indicated. The Board will determine whether a FRFA is necessary after consideration of comments received during the public comment period.

1. Reasons for the Proposed Action

As discussed in the preamble above, the Board is proposing these rules to govern the Federal Reserve Bank of New York's determination of eligibility of NRSROs and their credit ratings for use in TALF ABS for which the Board has established a requirement for collateral to be rated by one or more NRSROs. The Board anticipates that implementation of the proposed rule will permit an expansion of the set of NRSROs accepted for TALF ABS, while maintaining appropriate protection against credit risk for the U.S. taxpayer in connection with TALF.

2. Objective

As discussed in the preamble above, the objective of the proposed rule is to govern the Federal Reserve Bank of New York's determinations of eligibility of particular credit ratings for TALF ABS to meet a Board requirement for collateral to be rated by one or more credit rating agencies. The Board intends for the proposed rules to provide for an objective, prudent, and reasonably consistent process for the Federal Reserve Bank of New York to determine the eligibility of NRSROs and their credit ratings for purposes of TALF ABS.

3. Legal Basis

Section 11 of the Federal Reserve Act (12 U.S.C. 248(j)) authorizes the Board

[20] The additional risk assessment is being adopted to clarify and make systematic the process whereby the Federal Reserve Bank of New York determines whether a bond is acceptable as TALF collateral based on the TALF terms and conditions. The Federal Reserve Bank of New York already uses an additional risk assessment process to determine whether CMBS is eligible for TALF. Satisfaction of the Federal Reserve Bank of New York's risk assessment process for ABS is being added to the TALF program terms and conditions.

[21] 13 CFR 121.201.

[22] 5 U.S.C. 603.

to exercise general supervision over the Reserve Banks. The TALF is authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343).

4. Small Entities Subject to the Rule

The proposed rule would establish criteria and conditions governing the acceptance of credit ratings by the Federal Reserve Bank of New York for use in TALF. The Board has prepared this IRFA in order to determine any impact on small entities in order to determine if there is a more cost-effective manner to accomplish the goals of the regulation.

At present, there are ten NRSROs registered with the SEC. Of those ten, the Board's review of publicly available information indicates that three NRSROs are not ''small entities'' under the RFA because their asset size (or the asset size of the NRSRO's parent company) is larger than the level set in the SBA regulation. The Board does not have access to appropriate non-public information on the asset sizes of the other NRSROs. For purposes of estimating costs for this IRFA, the Board will assume that all seven of the NRSROs would qualify as a ''small entity'' under the SBA regulations and could be indirectly impacted by the proposed rule.

5. Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the proposed rule would leverage off the SEC's existing NRSRO registration process. The Board believes that the proposed rule would not establish any reporting, recordkeeping, or other compliance requirements that are not already part of the NRSRO registration process or involve records that would not otherwise be created in the normal course of an NRSRO's business. Other than that which is normally required in the credit rating agency industry, special expertise should not be required to compile the information necessary to submit an eligibility request to the Federal Reserve Bank of New York for use of an NRSRO's credit ratings in TALF. An NRSRO that wishes for its credit ratings to be accepted for TALF would merely have to supply its methodology for rating the relevant TALF asset sector and document how it has the relevant experience issuing ratings in the TALF asset sector. Most NRSROs should have this information readily available in the normal and customary course of business. The Board estimates that the costs of compiling this information and submitting a notice to the Federal Reserve Bank of New York would be nominal.[23]

The conditions required for the Federal Reserve Bank of New York to accept ratings from an NRSRO similarly also should require minimal expenditure of resources. If requested by the Federal Reserve Bank of New York, an NRSRO may be requested to provide information on its continued eligibility under the proposed rule. Such information, however, would be in connection with the eligibility criteria in the proposed rule (such as continued NRSRO registration with the SEC) and should be readily available in the normal course of business. An NRSRO that has been consulted on a transaction in TALF may be requested by the Federal Reserve Bank of New York to discuss its views of the particular transaction, but it would not be required to conduct any more analysis than it had already conducted in the course of its business.

The Board requests comment on the description of burden for compliance with the proposed rule described above. Commenters should provide identify any potential burdens not discussed herein, as well as any actual or estimated cost data.

6. Duplicative, Overlapping, or Conflicting Federal Rules

The Board believes that there are no federal rules that duplicate, overlap, or conflict with the proposed rules.

7. Significant Alternatives

Pursuant to section 3(a) of the RFA, the Board must consider certain types of alternatives, including: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

The proposed rule does not establish any compliance or reporting requirements, including any performance or design standards. Because the proposed rule provides a process through which credit rating agencies can have their credit ratings accepted by the Federal Reserve Bank of New York for purposes of the TALF, the Board preliminarily believes that small entities that wish to apply should be covered by the rule. Like the NRSRO registration procedure, the process set out in the proposed rule for a credit rating agency to have its ratings accepted by the Federal Reserve Bank of New York is voluntary.

