

FEDERAL RESERVE SYSTEM

Docket No. OP-1747

Proposed Guidelines for Evaluating Account and Services Requests

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comment

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comment on proposed guidelines (Account Access Guidelines) to evaluate requests for accounts and services at Federal Reserve Banks (Reserve Banks).

DATES: Comments on the proposed changes must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. OP-1747, by any of the following methods:

- Agency website: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Email: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- Fax: (202) 452-3819 or (202) 452-3102.
- Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at

www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons or to remove personally identifiable information at the

commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

Jason Hinkle, Assistant Director (202-912-7805), Division of Reserve Bank Operations and Payment Systems, or Sophia Allison, Senior Special Counsel (202-452-3565) or Gavin Smith, Senior Counsel (202-872-7578), Legal Division, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) only, please contact 202-263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Board of Governors of the Federal Reserve System (Board) is considering adopting guidelines (Account Access Guidelines) to be used by Federal Reserve Banks (Reserve Banks) in evaluating requests for master accounts and/or access to Federal Reserve Bank financial services (accounts and services). The Board's approach to this proposal reflects its analysis of the Board's policy goals of (1) ensuring the safety and soundness of the banking system, (2) effectively implementing monetary policy, (3) promoting financial stability, (4) protecting consumers, and (5) promoting a safe, efficient, inclusive, and innovative payment system. The Board's proposed guidelines are also intended to ensure that Reserve Banks evaluate a transparent and consistent set of factors when reviewing requests for accounts and services (access requests).

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, the Reserve Banks are receiving an increasing number of inquiries and requests for access to accounts and services from novel institutions.

Although the Reserve Banks have received such inquiries on an exceptional basis in the past, the Board now believes, given the increase in the number and novelty of such inquiries, that a more transparent and consistent approach to such requests should be adopted by the Reserve Banks. Given that access decisions made by individual Reserve Banks can have implications for a wide array of Federal Reserve System (Federal Reserve) policies and objectives, a structured, transparent, and detailed framework for evaluating access requests would benefit the financial system broadly. Such a framework would also help foster consistent evaluation of access requests, from both risk and policy perspectives, across all twelve Reserve Banks.

To help achieve the goal of applying a transparent and consistent process for all access requests, the Board is proposing guidelines for the Reserve Banks to evaluate such requests. The proposed account access guidelines contain six principles that would support consistency in approach and decision-making across Reserve Banks while maintaining Reserve Bank discretionary authority to grant or deny requests. Accordingly, the proposed guidelines would reduce the potential for forum shopping

across Reserve Banks and mitigate the risk that individual decisions by Reserve Banks could create de facto System policy for a particular business model or risk profile. These risk-focused guidelines would also promote more consistent implementation for eligible institutions with similar risk profiles.

The proposed account access guidelines are centered on a foundation of risk management and mitigation. In developing the proposed guidelines, the Board considered the risks that may arise when an institution gains access to accounts and services. These risks include, among others, risks to the Reserve Banks, to the payment system, to the financial system, and to the effective implementation of monetary policy.

The introduction to the proposed guidelines discusses the Federal Reserve's broad policy goals when providing accounts and services as well as the reasons for proposing to issue the account access guidelines. In addition, the introduction provides that while the guidelines are designed primarily for new access requests, Reserve Banks should also apply the guidelines to existing account and services relationships when a Reserve Bank 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, condition, etc.

The proposed account access guidelines identify potential risks and prompt the Reserve Bank to identify risk mitigation strategies adopted by the institution (including capital, risk frameworks, compliance with regulations, and supervision) and by the Reserve Bank (including account agreement provisions, restrictions on financial services accessed, account risk controls, and denial of access requests). The first principle specifies that only institutions that are legally eligible for accounts and services are in

scope, and the remaining five principles are designed to address specific risks ranging from narrow risks (such as risk to an individual Reserve Bank) to broader risks (such as risk to the U.S. financial system).¹ The Board is considering whether it may in the future be useful to clarify the interpretation of legal eligibility under the Federal Reserve Act for a Federal Reserve account and services.

For each of these principles, the proposed guidelines identify factors that Reserve Banks should consider when evaluating an institution against the specific risk targeted by the principle (several factors are pertinent to more than one principle). The identified factors are commonly used in the regulation and supervision of federally-insured institutions. When applying the account access guidelines the Reserve Bank should incorporate, to the extent possible, the assessments of an institution by state and/or federal supervisors into its independent assessment of the institution's risk profile. Given that the proposed guidelines utilize factors broadly applied to federally-insured institutions, the Board anticipates the application of the guidelines to access requests by federally-insured institutions would be fairly straightforward in most cases. Reserve Bank assessments of access requests from non-federally-insured institutions, however, may require more extensive due diligence.

