

April 22, 2022

Ann Misback
Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Proposed Guidelines for Evaluating Account and Services Requests (Docket No. OP-1747)

Dear Ms. Misback:

On behalf of America's credit unions, I am writing in response to Board of Governors of the Federal Reserve System's (Board) proposed guidelines (Guidelines) for evaluating account and services requests in this supplement notice and request for comment¹ similar to a request published by the Board in 2021.² The Credit Union National Association (CUNA) represents America's credit unions and their more than 130 million members.

CUNA continues to support the Board's effort to establish clear and consistent guidelines to evaluate requests for master account access to Reserve Bank accounts and services. However, the proposed Guidelines do not address how the Reserve Banks would ensure that new applicants for Reserve Bank accounts and services that are not subject to the rigorous regulations and supervision in place for federally-insured depository institutions or privately-insured state chartered credit unions would demonstrate adequate standards for ensuring the safe operation of the payments system.

The current system for determining eligibility for access to Reserve Bank accounts and services has worked well, but with the ever-evolving financial services marketplace, financial service providers other than credit unions and banks will likely seek access. Some of these new entrants will employ novel business models that rely on new technologies that may pose unique risks to the payments system. It is also likely that banks and credit unions will adopt new technologies making it important that the Board's Guidelines decouple novel business models from new products and address the risk for each individually. Without proper safeguards in place either could raise risks to all participants in the payments system.

The Guidelines Must Be Applied Consistently Across Reserve Banks

The Board's role is to establish guidelines for access to the payments system, with each Reserve Bank responsible for approving access. Because of this bifurcation of duties, clear and consistent guidelines for master account access might not be enough to ensure consistent application of the Guidelines. The Board states

¹ 87 Fed. Reg. 12957 (March 8, 2022).

² 86 Fed. Reg. 25,865 (May 11, 2021).

that “an individual Reserve Bank will evaluate each access request on a case-by-case basis,”³ using these Guidelines. As with any guidelines, rules, or regulations, consistent and proper application is nearly as important as the actual requirements. Clearly, the decision to allow access to Reserve Bank accounts and services does not rest with the Board but with the Reserve Banks. Our concern is that the Reserve Banks could apply the Guidelines inconsistently from entity to entity, which could lead to different outcomes for applications and possibly differences in how entities are supervised for ongoing compliance. To ensure consistent application of the Guidelines, the Board and the Reserve Banks should create a uniform evaluation policy and procedures so that the Guidelines are deployed consistently across the Reserve Banks when approving an entity to have master account access at a Reserve Bank.

Eligibility for Access to Reserve Bank Accounts and Services

We agree with the Board that “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.”⁴ This definition encompasses credit unions, banks, and certain other entities as well. Undoubtedly, the statute precludes any entity not defined as eligible from accessing Federal Reserve accounts and services, making the application of the Guidelines to entities not defined moot. For eligible entities, access would be conditioned on meeting the requirements in the Guidelines, which allows the Board and Reserve Banks to ensure entities given Federal Reserve accounts do not add risk to the payments system. We think this is reasonable as long as the Board’s Guidelines and the Reserve Banks’ application of the Guidelines consider the highly regulated nature of credit unions, which per statute and regulation must meet requirements that generally encompass the requirements in the Guidelines.

Again, we understand that eligibility is different than access and a credit union’s status as a depository institution defined in section 19(b) does not automatically confer access to Federal Reserve accounts. Nevertheless, the Guidelines should not impose additional requirements on credit unions or create additional burdens considering the strict and numerous regulations already in place for their safe and sound operation.

General Access Requirements

The proposed Guidelines appear to be developed from the regulatory framework for depository institutions. We agree that this framework should be the foundation of the Guidelines, as banks and credit unions following this regulatory framework make up the backbone of the financial services system and the private portion of the payments system. Applying this regulatory framework to all entities that seek access to Reserve Bank services represents the logical starting point for uniform requirements, but a non-depository institution will present unique risks due to the nature of being unregulated and not examined for compliance with regulations.

We agree that access should be predicated on “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,” and that 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 anti-money-laundering (AML) requirements or regulations, or consumer protection laws and regulations.”⁵ Furthermore, the “[p]rovision 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.”⁶ This Principle is similar to the regulatory requirements for credit unions and should be required of any entity that accesses a payments system to ensure adequate protection of the system and consumers.

³ *Id.* at 25,867.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

In section (a) of the second Principle, the Board further states that, “[t]he 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.”⁷ We agree that a Reserve Bank should use, to the extent possible, the assessment and other information that can be obtained from a credit union’s federal and/or state regulator.⁸ Call reports should contain most, if not all, the information a Reserve Bank would need to determine the financial health of a credit union. Of course, even more information could be obtained by working with the National Credit Union Administration (NCUA) or a state regulator if necessary. Working through the robust information provided by credit unions will ensure the process for application and ensuring ongoing compliance with the Guidelines is efficient and seamless.

Risk Management Requirements

The Guidelines adequately address risk by credit unions. We also believe the Guidelines represent a good starting point for any entity that requests access to Reserve Bank accounts. The banking framework creates uniform risk management standards that would help ensure every entity that requests access to Reserve Bank accounts meets minimum standards. Regulations and requirements designed for insured deposit taking, lending, fiduciary activities, and other traditional banking activities may not always be the most appropriate if applied directly to all entities that may be legally eligible to hold accounts at the Reserve Bank because of different structures and risks. Thus, entities that engage in evolving business models, that offer novel products, and those using charters that do not match their business model will likely require additional requirements to mitigate the risk of their activities. Guidelines for these entities should at least be as robust as those in place for credit unions and banks, especially considering these entities will likely never be supervised to the degree provided by credit union and bank regulators.

