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# What Is in the Federal Reserve's Doomsday Book?

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**T**he Doomsday Book is a collection of documents and memoranda compiled by the legal department of the Federal Reserve Bank of New York (FRBNY). The book focuses on financial crises that have prompted an operational response such as emergency loans and payments. The book includes background material that is useful in responding to a financial crisis and can help central bankers plan for emergencies. Further, it is meant to save time during the crisis.

Contents of the Doomsday Book have not been available to the public. However, I obtained access to the book through the FRBNY's freedom of information policy. This paper discloses the book's contents, showing that there has been a long and continuous disagreement between the FRBNY's legal department and the board of governors of the Federal Reserve System with respect to the interpretation of the Fed's incidental powers.

## Lack of Transparency about the Contents of the Doomsday Book

The book is intended to help the FRBNY's lawyers assist their clients in emergency management, as the FRBNY is considered the central bank's "firefighting department" during a financial crisis. There is no comparable "doomsday book" in

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Washington, D.C., or any other regional Reserve Bank. The book is maintained in paper and digital disk versions and is revised periodically. The editor (the FRBNY's general counsel) is the gatekeeper for all additions and revisions to the book.

Although the Doomsday Book has existed in various forms since the early 1990s, the public first heard about it in 2014 during the *Starr International Company, Inc. v. United States* trial.<sup>1</sup> In that trial, a class of former equity investors in the American International Group (AIG) sued the government over the terms of its bailout of AIG. The investors claimed that some of the memoranda in the Doomsday Book showed that the Fed broke its own rules and ignored the legal opinions in the book by taking a 79.9 percent equity stake in AIG in the fall of 2008. Further, the plaintiffs argued that the Fed lacked the authority to take an equity stake in the company.

During the trial, the Fed tried hard to keep the Doomsday Book under the court seal so that it could not be released to the public, but portions of the book were leaked in testimonies, as the book was considered evidence in the trial. John S. Kiernan, the FRBNY's lawyer, told the U.S. Court of Federal Claims that "of the tens of thousands of documents that we have produced in this case, the Federal Reserve Bank of New York has sought to retain confidentiality because of the internal sensitivity of only this one." He told the judge that the book was "confidential, proprietary and important" (Appelbaum 2015).

The book has been used for its intended purposes on many occasions. For instance, Timothy F. Geithner, who led the FRBNY during the Great Recession of 2008, indicated in the trial that he kept the Doomsday Book in his office. During his testimony, he stated, "We did occasionally go back and consult it as things were eroding around us. . . . It was a reference material that described precedent and authority" (Paletta 2014).

In his 2014 memoir, *Stress Test: Reflections on Financial Crises*, Geithner acknowledged the Doomsday Book's help in saving Bear Stearns from bankruptcy for several vital days when the FRBNY lent money to J. P. Morgan Chase, which then lent the money to Bear Stearns. He wrote in his memoir that the idea came from Thomas C. Baxter Jr., "taking a page from the Doomsday Book, the binder full of information about the New York Fed's emergency powers that he had helped write years earlier" (Geithner 2014, 151).

During an interview, Baxter, the FRBNY's general counsel during the recession of 2008, described how the book could be helpful:

Whether you call it a "doomsday book" or just a crisis playbook, knowing what types of interventions have been used, and could be used, in a crisis before the crisis happens is a very useful resource. Before the 2007 crisis,

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1. The opinion rendered by the U.S. Court of Appeals can be found at [https://www.wsj.com/public/resources/documents/DoomsdayBook.pdf?mod=article\\_inline](https://www.wsj.com/public/resources/documents/DoomsdayBook.pdf?mod=article_inline).

we at the Fed had thought through how we would respond to various scenarios and had defined disciplines for implementing such responses. We drew from our experiences after the 1987 market crash, then the Long-Term Capital Management in 1998 near-failure, and the September 11th turmoil, when the stock market was closed for days. We memorialized the actions we took and then we went through a series of “war games” to simulate what we would do in certain situations. I think this type of exercise is a really useful thing for people in central banking who are charged with the responsibility for maintaining financial stability. It’s important to think through the what-ifs, put them down on paper, and try them out, before you get yourself into a situation where you have to respond. (Buchholtz and Wiggins 2019, 202)

Disclosing the Doomsday Book’s contents and details could contribute to the Federal Reserve System’s progress toward transparency. Alan S. Blinder (2004), who served as the Fed’s vice chairman from 1994 to 1996, suggested that one of the greatest revolutions in central banking during the previous fifteen years was the shift toward transparency. Similarly, Ben S. Bernanke (2010), then chairman of the Fed, said the following about the central bank’s transparency during a speech: “Central bank independence is essential, but, as I have noted, it cannot be unconditional. Democratic principles demand that, as an agent of the government, a central bank must be accountable in the pursuit of its mandated goals, responsive to the public and its elected representatives, and transparent in its policies.”

A disclosure of the book’s contents and details can help the public and legislators learn what the Fed thinks about the limits of its powers to avert a financial crisis. If the public and legislators find the Fed’s legal interpretations of certain laws indefensible, they can pressure it to accept relatively strict interpretations of those laws. The public can also exert pressure on Congress to revise laws, as it did with the Dodd-Frank Act following public outrage over FRBNY’s actions involving Bear Stearns and AIG. This could be one benefit of transparency, while another benefit of making the book available publicly is that it includes a wealth of information. Not only is it a blueprint for fighting financial crises, but it also includes archives and an oral history of the Fed employees during various crisis periods. These are primary source materials that are likely to be of research interest. Economists, historians, and lawyers whose area of research is the Fed and central banking can benefit greatly from this never before unveiled resource.

On May 23, 2022, I requested access to the Doomsday Book under the FRBNY’s freedom of information policy.<sup>2</sup> The FRBNY’s website states that the bank does not fall under the category of an agency as defined by the Freedom of Information Act (FOIA). Consequently, it is not bound by FOIA’s provisions. It still complies with

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2. The original Doomsday Book is available at [https://www.wsj.com/public/resources/documents/DoomsdayBook.pdf?mod=article\\_inline](https://www.wsj.com/public/resources/documents/DoomsdayBook.pdf?mod=article_inline).

the act's spirit when responding to such types of requests, however.<sup>3</sup> The FRBNY provided me with versions 4.1 (2006) and 5.0 (2012) of the book.

There are five versions of the Doomsday Book, which has existed in various forms since the early 1990s. The revision history goes back to 1997. In this paper, I focus primarily on the latest version (5.0), as it was updated heavily after the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

## Contents of the Doomsday Book

The first part of the book contains pre-2008 legal documents, such as emergency credit agreements and emergency payment agreements. The second consists of post-2008 legal documents and was created in response to the 2008 recession. It includes every facility that the FRBNY employed to fight the recession. The third contains the most interesting section, Powers Opinions. Powers Opinions discusses the Federal Reserve Banks' authority to provide various forms of emergency services and facilities that it is not in the practice of offering under normal conditions. Further, Powers Opinions discusses the legality of exercising such emergency powers and thus answers the question, "Can the FRBNY do this?" It is worth noting that Powers Opinions does not address the legal criteria for determining a situation to be a financial emergency. The book does not provide a clear definition of the degree of abnormality required to classify circumstances as exigent. This lack of specificity may be intentional, allowing the FRBNY the flexibility to designate any situation as abnormal.

Later in this article, I provide a comprehensive analysis of the areas where the perspective on the Fed's authority in the Doomsday Book diverges from the views held by the Federal Reserve board of governors and possibly exceeds the standards set by Congress. Within this section, I explore how differing interpretations of the legal authority of the Fed between the FRBNY and the board shape their respective perceptions regarding the extent of the Fed's authority in financial crises. I demonstrate how these differing perspectives can lead to disagreements on which actions are the most suitable to address such crises. Notably, I highlight the proactive approach typically adopted by the FRBNY during emergencies, while the board tends to exercise greater caution. Additionally, I illustrate how the board, despite initial reluctance, eventually yields to the legal arguments presented by the FRBNY regarding the Fed's authority in financial crises. This section also includes compelling examples that showcase how the FRBNY establishes the legitimacy of the Fed's authority without necessitating explicit approval from Congress.

In this section of the paper, I summarize the contents of the Doomsday Book's three volumes. The next section offers a discussion on the legal authority of the Fed. The final section draws conclusions.

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3. The FRBNY's procedures for accepting FOIA requests can be found at <https://www.newyorkfed.org/aboutthefed/freedom-of-information-requests>.