Currently, Reserve Bank risk management practices include monitoring the condition of institutions with accounts and services on an ongoing basis using

¹ The proposed guidelines are designed as a risk management framework and, as such, the principles focus on risks an institution's access could pose. The Board notes, however, that an institution's access could have net benefits to the financial system that are not a focus of the risk management framework.

supervisory ratings, capitalization data, and other supplementary information. Reserve Banks use this process to determine whether risk controls or other restrictions should be placed on an institution's account. For example, the process is used to determine if an institution continues to remain eligible for primary credit. The Board anticipates that, if the proposed guidelines are adopted, Reserve Banks would use the guidelines to re-evaluate the risks posed by an institution in cases where these condition-monitoring activities indicate potential changes in the institution's risk profile.

II. II. Proposed Guidelines

Guidelines Covering Access to Accounts and Services at Federal Reserve Banks (Account Access Guidelines)

The Board of Governors of the Federal Reserve System (Board) has adopted account access guidelines comprised of six principles to be used by Federal Reserve Banks (Reserve Banks) in evaluating requests for master accounts and access to Federal Reserve Bank financial services (access requests).^{2,3} The account access guidelines apply

² As discussed in the Federal Reserve's Operating Circular No. 1, an institution has the option to settle its Federal Reserve financial services transactions in its master account with a Reserve Bank or in the master account of another institution that has agreed to act as its correspondent. These principles apply to requests for either arrangement.

³ Reserve Bank financial services mean all services subject to Federal Reserve Act, section 11A ("priced services") and Reserve Bank cash services. Financial services do not include transactions conducted as part of the Federal Reserve's open market operations or administration of the Reserve Banks' Discount Window.

to requests from all institutions that are legally eligible to receive an account or services, as discussed in more detail in the first principle.⁴

The Federal Reserve System's (Federal Reserve) approach to providing institutions with accounts and services depends on, among other things, whether the institution is legally eligible to obtain an account and on the Federal Reserve's policy goals of ensuring the safety and soundness of the banking system, effectively implementing monetary policy, promoting financial stability, protecting consumers, and promoting a safe, effective, efficient, accessible and innovative payment system. The Board believes it is important to make clear that legal eligibility does not bestow a right to obtain an account and services. While decisions regarding individual access requests remain at the discretion of the individual Reserve Banks, the Board believes it is important that the Reserve Banks apply a consistent set of guidelines when reviewing such access requests to promote consistent outcomes across Reserve Banks and to facilitate equitable treatment across institutions.

These account access guidelines also serve to inform requestors of the factors that a Reserve Bank will review in any access request and thereby allow requestors to make any enhancements to its risk management, documentation, or other practices, as the case may be, to attempt to demonstrate how it meets each of these factors for review.

⁴ These principles would not apply to accounts provided under fiscal agency authority or to accounts authorized pursuant to the Board's Regulation N (12 CFR 214), joint account requests, or account requests from designated financial market utilities, since existing rules or policies already set out the considerations involved in granting these types of accounts.

These guidelines broadly outline considerations for evaluating access requests but are not intended to provide assurance that any specific institution will be granted an account and services. The individual Reserve Bank will evaluate each access request on a case-by-case basis. When applying these account access guidelines, the Reserve Bank should incorporate to the extent possible the assessments of an institution by state and/or federal supervisors into its independent analysis of the institution's risk profile. The evaluation of an institution's access request should also consider whether the request has the potential to set a precedent that could affect the Federal Reserve's ability to achieve its policy goals now or in the future.

If the Reserve Bank decides to grant an access request, it may impose (at the time of account opening, granting access to service, or any time thereafter) obligations relating to, or conditions or limitations on, use of the account or services as necessary to limit operational, credit, legal, or other risks posed to the Reserve Banks, the payment system, financial stability or the implementation of monetary policy or to address other considerations.⁵ The account-holding Reserve Bank may, at its discretion, decide to place additional risk management controls on the account and services, such as real-time monitoring of account balances, as it may deem necessary to mitigate risks. If the obligations, limitations, or controls are ineffective in mitigating the risks identified or if the obligations, limitations, or controls are breached, the account-holding Reserve Bank

⁵ The conditions imposed could include, but are not limited to, paying a different rate of interest on balances held in the account, limiting the amount of balances on which interest is paid, or establishing a cap on the amount of balances held in the account.

may further restrict the institution's use of accounts and services or may close the account. Establishment of an account and provision of services by a Reserve Bank under these guidelines is not an endorsement or approval by the Federal Reserve of the institution. Nothing in the Board's guidelines relieves any institution from compliance with obligations imposed by the institution's supervisors and regulators.