Principle 2(b) and 2(b)(i) require that 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.”⁹ In addition, “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.”¹⁰

We agree that all entities seeking access to Reserve Bank accounts should have an effective risk management framework in place. Sound risk management is crucial to the ongoing success of any entity. However, while the approach taken to achieve effective risk management can vary, it should include common elements. Credit unions and banks of all sizes are required to have formal risk management frameworks in place. Through a risk management framework, a credit union should identify, mitigate, monitor, and manage the financial and operational risks posed by its business model. A credit union’s risk management framework is based on its risk profile, encompassing size and complexity. Credit unions engage in forward-looking evaluation of their balance sheets, as required by regulation or as part of their risk management process. In addition, credit unions engage in stress testing and portfolio analysis that use assumptions about the future to identify potential adverse balance sheet impacts. Most, if not all, credit unions meet the requirements in Guideline 2(b), including 2(b)(i), through their risk management programs. We agree that all entities should be required to have similar risk management

⁷ *Id.* at 25,868.

⁸ Federal and state-chartered credit unions file call reports. The requirements for federally chartered credit unions can be found in 12 C.F.R. § 741.6; the reports are officially titled “financial and statistical reports.”

⁹ 86 Fed. Reg. 25,868.

¹⁰ *Id.*

programs in place, although we do not think small entities should have formal stress testing requirements unless required by their risk profile.

Monitoring Compliance with the Guidelines

The tiered review framework is helpful; however, the oversight must be continual after access is granted for those institutions not subject to regular federal supervision. The Board should develop a process to monitor entities granted Reserve Bank access on an ongoing basis. Credit unions and banks are required to file quarterly call reports, which provide details on the overall financial health of the credit union or bank. Entities that do not file call reports should be required to file a similar document with the Reserve Banks on a quarterly basis to help the Banks and other stakeholders assess the financial condition of the entity that has access to Reserve Bank accounts and services. These reports should be audited to ensure they are as reliable as call reports and made public so stakeholders can assess an entity's ability to fulfill its obligations.

The Guidelines should include assessment of cybersecurity risks for entities that might not fall under such requirement by a prudential regulator. Credit unions and banks are subject to stringent cybersecurity requirements and examined to ensure compliance with these requirements. Similarly, other entities approved for Reserve Bank accounts and services should be subject to cybersecurity requirements to ensure operational resilience and business continuity requirements can be met. We suggest that non-depository institutions be required to follow the same or similar requirements as credit unions and banks and, because these institutions will likely not be examined, they should be required to have an annual cyber audit to ensure compliance with the Guidelines and other best practices.

Capital Standards

The Board should develop a floor for capital, liquidity, and risk management requirements for master account access that meets prudential standards in place for federally insured or supervised financial institutions. We understand that credit unions and banks are subject to different capital, liquidity, and risk management standards as set forth by each type of institutions' prudential regulator. Nonetheless, these requirements, along with rigorous supervision from federal and state regulators, ensure that credit unions and banks operate in a safe and sound manner and do not present risks to the payments system. We understand that applying similar standards to different entities could be difficult; however, doing so is necessary to ensure these entities can meet their obligations and not introduce risk to the payments system.

Application and Parity of the Tiered Review Framework

The inclusion of clearly defined tiers of consideration for eligible institutions is important to ensuring consistent application of the Guidelines; however, it does not completely allay our concerns. While the tiers provide clarity as to the level of consideration that will be given to entities, the Guidance fails to provide information on the substance of the evaluations and the processes that will be employed to ensure consistent application between entities of the same tier. Moreover, the Guidelines also fail to provide accountability between Reserve Banks as to their decisions and lacks assurances of consistency among the Banks when deciding whether to approve an eligible institution to have a master account at a Reserve Bank. The Guidelines must make clear that the Board has review and approval authority over the Banks' decisions to grant or withhold account access to eligible institutions.

Design of the Tiered Review Framework

The Guidelines rightly assign federally insured depository institutions to Tier 1 as they are consistently monitored for compliance with strict regulations and thorough examinations. Privately-insured, state-chartered

depository institutions should also be included in Tier 1. Like their federally insured counterparts, these institutions are already subject to a comprehensive set of banking regulations and detailed regulatory and financial information about these institutions is readily available in their call report data. Unlike Tier 2 and Tier 3 institutions, privately-insured, state-chartered depository institutions present no greater risk to the payments system than Tier 1 institutions and they are subject to equal levels of regulation of oversight by their state banking regulators. It is imperative that the risks to the payments system by Tier 3 institutions are adequately recognized and accounted for in the determinative process. These entities are not subject to any federal oversight at the institution level, and thus their access to the payments system must be predicated on commitments to ongoing compliance and examination with requirements that are at least as strenuous as those required by Tier 1 institutions to limit the risks posed by the applicants.

Conclusion

We are concerned that broadening access to Reserve Bank accounts without consistent guidelines could introduce unnecessary risks to the payments system. We believe that any new type of entity granted access to Reserve Bank accounts and services increases risk to the payments system. The extensive regulations in place for credit unions, and the supervision by federal and state examiners to ensure compliance with these regulations, represents the best model to ensure safe access to Reserve Bank accounts and services. The Board's goal should be to apply a similar level of requirements with processes to ensure compliance, as is in place for a federal or state regulated credit union or bank. Any entity not meeting these requirements should be denied access to the payments system.

If you have questions about our comments, please do not hesitate to contact me at

Sincerely,



Madison Rose
Director of Advocacy & Counsel for Payments and Technology