### *Volume 1: Pre-2008 Legal Documents*

Volume 1 consists of pre-2008 legal documents, such as emergency credit agreements and emergency payment agreements, documents that either the FRBNY created or were taken from public sources. Some of the agreements are copies of model agreements from public sources such as the International Swaps and Derivatives Association, the Bond Market Association (later merged with the Securities Industry Association to form the Securities Industry and Financial Markets Association), and the New York Fed–sponsored Financial Market Lawyers Group.

Volume 1 includes eight main sections:

- Emergency Credit Agreements
- Emergency Payment Agreements
- Master Agreements
- Nonrecourse Loan Agreements
- Closing of a Branch or Agency
- Ancillary Agreements
- Public Statements
- Litigation

The Emergency Credit Agreements section has seven subsections:

- Section 13(3) Lending Agreements with Recourse
- International Swap Agreements
- Section 10B Lending Agreement
- Section 13(13) Lending Agreement
- Repo Agreement
- Sale of Foreign Exchange (FX) Book
- Federal Deposit Insurance Corporation (FDIC) Indemnity Agreement

The Section 13(3) Lending Agreements with Recourse subsection<sup>4</sup> covers long-form and short-form agreements. The FRBNY considers that section 13(3) credit can be extended to “individuals, partnerships, and corporations.” The FRBNY believes that section 13(3) is the only means through which Discount Window credit can be

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4. Section 13(3) of the Federal Reserve Act grants the Federal Reserve the authority to offer emergency loans to nonbank entities in exceptional and urgent circumstances. The extent to which section 13(3) can be applied has been subject to ongoing debate. During the Great Recession, the Fed utilized section 13(3) to provide emergency assistance to various financial institutions, including investment banks and insurance companies. The events of the Great Recession sparked concerns about section 13(3) granting excessive power to the Fed, potentially leading to the bailout of failing financial institutions. To address these concerns, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended section 13(3). Under the Dodd-Frank Act, the Federal Reserve was mandated to seek approval from the Secretary of the Treasury before extending loans to nondepository institutions. Furthermore, the act imposed limits on the amount of money that the Federal Reserve could lend to any individual institution. Additionally, the act demanded increased transparency from the Federal Reserve regarding its lending activities.

extended to nonbanks without limitations on the type of collateral and, thus, the residual emergency lending authority.

The International Swap Agreements subsection consists of four agreements: foreign central bank swaps, the dollar-pound swap agreement; the U.S./Canadian dollar swap agreement, and the medium-term exchange stabilization agreement.

The FRBNY considers that section 14 of the Federal Reserve Act empowers Reserve Banks to purchase and sell “cable transfers . . . in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals.” The FRBNY believes that as cable transfers include forward and spot foreign exchange transactions, that section authorizes “swap agreements” with foreign central banks.

The Foreign Central Bank Swaps package is a folder in which many of the agreements were drafted in 2011. The agreements are all similar: the central bank counterparties are the European Central Bank (ECB) and the central banks (or monetary authorities) of Australia, Brazil, Canada, Denmark, England, Japan, Korea, Mexico, New Zealand, Norway, Singapore, Sweden, and Switzerland. There are three older sample agreements drafted before the package. Two are the dollar-pound swap agreement and U.S./Canadian dollar swap agreement with the Bank of England and Bank of Canada that emerged from the September 11 operation event. The medium-term exchange stabilization agreement was a 1995 swap with Mexican entities, while the dollar-pound swap and U.S./Canadian dollar swap were straight liquidity deals among central banks. The medium-term exchange stabilization swap involved sovereign credit and used the central banks as a fiscal agent.

The Operating Circular subsection in Section 10B Lending Agreement consists of 1998 operating circular 10 and 2006 operating circular 10. Operating circular 10 contains the writing needed for any type of secured lending and is a template for lending needs that other documents in the book do not satisfy. The Doomsday Book contains both the 1998 and 2006 versions of operation circular 10, as some banks (small ones) have not yet adopted the 2006 version.

In the Section 13(13) Lending Agreement subsection, the FRBNY states that the section 13(13) lending authority can be useful for nonbank government securities dealers. The FRBNY believes that Federal Reserve Banks are authorized to accept ineligible collateral to supplement eligible collateral.<sup>5</sup>

The Repo Agreement subsection includes a revised version of the Public Securities Association (PSA) master repurchase agreement from September 1996. The FRBNY argues that although there is little doubt about the FRBNY’s authority to enter into such an agreement, a particular transaction’s source of authority may be unclear. The FRBNY believes that a purchase of securities followed by a resale can be authorized by section 10B, 13(13), or 14 of the Federal Reserve Act. The FRBNY considers that the sale of securities followed by a repurchase is authorized

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5. See *Lucas v. Federal Reserve Bank of Richmond*, 59 F.2d 617 (4th Cir. 1932).

under section 14. However, it believes that such a transaction may also be characterized as securities lending against cash collateral, likely authorized by sections 10B or 13(13).

The Sales of FX Book subsection contains an agreement that was derived from the Franklin agreement of 1974 and modified in 1991 in contemplation of the Bank of New England insolvency.

The FDIC Indemnity Agreement subsection includes an agreement that streamlines the insolvency process. The agreement allows the FDIC to pay up to the fair market value of a Reserve Bank's collateral to the bank in exchange for a release of collateral. As part of the payment, the Reserve Bank has a right of indemnification for future losses up to the difference between the fair market value and the FDIC's previous payments to the bank. This agreement simplifies the interactions between the FDIC and the Reserve Bank if the latter is overcollateralized securely.

Volume 1's second main section includes Emergency Payment Agreements and has two subsections:

- The Section 13(3) Account Agreement
- FX Delivery versus Payment (DVP) Agreement

The Section 13(3) Account Agreement was prepared in March 1999. If the FRBNY extends emergency credit to a nonbank, the latter can have a direct account relationship with the FRBNY using that agreement.

The FX DVP Agreement is an emergency agreement that envisions one party with doubtful credit, a group of counterparties of the party, and a discrete number of currencies. In the agreement, the FRBNY would work only with a discrete number of participants who would serve as principals in the transaction and affect the counterparties' trades with the party with doubtful credit. The FRBNY serves as the escrow agent and interposes itself between the participants and the party with doubtful credit. As the escrow agent, the FRBNY would not release funds to either party until both parties have funded it.

The third main section of volume 1 is Master Agreements, which trade associations and the FRBNY-sponsored committee disseminate openly. Master Agreements includes nine subsections:

- The Bond Market Association (BMA) Master Repurchase Agreement
- FX Committee International Currency Options Market Master Agreement (ICOM)
- FX Committee International Foreign Exchange and Options Master Agreement (FEOMA)
- Barrier Option Confirmations for FEOMA and ICOM
- FX Committee's International Foreign Exchange Master Agreement (IFEMA)
- International Swaps and Derivatives Association (ISDA) Documentation
- FRBNY Master Open Market Agreement

- BMA Master Securities Loan Agreement
- FRBNY Global Master Repurchase

Volume 1's fourth main section contains Nonrecourse Loan Agreements and is intended for asset purchases.

The fifth main section of volume 1 is Closing of a Branch or Agency and has two subsections:

- Custody Agreement
- Deposit and Pledge Agreement

The documents in that section derived from the closing of the Daiwa Bank Ltd. branch in February 1996. The FRBNY considers that contingent liabilities are a key problem when closing a foreign branch or agency, and the documents address some of those concerns.

Volume 1's sixth main section is Ancillary Agreements and includes six subsections:

- Blank Uniform Commercial Code (UCC)-1
- Promissory Note
- Intangible Collateral Agreements
- Guarantees
- Treasury Fiscal Agent Letter of Indemnity
- Buddy Bank Materials

The Promissory Note subsection includes a simple promissory note for possible use in section 10B or 13(3) lending.

The Intangible Collateral Agreements subsection includes documents that seek to grant a perfected blanket-style security interest in all intangibles, such as accounts receivable, qualified financial contracts (swaps, forwards, FX, other derivatives), loans, securities, and bank accounts.

The Guarantee Agreements subsection consists of the following four components:

- Model Parent Guarantee
- Operating Circular (OC)-10 Letter of Agreement to Secure Guarantee
- Model Subsidiary Guarantee
- User's Guide to Guarantees

The model parental guarantee mitigates risks that interaffiliate transactions pose. That guarantee consists of a conditional promise to pay, coupled with a security agreement on parental assets that supports the guarantee. The OC-10 letter of agreement to secure a guarantee secures the model guarantee with the guarantor's assets. The model subsidiary guarantee serves the same function as the model parent guarantee except that it applies to a bank's subsidiaries. The user's guide to guarantees is retained in the agreement section, although it is a memorandum.