Accordingly, Reserve Banks should evaluate how each institution requesting an account and services will meet the following principles.⁶ Each principle identifies factors that Reserve Banks should consider when evaluating an institution against the specific risk targeted by the principle (several factors are pertinent to more than one principle). The identified factors are commonly used in the regulation and supervision of federally-insured institutions. As a result, the Board anticipates the application of the account access guidelines to access requests by federally-insured institutions will be fairly straightforward in most cases. However, Reserve Bank assessments of access requests from non-federally insured institutions may require more extensive due diligence.

Reserve Banks monitor and analyze the condition of institutions with accounts and services on an ongoing basis. Reserve Banks should use the guidelines to re-evaluate the risks posed by an institution in cases where its condition monitoring and analysis indicate

⁶ The principles are designed to address risks posed by an institution having access to an account and services, ranging from narrow risks (e.g., to an individual Reserve Bank) to broader risks (e.g., to the overall economy). Review activities performed by the Reserve Bank may address several principles at once.

potential changes in the risk profile of an institution, including a significant change to the institution's business model.

1. Each institution requesting an account or services must be eligible under the Federal Reserve Act or other federal statute to maintain an account at a Federal Reserve Bank (Reserve Bank) and receive Federal Reserve services and should have a well-founded, clear, transparent, and enforceable legal basis for its operations.⁷

a. Unless otherwise specified by federal statute, only those entities that are member banks or meet the definition of a depository institution under section 19(b) of the Federal Reserve Act are legally eligible to obtain Federal Reserve accounts and financial services.⁸

b. The Reserve Bank should assess the consistency of the institution's activities and services with applicable laws and regulations, such as Article 4A of the Uniform Commercial Code and the Electronic Fund Transfer Act. The Reserve Bank should also consider whether the design of the institution's services would impede compliance by the institution's customers with U.S. sanction programs, Bank Secrecy Act (BSA) and

⁷ These principles do not apply to accounts provided by a Reserve Bank as depository and fiscal agent for the Treasury and for certain government-sponsored entities (12 U.S.C. 391, 393-95, 1823, 1435) as well as to accounts provided to certain international organizations (22 U.S.C. sections 285d, 286d, 290o-3, 290i-5, 290l-3), to designated financial market utilities (12 U.S.C. 5465), pursuant to the Board's Regulation N (12 CFR 214), or to the Board's Guidelines for Evaluating Joint Account Requests.

⁸ These principles apply to account requests from member banks or other entities that meet the definition of a depository institution under section 19(b), as well as Edge and Agreement corporations (12 U.S.C. 601-604a, 611-631), and branches and agencies of foreign banks (12 U.S.C. 347d).

anti-money-laundering (AML) requirements or regulations, or consumer protection laws and regulations.

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

a. The Reserve Bank should incorporate, to the extent possible, the assessments of an institution by state and/or federal supervisors into its independent assessment of the institution's risk profile.

b. The Reserve Bank should confirm that the institution has an effective risk management framework and governance arrangements to ensure that the institution operates in a safe and sound manner, during both normal conditions and periods of idiosyncratic and market stress.

i. For these purposes, effective risk management includes having a robust framework, including policies, procedures, systems, and qualified staff, to manage applicable risks. The framework should at a minimum identify, measure, and control the particular risks posed by the institution's business lines, products and services. The effectiveness of the framework should be further supported by internal testing and internal audit reviews.

ii. The framework should be subject to oversight by a board of directors (or similar body) as well as oversight by state and/or federal banking supervisor(s).

iii. The framework should clearly identify all risks that may arise related to the institution's business (e.g., legal, credit, liquidity, operational, custody, investment) as well as objectives regarding the risk tolerances for the management of such risks.

c. The Reserve Bank should confirm that the institution is in substantial compliance with its supervisory agency's regulatory and supervisory requirements.

d. The institution must, in the Reserve Bank's judgment:

i. Demonstrate an ability to comply, were it to obtain a master account, with Board orders and policies, Reserve Bank agreements and operating circulars, and other applicable Federal Reserve requirements.

ii. Be in sound financial condition, including maintaining adequate capital to continue as a going concern and to meet its current and projected operating expenses under a range of scenarios.

iii. Demonstrate the ability, on an ongoing basis (including during periods of idiosyncratic or market stress), to meet all of its obligations in order to remain a going concern and comply with its agreement for a Reserve Bank account and services, including by maintaining:

