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Federal Reserve Proposes Guidelines for Access to Federal Reserve Bank Services for Non-Traditional Federal and State Charters

*Amanda L. Baker, Matthew Bisanz, Elizabeth A. Raymond,
and Jeffrey P. Taft**

In this article, the authors describe the background to and content of guidelines proposed by the Board of Governors of the Federal Reserve System that regional Federal Reserve Banks would use to evaluate requests for accounts and payment services.

The Board of Governors of the Federal Reserve System (“FRS”) has proposed guidelines that the regional Federal Reserve Banks (“FRBs”) would use to evaluate requests for accounts and payment services (the “Proposed Guidelines”).¹ As discussed in Operating Circular No. 1, an institution has the option to settle its FRB services transactions in its master account with an FRB or in the master account of another institution that has agreed to act as its correspondent. The Proposed Guidelines would apply to requests for either arrangement.²

In recent years, institutions with novel types of banking charters have requested access to FRB services (including FRB accounts) to support the introduction of new financial products and delivery mechanisms for traditional banking services. Historically, FRBs have relied on informal or nonpublic criteria to evaluate such requests and often refrained from making any public comments.

The Proposed Guidelines are intended to bring transparency and consistency to this process and ensure that FRBs consider the broader ramifications of their decisions.

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¹ Press Release, *Federal Reserve Board invites public comment on proposed guidelines to evaluate requests for accounts and payment services at Federal Reserve Banks* (May 5, 2021), available at <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210505a.htm>, 86 Fed. Reg. 25,865 (May 11, 2021).

² FRB, *Operating Circular No. 1, Account Relationships* (Feb. 1, 2013), available at <https://frbervices.org/resources/rules-regulations/operating-circulars.html>.

This article describes the background to and content of the Proposed Guidelines.

BACKGROUND

The regional FRBs provide financial services to depository institutions, including banks, credit unions, and savings and loans, much like those that institutions provide for their customers.³ These services include collecting checks, electronically transferring funds, and distributing and receiving cash and coin.⁴ To settle transactions with an FRB, an institution may open a master account with the FRB or rely on another institution's master account on a correspondent basis. In all cases, an FRB must approve an institution's request to have access to services, including with respect to opening/using a master account.

Historically, access to FRB services was limited to institutions that were members of the FRS, were depository institutions under Section 19 of the Federal Reserve Act, or were authorized to hold an account under another authority (e.g., U.S. branches and agencies of foreign banks, Edge and Agreement corporations).

In certain circumstances, other institutions could be granted access to FRB services on a case-by-case basis, such as was granted to certain international financial entities that are organized under the laws of Puerto Rico.⁵ Under the proposed principles, legal eligibility is only one of several factors for the FRB to consider in considering a request for access to an account and services.

As noted by the FRS, the payments landscape is evolving rapidly as technological progress and other factors are leading to both the introduction of new financial products and services and to different ways of providing traditional banking services (i.e., payments, deposit-taking, and lending). Relatedly, there has been a recent uptick in novel charter types being authorized or considered across the country, and, as a result, a wider range of institutions have sought access to, or been denied access to, FRB services.

These novel institutions have included uninsured state-chartered depository institutions and a credit union that focused on serving marijuana-related

³ FRB Services, *About Federal Reserve Bank Services* (2021).

⁴ FRB services do not include transactions conducted as part of FRS's open market operations or administration of FRBs' discount window.

⁵ E.g., Luc Cohen, *New York Fed cracks down on Puerto Rico banks following Venezuela sanctions*, Reuters (Apr. 18, 2019).

businesses.⁶ Also, the Office of the Comptroller of the Currency (“OCC”) has announced its intent to grant special purpose and payments-centric national bank charters and has granted national trust bank charters to companies engaged in digital asset activities.

In granting these charters, the OCC strongly intimated that such institutions should be eligible to become members of the FRS or receive access to FRB services.⁷ The FRS and FRBs have generally refrained from commenting publicly on their willingness to grant requests from institutions with novel types of banking charters that are seeking access to introduce new financial products and delivery mechanisms for traditional banking services.