The Treasury Fiscal Agent Letter of Indemnity subsection is the letter that derives from a late 1997 letter from Treasury indemnifying the FRBNY for its fiscal



agency work with respect to Nazi gold claims. It is kept in the Domesday Book in case the indemnity language may be useful in future emergency fiscal agency functions.

The Buddy Bank Materials subsection includes four documents. When a Reserve Bank becomes unable to extend discount window credit, the buddy bank documentation ensures that other Reserve Banks can serve as agents for the incapacitated Reserve Bank.

The seventh main section of volume I is Public Statements, with six subsections:

- Foreign Exchange Committee, Y2K: Best Practice in the Foreign Exchange Market
- New York Bank Holiday
- Section 13(3) Resolution by Board of Governors
- Emergency Lending Resolution by Board of Directors
- Book-Entry Securities Resolution
- Request for Section 13(3) Authority

The Foreign Exchange Committee, Y2K document was prepared to address year 2000 (Y2K) problems in operational failures that might trigger closeout provisions in foreign exchange contracts.

The New York Bank Holiday proclamation was drafted originally in August 1990 in response to the Con Ed power failure.

The Section 13(3) Resolution by Board of Governors was taken from the original November 1988 section 13(3) draft lending agreement, which was modified slightly in 1997 and again in 2004. The FRBNY states that the board need not disclose such a resolution publicly.

The provenance of the Emergency Lending Resolution by Board of Directors is the same as that of the 13(3) resolution. The determination in that resolution is required by Regulation A for emergency lending under either sections 13(3) or 13(13) of the Federal Reserve Act.<sup>6</sup> The language of the document is drafted for section 13(3) lending.

The Book-Entry Securities Resolution was drafted in 1992 in response to the Salomon crisis. The secretary of the treasury's authority to permit the FRBNY to create a securities account for a nonbank is pursuant to section 15 of the Federal Reserve Act. The resolution was revised in 1997 to clarify and strengthen the secretary of the treasury's authority.

The Request for Section 13(3) Authority document was taken from the Federal Reserve Bank of Kansas City.

Volume 1's seventh main section is titled Litigation. The memorandum of law in that section is designed for one problem, an intraday attachment of the Clearing House Interbank Payments Systems (CHIPS) account with the FRBNY.

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6. See the Code of Federal Regulations Title 12, section 201.3(d), Extensions of Credit Generally, Indirect Credit for Others (1997).

## *Volume 2: Post-2008 Legal Documents*

Volume 2 of the Doomsday Book consists of post-2008 legal documents. Volume 2 was created in response to the 2008 recession and includes all facilities that the FRBNY employed to fight the recession except the Term Auction Facility (TAF).

Volume 2 includes eleven main sections:

- Maiden Lane I
- Maiden Lane II
- Maiden Lane III
- AIG Lending Agreement
- Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF)
- Commercial Paper Funding Facility (CPFF)
- International Lease Finance Corporation (ILFC)
- Money Market Investor Funding Facility (MMIFF)
- Primary Dealer Credit Facility (PDCF)
- Term Asset-Backed Securities Loan (TALF)
- Term Securities Lending Facility (TSLF)

With one exception, all of these documents take the form of folders, each of which contains many separate documents.

Volume 2's first section is Maiden Lane I. The documentation was prepared on the FRBNY's behalf. The parties (and capacities) included the FRBNY (controlling party, tranche A lender), Maiden Lane LLC (borrower), J. P. Morgan Chase & Co. (tranche B lender), State Street Bank & Trust Co. (collateral administrator), and BlackRock Financial Management Inc. (investment manager).

The second section of volume 2 is Maiden Lane II, the documentation in which the FRBNY prepared. That transaction was comparable in principle and structure to that of Maiden Lane I.

Volume 2's third section is Maiden Lane III, the documentation in which was prepared on the FRBNY's behalf. The LLC bought reference assets from banks upon payment of the notional value. Then, the banks released AIG's derivatives subsidiary from the associated credit default swaps, which hedged the banks from the reference assets' downside risk. AIG compensated the FRBNY with the LLC's subordinated funding, and AIG and the FRBNY divided the LLC's residual share after asset liquidation.

The fourth section of volume 2, AIG Lending Agreement, was prepared on the FRBNY's behalf as well. The agreement was designed as a secured loan from the FRBNY to AIG.

The fifth section of volume 2 is about the AMLF. The Doomsday Book does not include its documentation, which the Federal Reserve Bank of Boston prepared.

Volume 2's sixth section covers the CPFF, the documentation of which was prepared on the FRBNY's behalf. The CPFF was a FRBNY-funded LLC that bought commercial paper directly from issuers through commercial paper dealers at a spread of 200 basis points to the overnight index swap rate for unsecured commercial paper and 300 basis points for asset-backed commercial paper. The 200-point spread was divided into a 100-point spread for credit risk and an additional 100 points that could be waived if the issuer offered sufficiently improved credit.<sup>7</sup>

The seventh section of volume 2 covers the ILFC, the documentation of which was prepared on the FRBNY's behalf. It is associated closely with the AIG lending agreement.

The eighth section of volume 2 discusses the MMIFF, which was created as a liquidity backstop for money market mutual funds.

Volume 2's ninth section covers the PDCE, for which the documentation was prepared in-house by the FRBNY's legal department and the clearing banks. It is a tri-party repo under section 13(3) authority in which the FRBNY acts as lender, the primary dealers as borrowers, and the clearing banks as tri-party intermediaries.

The tenth section of volume 2 covers the TALF, the documentation for which several law firms prepared on the FRBNY's behalf. The TALF is a nonrecourse financing structure for asset-backed securities to provide credit support and liquidity to this asset class.

The eleventh subsection of volume 2 discusses the TSLF, the documentation for which the FRBNY's legal department prepared in-house. The program lent Treasury general collateral against mortgage securities, and was a repo program that accepted mortgage securities as collateral.<sup>8</sup>

### *Volume 3: Legal Memoranda*

Volume 3 of the Doomsday Book consists of legal memoranda and contains seven main sections:

- Powers Opinions
- History and Policy
- Operational Issues
- Bankruptcy and Insolvency Law Issues
- International Issues
- Regulatory and Enforcement Issues
- Historical Collection of Primary Documents

The legal memoranda in volume 3 serve different purposes. For instance, the Powers Opinions memoranda are legal opinions of the Federal Reserve's powers that

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7. To learn more about the facility, see <https://www.newyorkfed.org/markets/cpff.html>.

8. To learn more about the TSLF, see <https://www.newyorkfed.org/markets/tslf.html>.

present a framework of legal advice to central bankers acting in emergency situations so that they can avoid acting outside the scope of the Federal Reserve's legal powers in emergency situations. Other memoranda in volume 3 clarify specific agreements and put them in historical context. Some memoranda are background reading for central bankers.

Volume 3's first main section is Powers Opinions. This section is perhaps the most interesting part of the Doomsday Book. Powers Opinions discusses the Federal Reserve Banks' authority to provide various types of emergency services and facilities that they are not in the practice of offering under normal conditions, and it discusses the legality of exercising those powers.

The Powers Opinions section includes eight subsections:

- Sections 10B, 13(3) and 13(13) Authority
- Securities Lending, Repo and Fed Funds
- Loan Restructuring, Guarantees and Equity Kickers
- Asset Purchase Authority
- Gold Lending and Foreign Exchange Powers
- Access to Federal Reserve Services
- Borrowing and Miscellaneous
- Statutory Interpretation Techniques

The Sections 10B, 13(3), and 13(13) Authority subsection has twelve memoranda:

- Designated Financial Market Utility (DFMU) Lending Authority: Repo and FX Swap
- The Authority of the Federal Reserve to Provide a Primary Dealer Credit Facility
- Section 13(3) Lending Authority to Foreign Central Banks
- Section 13(3) Lending Authority Disclosure Requirements
- Ability of Reserve Banks to Lend to Foreign Central Banks
- Section 10B and 13(3) of the Federal Reserve Act
- Authority of the Federal Reserve to lend to Orange County
- Federal Deposit Insurance Corporation Improvement Act (FDICIA) Section 142–Discount Window Operations
- Federal Reserve Discount Window Authority to Lend to Broker/Dealers
- Emergency Liquidity Assistance to a Nonbank
- Eligibility for Discount of Mortgage Company Notes
- Advances and Discounts by Federal Reserve Banks

The Securities Lending, Repo, and Fed Funds subsection consists of twelve memoranda:

- Authority to Pay Interest to Primary Dealers on Cash Balances Held in Margin Accounts
- Authority for the Federal Reserve to Purchase Fed Funds

- Power of Reserve Banks to Purchase Fed Funds
- Authority to Engage in Securities Lending Activities with Primary Dealers
- Modification to Securities Lending Facility
- Foreign Securities Lending
- Exchange of Maturing Securities
- Statutory Analysis: Overnight Cash Balance at Domestic Triparty Repo Custodian
- Domestic Tri-party Repo
- Authority to Engage in Reverse Repo Agreements
- Legality of Plan for Lending Government Securities by Federal Reserve Banks
- Authority of Federal Reserve Banks to “Lend” Government Securities

The book argues that those opinions underlie many of the Fed’s fundamental domestic open market operations, such as repo, fed funds, and securities lending.