A. Sufficient liquid resources to meet its obligations to the Reserve Bank under applicable agreements, operating circulars, and Board policies;

B. The operational capacity to ensure that such liquid resources are available to satisfy all such obligations to the Reserve Bank on a timely basis; and

C. Settlement processes designed to appropriately monitor balances in its Reserve Bank account on an intraday basis, to process transactions through its account in an orderly manner and maintain/achieve a positive account balance before the end of the business day.

iv. Have in place an operational risk framework designed to ensure operational resiliency against events associated with processes, people, and systems that may impair the institution's use and settlement of Reserve Bank services. This framework should consider internal and external factors, including operational risks inherent in the institution's business model, risks that might arise in connection with its use of any Reserve Bank account and services, and cyber-related risks. At a minimum, the operational risk framework should:

A. Identify the range of operational risks presented by the institution's business model (e.g., cyber vulnerability, operational failure, resiliency of service providers), and establish sound operational risk management objectives to address such risks;

B. Establish sound governance arrangements, rules, and procedures to oversee and implement the operational risk management framework;

C. Establish clear and appropriate rules and procedures to carry out the risk management objectives;

D. Employ the resources necessary to achieve its risk management objectives and implement effectively its rules and procedures, including, but not limited to, sound processes for physical and information security, internal controls, compliance, program management, incident management, business continuity, audit, and well-qualified personnel; and

E. Support compliance with the electronic access requirements, including security measures, outlined in the Reserve Banks' Operating Circular 5 and its supporting documentation.

3. 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.

a. The Reserve Bank should incorporate, to the extent possible, the assessments of an institution by state and/or federal supervisors into its independent assessment of the institution's risk profile.

b. The Reserve Bank should confirm that the institution has an effective risk management framework and governance arrangements to limit the impact that idiosyncratic stress, disruptions, outages, cyber incidents or other incidents at the institution might have on other institutions and the payment system broadly. The framework should include:

i. Clearly defined operational reliability objectives and policies and procedures in place to achieve those objectives.

ii. A business continuity plan that addresses events that have the potential to disrupt operations and a resiliency objective to ensure the institution can resume services in a reasonable timeframe.

iii. Policies and procedures for identifying risks that external parties may pose to sound operations, including interdependencies with affiliates, service providers, and others.

c. The Reserve Bank should identify actual and potential interactions between the institution's use of a Reserve Bank account and services and (other parts of) the payment system.

i. The extent to which the institution's use of a Reserve Bank account and services might restrict funds from being available to support the liquidity needs of other institutions should also be considered.

d. The institution must, in the Reserve Bank's judgment:

i. Be in sound financial condition, including maintaining adequate capital to continue as a going concern and to meet its current and projected operating expenses under a range of scenarios.

ii. Demonstrate the ability, on an ongoing basis (including during periods of idiosyncratic or market stress), to meet all of its obligations in order to remain a going concern and comply with its agreement for a Reserve Bank account and services, including by maintaining:

A. Sufficient liquid resources to meet its obligations to the Reserve Bank under applicable agreements, Operating Circulars, and Board policies;

B. The operational capacity to ensure that such liquid resources are available to satisfy all such obligations to the Reserve Bank on a timely basis; and

C. Settlement processes designed to appropriately monitor balances in its Reserve Bank account on an intraday basis, to process transactions through its account in an orderly manner and maintain/achieve a positive account balance before the end of the business day.

iii. Have in place an operational risk framework designed to ensure operational resiliency against events associated with processes, people, and systems that may impair the institution's payment system activities. This framework should consider internal and

external factors, including operational risk inherent in the institution's business model, risk that might arise in connection with its use of the payment system, and cyber-related risks. At a minimum, the framework should:

A. Identify the range of operational risks presented by the institution's business model (e.g., cyber vulnerability, operational failure, resiliency of service providers), and establish sound operational risk-management objectives;

B. Establish sound governance arrangements, rules, and procedures to oversee the operational risk management framework;

C. Establish clear and appropriate rules and procedures to carry out the risk management objectives;

D. Employ the resources necessary to achieve its risk management objectives and implement effectively its rules and procedures, including, but not limited to, sound processes for physical and information security, internal controls, compliance, program management, incident management, business continuity, audit, and well-qualified personnel.