The Board considered two substantive alternatives to the approach adopted in the proposed rule. First, the Board considered accepting for TALF all NRSROs registered with the SEC without any further requirements. The Board determined that this was not prudent as the SEC's registration process did not address the quality of credit ratings issued by registered NRSROs. In addition, the SEC ABS registration does not sufficiently track the TALF asset sectors to ensure that NRSROs would have experience to rate ABS transactions of the type being pledged to TALF. The Board also considered an approach wherein the Federal Reserve Bank of New York would conduct an extensive review of the methodology and resources of each NRSRO applying to be accepted at TALF in order to determine whether the NRSRO had the expertise and facilities to issue ratings suitable for use in each of the TALF asset sectors for which the NRSRO wished its ratings to be accepted. The Board did not propose this approach because of the time and resources that such in-depth reviews would require of the Federal Reserve Bank of New York; these resources also would likely be diverted away from the risk assessment process discussed above. The time and resource issue would be significant as it would involve detailed analysis of multiple NRSROs across seven different TALF asset sectors. Even with unlimited resources, designing the in-depth reviews, including the role that subjective judgment would play, would require time to perfect. TALF is intended as a temporary facility and there is the risk that the in-depth reviews would take longer than the remaining life of TALF.

[23] As noted above, for purposes of this IRFA, the Board assumes that there are no more than seven NRSROs that would qualify as ''small entities. The Board estimates that compiling the necessary information and submitting a notice to the Federal Reserve Bank of New York should take no more than four hours per NRSRO. Total cost was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rate (30% Administrative or Junior Analyst @ $25, 10% Managerial or Technical @ $55, 10% Senior Management @ $100, and 50% Legal Counsel @ $144). Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2007, *http://www.bls.gov/news.release/ocwage.nr0.htm*. Occupations are defined using the BLS Occupational Classification System, *http://www.bls.gov/soc/*. The total costs are estimated at $2,660 if seven small entity NRSROs applied to have their ratings accepted for all TALF sectors.

8. Request for Comments

The Board encourages the submission of comments on any aspect of the IRFA. In addition, the Board specifically requests comments on the estimate of the number of NRSROs that would be considered ''small entities'' indirectly impacted by the proposed rule for purposes of the RFA. Commenters that disagree with these estimates are requested to describe in detail the basis for their conclusions and identify the sources of any industry statistics they relied on to reach their conclusions. The Board also requests comment on any alternatives to the approach adopted in the proposed rule that would accomplish the goals of the proposed rule in a more cost-effective manner.

B. Paperwork Reduction Act Analysis

Office of Management and Budget (OMB) regulations implementing the Paperwork Reduction Act (PRA) state that agencies must submit ''collections of information'' contained in proposed rules published for public comment in the **Federal Register** in accordance with OMB regulations.[24] OMB regulations define a ''collection of information'' as obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency ''by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' [25]

In accordance with the PRA, the Board reviewed the proposed rule under the authority delegated to the Board by OMB. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number, which will be assigned. The collections of information that are proposed to be revised by this rulemaking are found in subsection 201.3(e)(1)(ii) and (iii) of the proposed rule (to be codified at 12 CFR 201.3(e)(1)(ii) and (iii)). This information is required to permit the Federal Reserve Bank of New York to determine eligibility of credit rating agencies to have their ratings accepted in TALF in accordance with Board regulations. The respondents are NRSROs, which may be small entities. There is no record retention requirement in the proposed rule.

The estimated burden per response is two hours. It is estimated that there will be ten respondents providing information on a one-time basis. Therefore, the total amount of annual burden is estimated to be 20 hours.

The proposed rule in this notice implements a threshold requirement of registration with the SEC as an NRSRO. As noted above, registration with the SEC as an NRSRO requires, among other things, the completion of the SEC Form NRSRO. This form includes exhibits regarding a general description of the procedures and methodologies used by the credit rating agency to determine credit ratings for the classes of assets for which the credit rating agency is seeking registration. The SEC, however, already budgets for paperwork burden connected with its NRSRO registration program. Accordingly, it would be redundant for the Board to budget additional paperwork burden for the SEC's registration process.