The Loan Restructuring, Guarantees, and Equity Kickers subsection contains six memoranda:

- AIG Loan Restructuring-Reserve Bank Powers
- Bank Authority to Issue a Guarantee
- Equity Kickers and Reserve Bank Loans
- Authority of Reserve Banks to Issue Guarantees on Behalf of Depository Institutions
- Federal Home Loan Bank Standby Letter of Credit
- REI/Authority to Acquire a Firm under Incidental Powers

The opinions in those six memoranda are largely about the Fed’s incidental lending powers, which were important during the 2008 recession.

The Asset Purchase Authority subsection includes nine memoranda:

- Analysis of the Legal Authority for the Bear Stearns Transaction
- The Authority of the Federal Reserve to Provide an Extension of Credit in Connection with the Acquisition by JP Morgan Chase of Bear Stearns
- The Authority of the Federal Reserve to Provide an Extension of Credit to Bear Stearns through JP Morgan Chase
- FRBNY Powers to Enter into Nonrecourse Lending Transactions
- Nonrecourse Lending under Section 13(3) of the Federal Reserve Act
- Section 14(b)(1) Municipal Securities
- Options on Repurchase Agreements
- Nonrecourse Lending under Section 10B of the Federal Reserve Act
- Reserve Bank Purchase of Agency Obligation Section 14(b)(2)

The Domsday Book divides the opinions in those nine memoranda into two categories: old and new. The book states that the older memos do not depend on section 13(3) and thus remain helpful independently. It suggests that the 1997

memorandum titled “Nonrecourse Lending under Section 10B of the Federal Reserve Act” is particularly useful. It is limited in scope to section 10B of the Federal Reserve Act, which was not subjected to the limitations on asset purchases imposed by section 13(3) of the Dodd-Frank Act. The memo titled “Nonrecourse Lending under Section 13(3) of the Federal Reserve Act” investigates extending the conclusions of the 1997 memo to section 13(3) of the Federal Reserve Act.

The Gold Lending and Foreign Exchange Powers subsection has twelve memoranda. The Doomsday Book states that a Reserve Bank’s gold lending and foreign exchange powers are interrelated closely, given that international transactions among different currencies (“cable transfers”) were ultimately settled in gold during the gold standard period. The subject of several of those memoranda is that the power to engage in foreign exchange transactions presupposes a power to borrow foreign exchange, and they provide a foundation for analyzing Reserve Banks’ swaps power.

The memoranda titled “Section 2(a) of the Gold Reserve Act of 1934” and “Gold Loans” investigate the limits of that power, the most significant of which come from the Gold Reserve Act of 1934.

The Doomsday Book notes that the opinion “Power to Transact with CLS Bank” is partially outdated, as the CLS Bank has eliminated FX settlement risk, at least for CLS Bank currencies.

The Access to Federal Reserve Services subsection consists of ten memoranda:

- Federal Reserve Bank Powers to Provide Overdraft Capacity to Broker-Dealers
- Is the Power to Establish an Account Incidental to Section 13(3) Lending Authority?
- Foreign Bank Branch and Agency Discount Window Access
- Federal Reserve Bank Powers to Provide Nonbank Dealers with Government Securities Clearance Services
- Authority of the FDIC to Open Receivership Accounts at a Federal Reserve Bank
- Reimbursement from the Treasury for Fiscal Agency Services
- Authority of Treasury Department to Indemnify Bank
- Reimbursement to This Bank for Fiscal Agency Activities Performed at the Direction of the Treasury
- Legal Authority of Reserve Bank to Permit Reserve Account Overdrafts
- Government Unlimited Liability to a Federal Reserve Bank

The majority of those opinions were replaced because of the events of the recession and the reenactment of section 13(3) that authorized most Federal Reserve actions taken during the period. The FRBNY argues that other opinions are the foundation for basic Reserve Bank powers that are unchallenged today, particularly those associated with overdrafts and fiscal agency. The book states that those opinions’ main benefit is their historical importance.

The Borrowing and Miscellaneous Powers subsection includes five memoranda. The opinion titled “Does Dodd-Frank Section 806(b) Grant Takeout Lending Authority?” analyzes the language of Dodd-Frank to determine whether the proceeds of a loan to a DFMU could take out prior creditors, despite the Dodd-Frank’s requirement that the borrower does not have access to adequate credit. That opinion is relevant to section 13(3) lending that has a similar requirement.

The second through fourth opinions are related to a Reserve Bank’s power to borrow. The opinion titled “Power of Reserve Banks to Purchase Fed Funds” is the most cautious of the three. That opinion and the board staff opinion titled “Authority for the Federal Reserve to Purchase Fed Funds” were drafted when Reserve Banks needed to borrow money to pay interest on their liabilities. The book notes that the context is outdated for the time being, as Reserve Banks acquired the statutory power to pay interest on reserves, and thus they do not need to borrow on the federal funds market.

The FRBNY believes that although the Edge Act Corporation opinion may be outdated, considering modern incidental powers analysis, particularly the VALIC case,<sup>9</sup> its conclusion is still valid.

Finally, the Statutory Interpretation Techniques subsection consists of four memoranda:

- Legislative Reenactment and Section 13(3)
- Applicability of Title 8 of Dodd-Frank to Foreign Financial Market Utilities
- Notes on Federal Reserve Banks’ Incidental Lending Powers—Notably Securities Lending
- Why a Reserve Bank Can Deal in Mortgage and Commercial Paper

These memoranda are examples of statutory interpretation techniques.

The memorandum titled “Applicability of Title 8 of Dodd-Frank to Foreign Financial Market Utilities” is an analysis of the extraterritorial range of some Federal Reserve lending powers. It combines a detailed analysis of *Morrison v. National Australia Bank Ltd.*—561 U.S. 247, 130 S. Ct. 2869 (2010)—which is the Supreme Court’s latest word on clarifying the extraterritorial range of congressional statutes.

The memorandum titled “Notes on Federal Reserve Banks’ Incidental Lending Powers—Notably Securities Lending” provides a close analysis of *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.* (VALIC) as it relates to the Federal Reserve Act. The memo titled “Why a Reserve Bank Can Deal in Mortgage and Commercial Paper” is a preliminary analysis of section 14 of the Federal Reserve Act.

Volume 3’s second main section is “History and Policy,” which contains eleven memoranda. The Doomsday Book does not place much importance on the Fed’s proper role in emergency situations. The documents in the book concentrate on

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9. *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. 251 (1995)

how to react to emergency situations rather than why the Fed should react to those situations. Thus, the memoranda in this section differ. Many focus on separate crises from the Fed's perspective, such as the Salomon crisis of the early 1990s, the World Trade Center attack, and the events during the recession of 2008. Other memoranda discuss events over a broad time range, such as those affecting the pre-1970s Federal Reserve.

The first memorandum, "Federal Reserve Credit Initiatives during the First Year of the Meltdown: August 2007 to Mid-2008," is the first volume of a planned two-volume history of the FRBNY's response to the events during the recession. It combines archives and an oral history of the Fed participants during the crisis. This volume is more than a detailed narrative, as it is an important collection of the Federal Reserve's documents and refers to several entries in the Doomsday Book. The document is a history of the first four facilities established to cope with the crisis. Those facilities are the TAF, TSLF, PDCF, and the single-tranche repo program. The target audience for the document is midlevel Federal Reserve officials with ten or twenty years' work experience. The document was created because those officials may want to learn why the Federal Reserve decided to create four new credit facilities during the first year of the Great Recession. The book contains no comparable narrative history of the Fed's response to other crises.