4. Provision of an account and services to an institution should not create undue risk to the stability of the U.S. financial system.

a. The Reserve Bank should incorporate, to the extent possible, the assessments of an institution by state and/or federal supervisors into its independent assessment of the institution's risk profile.

b. The Reserve Bank should determine, in coordination with the other Reserve Banks and Board, whether the access to an account and services by an institution itself or a

group of like institutions could introduce financial stability risk to the U.S. financial system.

c. The Reserve Bank should confirm that the institution has an effective risk management framework and governance arrangements for managing liquidity, credit, and other risks that may arise in times of financial or economic stress.

d. The Reserve Bank should consider the extent to which, especially in times of financial or economic stress, liquidity or other strains at the institution may be transmitted to other segments of the financial system.

e. The Reserve Bank should consider the extent to which, especially during times of financial or economic stress, access to an account and services by an institution itself (or a group of like institutions) could affect deposit balances across U.S. financial institutions more broadly and whether any resulting movements in deposit balances could have a deleterious effect on U.S. financial stability.

i. Balances held in Reserve Bank accounts are high-quality liquid assets, making them very attractive in times of financial or economic stress. For example, in times of stress, investors that would otherwise provide short-term funding to nonfinancial firms, financial firms, and state and local governments could rapidly withdraw that funding and instead deposit their funds with an institution holding mostly central bank balances. If the institution is not subject to capital requirements similar to a federally-insured institution, the potential for sudden and significant deposit inflows into that institution is particularly large, which could disintermediate other parts of the financial system, greatly amplifying stress.

5. 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.

a. The Reserve Bank should incorporate, to the extent possible, the assessments of an institution by state and/or federal supervisors into its independent assessment of the institution's risk profile.

b. The Reserve Bank should confirm that the institution has an anti-money-laundering program consistent with the requirements in 31 CFR 1020.210(b) and complies with the Office of Foreign Asset Control (OFAC) regulations at 31 CFR Chapter V.

i. For these purposes, the Reserve Bank should confirm that these compliance programs contain the following elements:

A. A system of internal controls, including policies and procedures, to ensure ongoing BSA/AML and OFAC compliance, including regular written risk assessments to identify, analyze and address the risks the institution faces, policies, procedures, and an effective transaction-monitoring system;

B. Independent audit and testing of BSA/AML and OFAC compliance;

C. Senior management commitment to BSA/AML and OFAC compliance, including, at a minimum: (a) the designation of a specific person or persons responsible for managing BSA/AML and OFAC compliance, including the employment of an experienced BSA/AML and OFAC compliance officer; (b) senior management review and approval of the institution's BSA/AML and OFAC compliance programs; (c) the institution's compliance staff has sufficient authority and autonomy to deploy policies

and procedures in a manner that effectively controls the institution's BSA/AML and OFAC risk; and (d) senior management taking, and demonstrating that it will continue to take, steps to ensure that the institution's compliance unit receives adequate resources;

D. Ongoing training for appropriate personnel with a scope that is appropriate for the products and services the institution offers; and

E. Processes that allow for a risk-based classification of its customer base, including risk-based procedures for conducting ongoing customer due diligence.

6. Provision of an account and services to an institution should not adversely affect the Federal Reserve's ability to implement monetary policy.

a. The Reserve Bank should incorporate, to the extent possible, the assessments of an institution by state and/or federal supervisors into its independent assessment of the institution's risk profile.

b. The Reserve Bank should determine, in coordination with the other Reserve Banks and the Board, whether access to an account and services by an institution itself or a group of like institutions could have an effect on the implementation of monetary policy.

c. The Reserve Bank should consider, among other things, whether access to a Reserve Bank account and services by the institution could affect the level and variability of the demand for and supply of reserves, the level and volatility of key policy interest rates, the structure of key short-term funding markets, and on the overall size of the consolidated balance sheet of the Reserve Banks. The Reserve Bank should consider the implications of providing an account to the institution in normal times as well as in times

of stress. This consideration should occur regardless of the current monetary policy implementation framework in place.

III. Request for Comment

The Board requests comment on all aspects of the proposed account access guidelines, including: (1) whether the scope and application of the proposed guidance are sufficiently clear and appropriate to achieve their intended purpose; and (2) suggesting/identifying other criteria or information that commenters believe may be relevant to evaluate accounts and services requests under the proposed guidance. The Board further seeks comment specifically on the following aspects of the proposed guidance:

1. Do the proposed account access guidelines address all the risks that would be relevant to the Federal Reserve's policy goals?
2. Does the level of specificity in each principle provide sufficient clarity and transparency about how the Reserve Banks will evaluate requests?
3. Do the proposed account access guidelines support responsible financial innovation?

Finally, the Board also seeks comment on whether the Board or the Reserve Banks should consider other steps or actions to facilitate the review of requests for accounts and services in a consistent and equitable manner.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,
Secretary of the Board