In addition to NRSRO registration, the proposed rule would require the NRSRO to submit to the Federal Reserve Bank of New York additional information to demonstrate that it has sufficient expertise and experience to provide credit ratings that would assist in the Reserve Bank's risk assessment on the most senior classes of newly issued asset-backed securities in a particular TALF asset sector. The additional requirements includes an NRSRO (i) having a current and publicly available rating methodology specific to asset-backed securities in the particular TALF asset sector for which it wishes its ratings to be accepted; and (ii) having made public or made available to a paying subscriber base, since September 30, 2006, at least ten ratings on U.S. dollar-denominated transactions within a particular group of complementary ABS categories as set out in the proposed rule. These requirements are found in subsection 201.3(e)(1)(ii) and (iii) of the proposed rule (to be codified at 12 CFR 201.3(e)(1)(ii) and (iii)).

The Board believes that each of these requirements should require minimal effort on the part of an NRSRO. Most NRSROs that issue credit ratings for a type of asset make public their methodology. In addition, it should be a relatively simple matter for an NRSRO to certify that it has issued ten ratings in the appropriate asset category by enclosing a list containing the CUSIP number and original and current rating of the most senior tranche from at least ten transactions it has rated within the appropriate asset category and timeframe.

Comments are invited regarding (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

C. Plain Language

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

IV. Statutory Authority

Pursuant to the authority set out in the Federal Reserve Act and particularly section 11 (codified at 12 U.S.C. 248(j)), the Board proposes the rules set out below.

V. Text of Proposed Rule

List of Subjects in 12 CFR Part 201

Credit.

Authority and Issuance

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

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

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

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

2. In § 201.3, paragraph (e) is added to read as follows:

[24] 5 CFR 1320.11. The PRA is codified at 44 U.S.C. 3506 *et seq.*

[25] 5 CFR 1320.11(c).

§ 201.3 Extensions of credit generally.

* * * * *

(e) *Credit ratings for Term Asset-Backed Securities Loan Facility (TALF).*

(1) If the Board requires that a TALF advance, discount, or other extension of credit be against collateral (other than commercial mortgage-backed securities) that is rated by one or more credit rating agencies, the Federal Reserve Bank of New York may accept the ratings of any credit rating agency that:

(i) Is registered with the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization for issuers of asset-backed securities;

(ii) Has a current and publicly available rating methodology specific to asset-backed securities in the particular TALF asset sector (as defined in the TALF haircut schedule) for which it wishes its ratings to be accepted; and

(iii) Demonstrates that it has sufficient experience to provide credit ratings that would assist in the Federal Reserve Bank of New York's risk assessment on the most senior classes of newly issued asset-backed securities in the particular TALF asset sector by having made public or made available to a paying subscriber base, since September 30, 2006, ratings on at least ten transactions denominated in U.S. dollars within the particular category to which the particular TALF asset sector is assigned as set out below—

(A) Category 1—auto, floorplan, and equipment TALF sectors;

(B) Category 2—credit card and insurance premium finance TALF sectors;

(C) Category 3—mortgage servicing advances TALF sector; and

(D) Category 4—student loans TALF sector.

(2) For purposes of the requirement in paragraph (e)(1)(iii) of this section, ratings on residential mortgage-backed securities may be included in Category 3 (servicer advances).

(3) The Federal Reserve Bank of New York may in its discretion review at any time the eligibility of a credit rating agency to rate one or more types of assets being offered as collateral.

(4) *Process.*

(i) Credit rating agencies that wish to have their ratings accepted for TALF transactions should send a written notice to the Credit, Investment, and Payment Risk group of the Federal Reserve Bank of New York including information on the factors listed in paragraph (e)(1) of this section with respect to each TALF asset sector for which they wish their ratings to be accepted.

(ii) The Federal Reserve Bank of New York will notify the submitter within 5 business days of receipt of a submission whether additional information needs to be submitted.

(iii) Within 5 business days of receipt of all necessary information to evaluate a credit rating agency pursuant to the factors set out in paragraph (e)(1) of this section, the Federal Reserve Bank of New York will notify the credit rating agency regarding its eligibility.

(5) *Conditions.* The Federal Reserve Bank of New York may accept credit ratings under this subsection only from a credit rating agency that agrees to—

(i) Discuss with the Federal Reserve its views of the credit risk of any transaction within the TALF asset sector that has been submitted to TALF and upon which the credit rating agency is being or has been consulted by the issuer; and

(ii) Provide any information requested by the Federal Reserve regarding the credit rating agency's continued eligibility under paragraph (e)(1) of this section.

By the Board of Governors of the Federal Reserve System, October 5, 2009.

Jennifer J. Johnson,

Secretary.

[FR Doc. E9–24252 Filed 10–7–09; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM414 Special Conditions No. 25–09–10–SC]

Special Conditions: Boeing Model 747–8/–8F Series Airplanes; Design Roll Maneuver Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747–8/–8F airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include an electronic flight control system that provides roll control of the airplane through pilot inputs to the flight computers. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing 747–8/–8F airplanes.

DATES: Comments must be received on or before November 9, 2009.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM414, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM414. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We