The second memorandum, "Primary Dealer Status of Salomon Brothers, Inc., 1991–1992," was created as part of the preparations to expand the roster of primary dealers in 2010. It presents a short timeline of the scandal and a detailed history of the FRBNY's internal response to it with an emphasis on the legal department's role. The book states that the Salomon scandal was very complex legally, as the FRBNY's main formal power was excluding Salomon as a primary dealer, which would have been an effective death sentence. Many of the legal memoranda attempted to cobble together intermediate legal powers from common law materials.

The memorandum titled "Compilation of Board of Governors Financial Crisis Actions under Section 13(3), 13(13), and 23A/B of the Federal Reserve Act, the BHC Act, the FDI Act, Regulation D, and Other Provisions of Law" is a key historical document. It is a collection of important board actions taken from July 13, 2008, to December 16, 2008, during the financial crisis. Thus, the document does not contain authorizations for Bear Stearns, the PDCF (authorized March 16, 2008), TSLF (authorized March 11, 2008), or TAG. It also does not include final approvals for the TALF facilities, and although it refers to various staff documents, it does not include them. However, it includes the text of all board authorizations such as the section 13(13) lending "authorization" for Fannie Mae and Freddie Mac; the broadening of eligible collateral for PDCF and TSLF to include anything acceptable to primary dealers, plus section 23A relief for interaffiliate lending; AMFL authorization with concomitant section 23A relief (Boston); and bank holding company formations for Morgan Stanley, Goldman Sachs, and Merrill Lynch with concomitant section 13(3) lending authorization to U.K. broker-dealer subsidiaries and U.S. primary dealer



subsidiaries. Other board actions included approving a systemic risk exception for Wachovia; holding a discussion with regard to Wachovia and commercial paper; approving a DMLF (Atlanta, Chicago); setting an interim final rule (regulation D) authorizing interest on reserves; approving in principle CPFF; holding discussions on Wachovia, TAF, and DMLF; allowing a section 23A waiver for an unnamed bank; authorizing securities lending to AIG; approving the acquisition by Mitsubishi-UFJ of 24.9 percent of Morgan Stanley; approving a CPFF; approving a broad systemic risk exception for a banking system; authorizing an MMIFF; implementing a CPFF on October 13, 2008; approving an interim final rule enabling TARP money to be counted as tier 1 capital; easing terms on an MMIFF; approving guarantees and financing to Citigroup; considering TALF in general; concurring with NCUA that it could lend for other than liquidity purposes; approving liquidity support to Citigroup's London broker-dealer; and approving new interest for reserves.

The memorandum titled "Financial Crisis Manual" examines government assistance programs and highlights Treasury programs under the Emergency Economic Stabilization Act of 2008 (EESA). Although the document's focus is the EESA, it also examines other agencies' programs. The FDIC's Temporary Liquidity Guarantee Program (TLGP) has a separate discussion, as does the Federal Reserve's section 13(3) authority, and the programs under that authority, such as Bear Stearns, AIG, the TSLF, PDCF, CPFF, and AMLF. The document examines the TALF program individually, which used both TARP and Federal Reserve money.

"Managing Financial Crisis: A Primer" is a document targeted at junior Fed bank officers. The book calls the document a useful historical source and an excellent educational resource. It includes historical data and an introduction to crisis management before the recession. It includes a short discussion as well on the need for market liquidity, which was most of the lending facilities' focus during the recession. However, the document focuses largely on money liquidity and other crisis management tools, such as supervision, suasion, recourse lending, payment operations, and cross-border transactions.

The document includes a brief history of most financial crises between 1985 and 2001. In chronological order, those are the 1977 blackout, the BoNY's operational breakdown (1985), the 1987 stock market crash, Drexel (1990), Salomon (1991), the 2003 blackout discussed with the 1977 blackout, Mexico (1994), Asia/Russia (1997–1998), LTCM (1998), Y2K (1999–2000), and September 11, 2001.

The memorandum titled "Chronology of Events at the Federal Reserve Bank of New York after the World Trade Center Attack" begins with the morning of September 11, 2001, and ends with the full resumption of operations on September 24. The document discusses significant financial, operational, and humanitarian events. The book states that the crisis was unique among all of the financial crises in the sense that it involved nearly every division of the FRBNY, including such traditional support functions as building services, protection, and medical.

The memorandum titled “Legislative History of the Provisions of the Federal Reserve Act Relating to the Discount Window and Open Market Operations” includes significant additions to work on open-market operations, the post-1973 events, and the Federal Reserve Act’s legislative history. The Doomsday Book states that the document is primarily of historical and research interest, as it has been replaced by the events of the Great Recession and the Dodd-Frank legislation of 2010.

“The Origin of the Federal Reserve’s Discount Window” is a short history of the discount window before 1970. It attempts to reconstruct the intellectual currents that motivated Congress when it created these powers, particularly the “real bills” doctrine. The book states that those ancient currents had considerable force as late as 2008 and the Dodd-Frank Act, particularly with its revision of section 13(3) and its recognition that financial market utilities may represent a conceptual break with the past.

The memorandum titled “A Brief History of Repo Authority for Federal Reserve Banks” is a short history of the Federal Reserve’s repurchase agreement authority. It includes a brief summary of, and citations to primary sources, such as original Federal Reserve memoranda dating back to the 1920s. The book states that the Federal Reserve’s current repo authority is unquestioned, but its legal history could be useful if there is a need to extend it.

The document titled “A Report on Drysdale and Other Recent Problems of Firms Involved in the Government Securities Market” is a creation of the FRBNY, not just its legal department. The document explains the troubles with government securities dealers, such as Drysdale, Comark, and Lombard-Wall.

The Doomsday Book states that the most important historical document in the collection is probably “Lending Functions of the Federal Reserve Banks: A History.” It was written by Howard H. Hackley (1973), the board’s general counsel at the time, and constitutes a comprehensive legal history of Reserve Bank lending activities.<sup>10</sup>

Volume 3’s third main section is Operational Issues, which discusses legal aspects such as security interests, payments, and miscellaneous operations.

The Security Interests subsection has the following twelve memoranda:

- The Fetishism of Physical Collateral
- Field Warehouses: An Obsolete Legal Concept
- Letter from Department of Education on Student Loan Securities and FRBNY Securities Interests
- Self-Help and Sovereign Immunity: There Is No FSIA Immunity for Setoff and Nonjudicial Dispositions of Security Interests
- Evaluation of Excess Treasury Collateral Procedures
- In-Transit Securities
- On Lending to a Debtor Who Has Previously Executed a Negative Pledge Agreement with a Creditor

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10. The full document is available at <https://fraser.stlouisfed.org/title/lending-functions-federal-reserve-banks-128>.

- All-Assets Pledge Risk Assessment
- Review of the Proposal to Offer the Single-Account Structure to Foreign Banks
- Mutual Funds Internal and External Borrowing Capacity
- The Authority of Investment Companies and the SIPC to Borrow and to Pledge Assets
- Mutual Insurance Company's Ability to Pledge Its Assets to Secure a Loan

The memoranda in that subsection address technical aspects of obtaining and improving security interests. There are several technical memoranda on UCC article 9; many are largely inapplicable because they were replaced by revised article 9. The Domesday Book does not offer much aid in straight article 9 issues.

The memorandum titled “Self-Help and Sovereign Immunity: There is No FSIA Immunity for Setoff and Nonjudicial Dispositions of Security Interests” focuses on problems associated with the administration of interstate security interests, as fifty states have competing laws. For foreign and state-chartered branches, it is uncertain in the memorandum whether security interests will be enforced if the bank liability is in one state, but the property securing the liability is in another. The memoranda titled “The Fetishism of Physical Collateral,” “Field Warehouse: An Obsolete Legal Concept,” and “Evaluation of Excess Treasury Collateral Procedures” emphasize an important problem: not all entities have unlimited power to pledge collateral. The first two memoranda derived from a proposal from other Reserve Banks to take physical possession of collateral, and define the risks of possession or the virtual possession of field warehousing.

The Payments subsection includes the following four memoranda:

- Special Deposits
- Will a “Tested Fax Arrangement” Be Deemed a “Commercially Reasonable Security Procedure” under UCC Article 4A?
- On “Conduit Lending” by a Federal Reserve Bank through Another Bank
- Overnight Payments and Credits While Accounting System Is Shut Down

The Domesday Book states that many exercises of the FRBNY's emergency powers involve payments in an unconventional manner, and these unconventional payments—such as those to, or touted through, a part of weak solvency—could create unconventional legal risks.

