



April 16, 2020

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Via email: regs.comments@federalreserve.gov

Subject: Comment in Support of Restoring Transparency at the Federal Reserve During the COVID-19 Pandemic

Dear Chairman Powell:

The Project On Government Oversight (POGO) submits the following comment in support of restoring some transparency requirements for the Federal Reserve that have been suspended during the COVID-19 pandemic. Recent changes meant to provide the Federal Reserve with flexibility are too broad, and we urge the Federal Reserve to continue following the record-keeping requirements per the Government in the Sunshine Act.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Section 4009 of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) exempted the Federal Reserve from key provisions of the Government in the Sunshine Act should the chairman determine there were “unusual and exigent circumstances.”¹ The landmark Government in the Sunshine Act governs public notice and record-keeping requirements for meetings of federal agencies. These transparency rules allow the public to know the workings of the federal government.

During the 2008 financial crisis, the Federal Reserve was unable to act quickly because the law required advance public notice before meetings took place. This requirement kicked in when at least three out of the five board members met. As then-Vice Chairman Donald Kohn described, if the board wanted to discuss a matter immediately, members were required to get together in

¹ Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. Law No. 116-136, 198. Sec. 4009.
<https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

small groups and cycle in and out so others could participate.² This was an inefficient and ineffective process as the Federal Reserve tried to save the economy from utter collapse.

POGO agrees that as a crisis rapidly evolves, agencies need the flexibility to be able to meet without having to wait. Although the Federal Reserve has procedures in place to allow meetings to take place on an expedited timeline, usually two business days,³ one can see how this could be too long during an unfolding crisis. Section 4009 allows the members of the Federal Reserve to meet without public notice.

While increased flexibility may be needed for public notice requirements, another flexibility measure in Section 4009 is not: the exemption from the requirement to keep public records of the meeting. Section 4009 only requires votes “and the reasons for such votes” to be recorded; staff memoranda, meeting minutes, transcripts, and recordings would no longer have to be kept. Without those records, there will be no way for the public to know what was discussed. If an emergency requires the Federal Reserve to meet in secret, notwithstanding the exemptions for open meetings outlined in the Government in the Sunshine Act,⁴ the public should at the very least know why the Federal Reserve met and what they discussed.

In recent weeks, the Federal Reserve has taken unprecedented actions that are worth trillions of dollars to stabilize the economy.⁵ The Paycheck Protection Program Liquidity Facility, the Municipal Liquidity Facility, and the Main Street Lending Program will all help support the nation’s financial institutions, small and medium sized businesses, and state and local municipalities.⁶ Given the trillions of new dollars under the Federal Reserve’s purview, the public has a vested interest in knowing why the Federal Reserve is meeting, and what they are discussing. Although the Federal Reserve is now exempted from transparency laws, the Federal Reserve should continue to keep records and make them accessible to the public if it meets under “unusual and exigent circumstances.”

Thank you for your consideration of this comment. Should you have any questions, please contact Tim Stretton at (202) 347-1122 or at tstretton@pogo.org.

Sincerely,

Danielle Brian
Executive Director

² Maggie Severns and Victoria Guida, “Recovery law allows Fed to rope off public as it spends billions,” *Politico*, April 9, 2020. <https://www.politico.com/news/2020/04/09/coronavirus-recovery-bill-fed-records-176371>

³ “Government in the Sunshine Meeting Memorandum,” Board of Governors of the Federal Reserve System, June 27, 2013. <https://www.federalreserve.gov/aboutthefed/boardmeetings/sunshine.htm>

⁴ 5 U.S. Code § 552b(c) (2020). <https://www.law.cornell.edu/uscode/text/5/552b>

⁵ Jeff Cox, “The Fed is providing way more help for the markets now than it did during the financial crisis,” CNBC, March 24, 2020. <https://www.cnbc.com/2020/03/23/fed-is-helping-the-markets-more-than-it-did-during-the-financial-crisis.html>

⁶ Board of Governors of the Federal Reserve System, “Press Release: Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy,” April 9, 2020. <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>