SUMMARY OF THE PRINCIPLES OUTLINED IN THE PROPOSED GUIDELINES

The Proposed Guidelines are intended to bring transparency and consistency to the process of reviewing requests for access to FRB services by establishing six principles that FRBs would use when deciding whether to grant or deny requests. The six proposed principles are:

Eligibility and Operations. Each institution requesting an account or services must be eligible under the Federal Reserve Act or another federal statute to maintain an account at an FRB and receive FRB services and should have a well-founded, clear, transparent, and enforceable legal basis for its operations. As evidenced by the Proposed Guidelines, the FRS does not believe that legal eligibility alone bestows a right to obtain an account and services.

Risk to FRB. Provision of an account and services to an institution should not present or create undue credit, operational, settlement, cyber, or other risks to the FRB.

Risk to Payment System. Provision of an account and services to an institution should not present or create undue credit, liquidity, operational, settlement, cyber, or other risks to the overall payment system.

Risk to Financial System. Provision of an account and services to an institution should not create undue risk to the stability of the US financial system.

⁶ E.g., *Fourth Corner Credit Union v. FRB Kansas City*, 861 F.3d 1052 (10th Cir. 2017); *TNB USA Inc. v. FRB New York* (S.D.N.Y. Mar. 25, 2020); Lee Reiners, *Restoring Order in Crypto’s Wild West*, The FinReg Blog (Apr. 6, 2021).

⁷ OCC, NR 2021-19 (Feb. 5, 2021); Victoria Guida, *Top regulator pushes ahead with plan to reshape banking, sparking clash with states*, Politico (Aug. 31, 2020).

Risk to Economy. Provision of an account and services to an institution should not create undue risk to the overall economy by facilitating activities such as money laundering, terrorism financing, fraud, cybercrimes, or other illicit activity.

Monetary Policy. Provision of an account and services to an institution should not adversely affect the FRS's ability to implement monetary policy.

Each principle is supported by additional factors that the FRB should consider when evaluating the request.

For example, the supporting factors for the third principle state that the FRB should confirm that the applicant has an effective risk management framework and governance arrangements, and the factors for the fifth principle state that the FRB should confirm that an applicant has a bank-like compliance program for anti-money laundering purposes.

The preamble to the Proposed Guidelines notes that while they are primarily designed to apply only to new applicants, the FRS expects FRBs to apply them to existing relationships when an FRB becomes aware of a significant change in the risks that the account holder presents due to changes in the nature of its principal business activities or condition.

CONCLUSION

The FRS expects that the application of the Proposed Guidelines to federally insured institutions would be “fairly straightforward in most cases” because the principles are broadly based on concepts that apply to such institutions. However, the FRS expects that assessments of access requests from non-federally insured institutions, which presumably would include many of the institutions with novel structures or charters, would likely require more extensive due diligence.

The Proposed Guidelines would provide clarity in an area of banking regulation that has historically been outside of the public view and, therefore, are consistent with the FRS's ongoing transparency initiative.⁸

Beyond the concept of transparency as an end to itself, access to FRB services is an important issue for existing institutions and Fintechs with novel charters or structures. Industry groups have already expressed their view that the Proposed Guidelines will be an important issue for the banking industry.⁹

⁸ E.g., Randal Quarles, *Transparency, Accountability, and Fairness in Bank Supervision* (Jan. 17, 2020) (“I would like [FRS] to seek comment on more supervisory guidance going forward.”).

⁹ Austin Anton, *BPI Responds to Federal Reserve Proposed Guidelines on Fed Accounts and Access*

Accordingly, we expect a number of comments to the Proposed Guidelines from a wide range of institutions and interest groups.

to the Payment System, BPI (May 5, 2021); Rob Nichols, *ABA Statement on Federal Reserve Board Review of Payments System Access*, ABA (May 5, 2021).