The memorandum titled “Overnight Payments and Credits While Accounting System Is Shut Down” is meant to reassure emergency counterparties of the FRBNY. The intended recipients of the memorandum are any counterparty of the FRBNY that needs assurance that the FRBNY can bind itself to a payment order, even if its accounting system is shut down. The memorandum guarantees a counterparty that certain of the FRBNY's acts will create a binding obligation. The memorandum titled “Special Deposits” suggests that a Reserve Bank has the power to accept special deposits.

The Miscellaneous subsection consists of the following three memoranda:

- Risk Analysis Section 13(3) Lending
- Minimum Documentation Recommendation for Emergency Lending to DIs
- December 31, 1999, Holiday Project: Summary of Relevant Holiday Laws

These three memoranda could not be categorized in any other place in the book. The memorandum titled “Risk Analysis of Section 13(3) Lending” is a broad risk analysis of emergency lending to debtors with whom the FRBNY is unfamiliar. The memorandum titled “Minimum Documentation Recommendation for Emergency Lending to DIs” considers minimum documentation for emergency lending. The memorandum titled “December 31, 1999, Holiday Project: Summary of Relevant Holiday Laws” was prepared as an early part of the FRBNY’s Y2K project. As it examines bank holiday laws, it remains useful. It was a main source in a recent emergency bank holiday memorandum filed in the *Doomsday Book* titled “Governmental Authority to Close Financial Institutions.”

The fourth main section of volume 3 is “Bankruptcy and Insolvency Law Issues.” The memoranda in the section address the legal risks of lending to firms that are, or subsequently become, insolvent. The fourth section consists of three subsections:

- Core Insolvency Law
- Avoidances
- Memoranda

The Core Insolvency Law subsection has five memoranda:

- Analysis of the “Chapter 14” Systematically Important Financial Institution (SIFI) Insolvency Proposal
- Section 718 of the Financial Services Regulatory Relief Act of 2006 and the Discount Window
- Requirements to Lift an Automatic Stay in an Insolvency Proceeding
- Futures Commission Merchant (FCM) Bankruptcy Regime
- Options Regarding Closure of Edge Corporation

There are not many memoranda on core insolvency law. The book states that those memoranda could be useful, as they were useful reference sources during the MF Global insolvency. The memorandum “Analysis of the ‘Chapter 14’ SIFI Insolvency Proposal” is the nearest thing to an analysis of the Dodd-Frank’s Orderly Liquidation Authority (OLA).

The Avoidances subsection comprises four memoranda:

- Avoidances in Solvency
- Legal Risks of Extraordinary Payments
- Preferences
- The Law of Preferences and Fraudulent Conveyances in New York

The book states that avoidance liability is a significant issue in emergency lending, particularly fraudulent conveyance liability for lending involving more than one

entity in an affiliated group. Many collaterals taken during the 2008 recession came from bank affiliates, and thus, fraudulent conveyance risk was always relevant.

The Memoranda subsection consists of six memoranda:

- Fraudulent Conveyance Exposure to Insiders Under New York and Delaware Law
- What Constitutes “New Value” under 11 USC 547(c)(1) and (c)(4)?
- What Constitutes a “Contemporaneous Exchange” under 11 U.S. Code § 547(c)(1)?
- Defending Preference Actions: Hypothetical Chapter 7 and Ordinary Course of Business
- Equitable Subordination (including “Insider” Status)
- Lender Liability

The memos in that subsection were prepared in relation with the workout of AIG, and focus on challenges in preferences and the law of fraudulent conveyances.

Volume 3’s fifth main section is International Issues and includes the following six memoranda:

- Foreign Bank USD Liquidity
- Notes on the Prospect of a Creditors’ Standstill
- Foreign Bank Default-Response
- Immunity of the Bank for International Settlements (BIS)
- Letter on Closing of Branches and Standby Letters of Credit
- Vulnerability of the Bank to Suit because of Assets Abroad

Many memoranda in the section are summaries written during the Korean crisis of late 1997 and early 1998.

The memorandum titled “Letter on Closing of Branches and Standby Letters of Credit” defines a common issue in branch closings, which is long-lived liabilities booked in the United States. If the branch that issues such liabilities ceases to exist, what happens to the obligation? The letter suggests a solution that private parties could incorporate in their agreements. The book states that a foreign branch’s standby letter of credit liabilities remains a problem in the case when a branch closes. The memorandum titled “Vulnerability of the Bank to Suit because of Assets Abroad” summarizes a risk to the FRBNY from foreign attachments. The FRBNY updated the memorandum using foreign counsel opinions.

Volume 3’s sixth main section, Regulatory and Enforcement Issues, comprises the following five memoranda:

- Governmental Authority to Close Financial Institutions
- The Legal Consequences of a Money Laundering Conviction for a Financial Institution
- Enforcement Authority Under Gramm-Leach-Bliley

- Impact of a Criminal Conviction on a State Member Bank
- Disqualification Provisions Triggered by Conviction of a Financial Institution

All of these address regulatory and enforcement issues. One examines the federal authority to close financial firms. Other memoranda discuss the consequences of a legal crisis, such as the legal effect of a criminal conviction on a financial institution's operations.

The seventh and final main section of volume 3, Historical Collection of Primary Documents, consists of the following twenty memoranda:

- Potential Request of the Federal Reserve Bank of New York to Commence Negotiations in Connection with the Proposed Refinancing of a Portion of the Loans Extended to the United Mexican States by the U.S. Treasury
- Draft Memo on Cable Transfers
- Payment of Interest on Required Reserves and Reduction in Reserve Requirements
- Foreign Exchange Transactions for Federal Deposit Insurance Corporation
- The Federal Reserve Bank of New York's Ability to Deal in Forward Foreign Exchange Transactions
- Authority of Federal Reserve Banks to Provide Liquidity Support to the BIS through the Purchase of Gold
- Legal Authority of Federal Reserve to Engage Independently in Foreign Exchange Transactions
- Interest Bearing SDR Valued Deposits for the IMF
- Authority of Federal Reserve Banks to Lend Government Securities to Dealers
- Authority of Board to Pay Interest on Required Reserves of Member Banks
- On Gold Transactions, Specifically Selling Collateral on Gold Loans
- Authority for Foreign Exchange Operations by the Federal Reserve System
- Direct Extension of Emergency Credit to a Nonmember Bank or Bank Holding Company on Its Own Note
- Power of this Bank to Pay Interest on Deposits of Foreign Central Banks and Foreign States
- Analysis of 31 USCA Section 1023
- Legal Considerations regarding Federal Reserve Participation in Treasury Refunding Operations
- Memoranda on Foreign Exchange Operations, in Hearings before the Committee on Banking and Currency, Bretton Woods Agreement Act Amendments, 87th Cong. 2d Sess. 157
- Exchange of Treasury Bills by Federal Reserve Banks
- Letter on Treasury Exchange Privilege
- Section 13(3) Historical Material

Those documents can be divided into various topics, such as fiscal agency, foreign exchange and swaps, gold lending, interest on deposits, section 13(3), securities

lending, and treasury exchange. The book states that some of those documents were very important and controversial in their time, but now reflect well-established powers. Other documents contain thought-provoking legal arguments. Some of the Powers Opinions in other sections of the Domesday Book will be transferred to that historical collection in future editions.

## Discussion on the Legal Authority of the Fed

In this section, I discuss the areas where the Domesday Book's perspective on the Fed's authority deviates from the views of the Federal Reserve board of governors and may fall outside the standards set by Congress. The section highlights the assertions made by the FRBNY regarding the scope of actions authorized by the law, revealing how these assertions create a tension between adhering to established rules and exercising discretion in emergency operations. The core issue centers on interpreting the Federal Reserve's legal authority in the context of financial crises. Unlike the board staff, the FRBNY contends that the intricacies of financial markets and the unpredictability of crises necessitate a more flexible interpretation of the Federal Reserve's authority. The FRBNY appears to rely on a broad interpretation of the laws, as it believes that a discretion-based approach enables the Federal Reserve to respond to financial crises with greater flexibility in its actions, even when such actions lack explicit details in the legislation.

To enhance clarity in interpreting the contents of the book, I will begin by providing a concise overview of the governing structure of the Fed before delving into the discussion on its legal authority.

The mandate of the Fed and its powers are determined by the U.S. Congress. Congress established the Federal Reserve System through the enactment of the Federal Reserve Act of 1913, which serves as the legal foundation and outlines the core responsibilities of the Fed. Congress holds the authority to amend the Federal Reserve Act and modify the Fed's mandate. An example of this is seen when Congress passed the Full Employment and Balanced Growth Act of 1978 (Humphrey-Hawkins Act), thereby expanding the Fed's responsibilities to include the dual mandate. In essence, Congress defines the Fed's mandate and establishes the parameters of its authority. It is the responsibility of the Fed to operate within the boundaries set by Congress.

Although the Federal Reserve possesses the authority to establish the particular policies and strategies it utilizes to accomplish its mandated goals of achieving maximum employment and price stability, it is imperative that it adheres to the limitations defined by Congress.

In the event that the Federal Reserve exceeds its designated authority, it may encounter legislative consequences. Congress has the ability to enact legislation to provide clarity on the boundaries of the Fed. Furthermore, the actions of the Fed

can also be subject to legal challenges. Should the courts determine that the Fed has exceeded its authority, it may be compelled to cease such actions.

Although the Federal Reserve System's board serves as its primary governing body, the Federal Reserve Bank of New York (FRBNY) holds the most influential position among the Reserve Banks. The president of the FRBNY holds a permanent membership in the Federal Open Market Committee (FOMC), which is responsible for crafting the Fed's monetary policy. Additionally, the FRBNY assumes the responsibility of executing the monetary policy decisions made by the FOMC. Furthermore, the FRBNY plays a crucial role as the operational arm of the Fed, implementing initiatives aimed at upholding financial stability. During times of financial crises, the FRBNY is regarded as the Fed's "firefighting department." Consequently, the perspectives of the FRBNY concerning the Fed's authority during such crises hold equal importance to those of the board.

Differing interpretations of the legal authority of the Fed between the FRBNY and the board can influence their respective perceptions of the extent of the Fed's authority in times of financial crises. These contrasting views may lead to disagreements regarding the appropriate course of action to address such crises. The Domsday Book indicates that the FRBNY tends to adopt a more proactive approach in emergency situations, whereas the board tends to exercise greater caution. Nevertheless, the evidence presented in the Book suggests that despite the board's initial reluctance to pursue assertive measures, it eventually yields to the legal arguments presented by the FRBNY regarding the Fed's authority during financial crises.

The Domsday Book's contents indicate that there has been a long and continuous disagreement between the FRBNY's legal department and the Fed's board of governors with respect to the interpretation of the Reserve Bank's incidental powers. The board's and the FRBNY's legal staff take a vastly different view of the Federal Reserve's legal powers. The book suggests that much of the difference is doctrinal: interpreting the grant of incidental powers in section 4 of the Federal Reserve Act. While the board's legal staff uses a classical incidental powers analysis,<sup>11</sup> as in the more austere cases of the pre-New Deal era, the FRBNY's legal staff uses postwar Office of the Comptroller of the Currency (OCC) cases, such as *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. 251 (1995). The book notes that one FRBNY attorney tried to set out a formal incidental powers analysis adapted to the Federal Reserve Act, but even when Reserve Bank attorneys apply the board's legal analytic tools, they still tend to have a more expansive view of the Reserve Bank's powers than the board's legal staff.

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11. Classical incidental powers analysis pertains to a legal structure focused on interpreting and comprehending implicit powers. These powers, while not expressly mentioned, are considered essential for a particular entity, such as a government or agency, to effectively execute its explicitly granted authorities or functions. The term *classical* within this analysis generally alludes to established, time-honored interpretations and principles used to ascertain the extent of these implied powers.



The Powers Opinions subsection dealing with securities lending, repo, and federal funds contains twelve memoranda that the FRBNY believes serve as the foundation for several fundamental domestic open market operations of the Fed. The FRBNY states that the opinions reinforce the authority of the TSLF facility the Federal Reserve offered in 2008, one of the few facilities that was not based upon section 13(3) powers. The Term Auction Facility, based upon section 10B, was another exception. The power to lend securities is one of the few incidental powers that the Fed has long asserted. The FRBNY argues that this power displays the interpretive differences between the board's and the FRBNY's legal staffs. The board's legal staff has argued consistently for a narrow interpretation of Reserve Bank's incidental powers, while the FRBNY's legal staff has argued for a broader interpretation of those powers.

The FRBNY considers that those historical differences were reversed in the board's legal staff's opinion on the TSLF. The book notes the following statement as proof of those reconciliations: "As discussed in the accompanying memorandum from staff at the FRBNY, current market conditions continue to indicate that lending U.S. Treasury securities by the FRBNY is reasonably necessary to allow the effective implementation of open market operations and monetary policy." The FRBNY suggests that this combines the powers that section 14 of the Federal Reserve Act grants with the statutory policies contained, *inter alia*, in the preamble to the Federal Reserve Act, section 2A of the Federal Reserve Act, and section 12A(c) of the Federal Reserve Act. In the eyes of the FRBNY, that suggests that Reserve Banks possess any open-market power not precluded or conditioned by section 14 if it is reasonably necessary to effect statutory policies.

Another instance where the FRBNY's perspective on the Fed's authority differs from that of the board can be seen in the Loan Restructuring, Guarantees, and Equity Kickers subsection of the Powers Opinions, which comprises six memoranda. The opinions in those six memoranda are largely about the Fed's incidental lending powers, which were important during the 2008 recession. Lenders receive equity kickers<sup>12</sup> frequently to compensate for risk. The FRBNY received an equity kicker in the AIG loan. The FRBNY considers that the scope of the power to receive an equity kicker remains uncertain, particularly whether the National Bank Act restrictions on equity kickers apply to Reserve Banks. The memorandum titled "Equity Kickers and Reserve Bank Loans" contends that they do not. Lenders sometimes employ guarantees appurtenant to financial transactions, and often employ guarantees in workout contexts. The memoranda titled "AIG Loan Restructuring-Reserve Bank Powers" and "Authority of Reserve Banks to Issue Guarantees on Behalf of Depository Institutions" explore the limits of the guarantee power.

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12. *Equity kickers* refers to additional incentives that a lender may receive along with the regular interest payments when providing a loan. Those incentives often take the form of equity ownership or a right to purchase equity in the borrowing company.

The FRBNY argues that Dodd-Frank resolved neither the equity kicker nor the guarantee issue, as the Fed issued nonguarantees pursuant to section 13(3) and did not accept an equity kicker from AIG. The FRBNY believes that those opinions are still valid in future emergency lending. While the Board’s legal staff has thus far rejected those FRBNY positions on guarantees, it has not expressed any specific disagreements with the FRBNY’s legal interpretation.

Another observation pertains to the reason behind the FRBNY receiving extra spread upon the establishment of CPFF. CPFF was a FRBNY-funded LLC that bought commercial paper directly from issuers through commercial paper dealers at a spread of 200 basis points to the overnight index swap rate for unsecured commercial paper and 300 basis points for asset-backed commercial paper. The 200-basis-points spread was divided into a 100-point spread for credit risk and an additional 100 points that could be waived if the issuer offered sufficiently improved credit. The legal department of the Fed’s board of governors believed that this additional spread was required to comply with the language of section 13(3). The FRBNY’s legal department did not take a position on that.

The subsection Statutory Interpretation Techniques in the Powers Opinion, consisting of four memoranda, serves as a compelling illustration of how the FRBNY establishes the legitimacy of the Fed’s authority without requiring explicit approval from Congress. These memoranda are examples of statutory interpretation techniques. The book states that the memo titled “Legislative Reenactment and Section 13(3)” is important, as the history of the Federal Reserve Act is one of administrative interpretations followed by congressional amendments. The Domsday Book declares that the legislative reenactment doctrine holds that the subsequent congressional amendments are generally a ratification of the administrative interpretation. The book finds the interpretation particularly useful, as some of the Federal Reserve Act’s administrative interpretations (notably foreign exchange powers) were made using techniques of statutory construction that are disfavored now, such as gleaning a meaning from legislative history that appears unsupported by the statute’s text. The FRBNY believes that it is also the most straightforward basis for the argument that the Dodd-Frank Act constituted congressional approval of most Federal Reserve constructions of section 13(3) of the Federal Reserve Act.

The memorandum in Statutory Interpretation Techniques titled “Notes on Federal Reserve Banks’ Incidental Lending Powers—Notably Securities Lending” provides a close analysis of *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. 251 (1995) (VALIC)<sup>13</sup> as it relates to the Federal Reserve

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13. The VALIC decision holds considerable significance within U.S. bankruptcy law, particularly concerning the extent of a bankruptcy trustee’s ability to use avoidance powers as outlined in the Bankruptcy Code. This case, heard by the U.S. Supreme Court, delved into the question of whether a trustee, in the course of bankruptcy proceedings, possesses the authority to void a creditor’s security interest under specific circumstances. The case revolved around a repo agreement where the debtor (Nations-Bank) provided securities to the creditor (Variable Annuity Life Insurance Co.) in exchange for a loan. The key takeaway from this case is its clarifying role in the treatment of such transactions within the

Act. The book states that the analysis creates disagreement between the board's and the FRBNY's legal departments. Board lawyers do not believe that VALIC applies to the Federal Reserve Act at all and instead favor the narrow form of incidentality analysis that applied to national banks in the prewar years. The memorandum titled "Notes on Federal Reserve Banks' Incidental Lending Powers—Notably Securities Lending" takes a contrary position and attempts to adapt VALIC's analysis to the very different structure of the Federal Reserve Act.

Another curious case is the Sections 10B, 13(3), and 13(13) Authority subsection of Powers Opinions. That subsection has twelve memoranda. The FRBNY considers that most of these twelve are only of historical interest and that their conclusions are authorized either by the language of Dodd-Frank or by practice. However, those memoranda were present in the previous version of the Domesday Book prior to the enactment of the Dodd-Frank Act. It seems that the FRBNY defends the inclusion of many of the memoranda in the Domesday Book based on established "practice" without explicit authorization from Congress.

Another example of how the FRBNY justifies its actions "by practice" without congressional authorization is the Asset Purchase Authority subsection of Powers Opinions, which includes nine memoranda. The first five opinions in the Asset Purchase Authority subsection existed in the previous version of the book before the Dodd-Frank Act. However, the book suggests that the first five opinions are only historically important in the newer version of the book, as they were the foundations for many of the Great Recession facilities that relied on section 13(3) of the Federal Reserve Act to purchase assets. The FRBNY believes that because Dodd-Frank ratified the Fed's section 13(3) facilities directly, the legal reasoning these opinions employed is now primarily of historical importance.

The book states that the two most interesting memoranda in Sections 10B, 13(3), and 13(13) Authority are the 2008 opinion from the Fed's board of governors staff finding authority for the PDCF ("The Authority of the Federal Reserve to Provide a Primary Dealer Credit Facility") and the staff's 1997 opinion ("Section 10B and 13(3) of the Federal Reserve Act"), which suggests that banks may receive section 13(3) loans as well as section 10B loans. The opinion raises issues of nonstandard lending authority to banks. For instance, bank consortia<sup>14</sup> may receive section

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context of bankruptcy proceedings. The Supreme Court's decision established that, in certain instances, a securities transfer under a repo agreement can be deemed a preferential transfer under the Bankruptcy Code. Consequently, this categorization subjects it to potential avoidance by the bankruptcy trustee. A "preferential transfer" refers to the transfer of the debtor's property interest occurring within a specific timeframe before the filing of the bankruptcy petition. Such transfers can be overturned by the trustee to ensure an equitable distribution among creditors. This ruling holds significant implications for the interpretation of bankruptcy law, particularly in the realm of intricate financial transactions. It underscores the imperative for creditors to take into account potential bankruptcy consequences when participating in such transactions.

14. *Bank consortia* refers to cooperative arrangements or partnerships among multiple banks, aimed at collectively engaging in specific projects or transactions.

10A loans as an alternative to section 10B. The board's opinion on mortgage company notes ("Eligibility for Discount of Mortgage Company Notes") distinguishes section 13(3) from the real bills doctrine that appears to limit the scope of its operation. The opinion argues that section 13(2) may play an asset-purchase role parallel to that of section 13(3) without the need for board supermajority approval and without the constraints in section 13(3).

The book also elaborates on how the FRBNY provides justification for the TSLF. The program lent Treasury general collateral against mortgage securities and was a repo program that accepted mortgage securities as collateral. Because it accepted private label mortgage securities as well as Government-Sponsored Enterprise (GSE) securities, the FRBNY believes that it is authorized in part by section 13(3) as well as the incidental powers of Federal Reserve Banks.

The FRBNY legal staff also believes that the Federal Reserve Act clearly authorizes gold loans, although they have not been contemplated recently. The memoranda titled "Section 2(a) of the Gold Reserve Act of 1934" and "Gold Loans" investigate the limits of that power, the most significant of which come from the Gold Reserve Act of 1934. The conclusion of those memoranda is that gold lending likely requires a Treasury license as a practical matter, or a Treasury interpretation that the Gold Reserve Act is no longer in force, or some type of Treasury approval.

The opinion titled "Power to Transact with CLS Bank" also concludes that Reserve Banks have the power to receive special deposits.

Powers Opinions also draws several important conclusions. For instance, as long ago as 2006, the FRBNY has believed that Reserve Banks could extend section 10B credit on a nonrecourse basis.<sup>15</sup> This permits back-to-back section 10B lending as an alternative to section 13(3) discounting. The FRBNY considers that such power also permits Reserve Banks to provide price support in a panicking market by extending nonrecourse loans based solely upon collateral. This is equivalent to purchasing the collateral with a purchase option, an effective means of price support.<sup>16</sup> The FRBNY also believes that section 13(3) lending has fewer constraints than commonly believed and suggests that the board can preauthorize a Reserve Bank to lend under section 13(3) at the bank's discretion without disclosing this pre-authorization to the public. The FRBNY also indicates that section 13(3) lending to banks may be permissible without the liability scheme imposed by section 10B as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991. Surprisingly, the FRBNY states that section 13(3) lending authority extends to municipalities,

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15. Under section 10B of the Federal Reserve Act, Federal Reserve Banks are authorized to provide advances to member banks using only their time or demand notes, with maturities not exceeding 120 days.

16. "Purchasing the collateral with a purchase option" describes a scenario in which a party obtains the collateral while having the option to purchase it at a later specified date or under certain conditions. The process entails an initial purchase of the collateral with a prenegotiated option to buy it outright in the future.

and that there is an additional independent section 14(b)(1)<sup>17</sup> lending authority for municipalities. Thus, the FRBNY considers that it has the legal authority to rescue municipalities in emergency situations. The Doomsday Book does not define what those “emergency situations” are. In addition, it deems that section 13(3) credit can be extended to Federal Home Loan Banks, notwithstanding the language in section 14(b)(2) of the Federal Reserve Act. The FRBNY also believes that section 13(3) credit can be extended on the note of the obligor, and considers that the Federal Reserve Act authorizes its repurchase business, including reserve and tri-party repurchase transactions.

In addition, Powers Opinions indicates that securities firms’ direct access to Reserve Bank payment facilities is or can be permissible. It is important to understand that securities firms that do not accept deposits are not eligible to open master accounts at the Federal Reserve. Consequently, they are unable to become direct members of the Federal Reserve payment facilities. These securities firms depend on depository institutions to handle payment transactions for their customers. However, according to the Doomsday Book, these securities firms can access the Federal Reserve payment facilities without requiring a bank charter or branch license.

## Conclusions

This paper contributes to the progress toward the Fed’s transparency by disclosing the contents and details of the Doomsday Book. By disclosing the majority of the book’s specifics, the public and legislators can learn what the Fed believes about the limits of its powers to avert a financial crisis. For example, the FRBNY considers that section 13(3) lending authority extends to municipalities. Further, it considers that there is an additional independent section 14(b)(1) lending authority for municipalities. Thus, the FRBNY asserts that it has the legal authority to rescue municipalities in emergency situations. If the public and legislators find the Fed’s legal interpretations of section 13(3) lending authority and section 14(b)(1) lending authority pertaining to municipalities unjustifiable, they can pressure it to accept relatively strict interpretations of those laws. The public can also exert pressure on Congress to revise those laws.

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17. Detailed explanations of section 14(b)(1) and section 14(b)(2) can be found at <https://www.federalreserve.gov/aboutthefed/section14.htm#:~:text=No%20officer%20or%20other%20representative,of%20the%20Federal%20Reserve%20System>.

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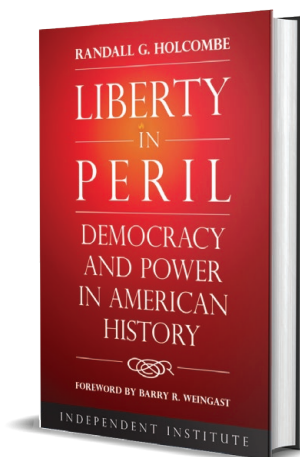
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