

# Federal Reserve Clarifies Access to Master Accounts and Services for Financial Institutions, Including for “Novel Charters” in Final Guidelines

September 20, 2022

The Federal Reserve Board (“FRB”) has approved final guidelines (“Final Guidelines”) for Federal Reserve Banks (“Reserve Banks”) to use in evaluating requests for master accounts and access to Reserve Bank financial services (“Fed Accounts and Services”).<sup>1</sup> The Final Guidelines reflect the comments to and development of two prior proposed guidelines: (i) the initial proposed guidelines, issued on May 11, 2021; and (ii) the supplemental proposed guidelines, issued March 8, 2022 (please see our prior Client Updates regarding the initial and supplemental guidelines for detailed summaries of the [May 2021 proposal](#) and [March 2022 proposal](#)).

The FRB stated that these guidelines were intended to (i) address the increasing number of inquiries and access requests Reserve Banks received from novel institutions as a result of a recent uptick in novel charter types being authorized or considered across the country and (ii) provide a “structured, transparent, and detailed framework for evaluating access requests” and “help foster consistent evaluation . . . from both risk and policy perspectives” across the 12 Reserve Banks.<sup>2</sup>

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## Background

Reserve Banks offer financial institutions a set of core financial services that constitute the basis of the U.S. payments system, including the provision of master accounts,<sup>3</sup> processes for the collection and processing of checks, electronic fund transfers through the Fedwire Funds Service, and the issuance, maintenance, transfer and settlement of certain U.S. government securities through the Fedwire Securities Service. By statute,

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<sup>1</sup> FRB, Press Release, Federal Reserve Board announces final guidelines that establish a transparent, risk-based, and consistent set of factors for Reserve Banks to use in reviewing requests to access Federal Reserve accounts and payment services (August 15, 2022, 2:30p EDT), available [here](#); 87 Fed. Reg. 51099 (Aug. 19, 2022).

<sup>2</sup> See Proposed Guidelines for Evaluating Account and Services Requests, 86 Fed. Reg. 25865 at 25866 (May 11, 2021).

<sup>3</sup> A master account is a record of financial transactions that reflects the financial rights and obligations of a member bank account holder and a Reserve Bank with respect to each other, where opening, intraday and closing balances are determined. The Federal Reserve, Master Account, available [here](#) (last visited Sept. 8, 2022).

eligibility for direct access to Fed Accounts and Services generally is limited to banks that are members of the Federal Reserve System or “depository institutions,” as that term is defined in the Federal Reserve Act (“FRA”).

Prior to the Final Guidelines, there were no publicly available standards outlining the criteria upon which a Reserve Bank would evaluate a financial institution’s application for access to Fed Accounts and Services. Indeed, in recent years, there have been suits filed by institutions claiming that a Reserve Bank had not acted on their accounts. For example, The Narrow Bank filed suit against the Federal Reserve Bank of New York, alleging a 12-month delay in their application.<sup>4</sup> Custodia Bank (formerly known as Avanti), which focuses on digital asset payments and custody, similarly filed suit against the FRB and the Federal Reserve Bank of Kansas City, claiming that there had been a 19-month delay on its application for a master account.<sup>5</sup> Senator Cynthia Lummis (R-WY) spoke out about the delays by the Federal Reserve Bank of Kansas City in processing both Custodia Bank and Kraken’s applications for master accounts, saying the delays violated statutory requirements for FRB processing time.<sup>6</sup>

We note that the Responsible Financial Innovation Act introduced by Senator Lummis and Senator Kirsten Gillibrand (D-NY) would *require* the FRB to extend access to Fed Accounts and Services to state-chartered institutions, removing the discretion Reserve Banks currently have in determining whether to grant access to Fed Accounts and Services.<sup>7</sup> (For additional information about the Responsible Financial Innovation Act, see our [post](#) discussing key provisions of the bill and our [webcast](#) with counsel for each of the Senators.)

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## Summary of the Final Guidelines

The Final Guidelines will impose a risk-focused framework that all 12 Reserve Banks will use when evaluating applications for access to Fed Accounts and Services. They outline six risk-based principles that set forth the factors Reserve Banks would be expected to consider when evaluating a request for access to Fed Accounts and Services. These principles are designed to help the Reserve Banks consider the risks of granting access to a particular institution, such as risk to the Reserve Bank, the U.S. financial system and the overall economy. The six principles are:

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<sup>4</sup> TNB USA Inc. vs. Federal Reserve Bank of New York, 2020 WL 1445806 (Mar. 25, 2020).

<sup>5</sup> Custodia Bank Inc. v. Federal Reserve Board of Governors, 1:22-CV-00125 (D. Wy. filed June 7, 2022).

<sup>6</sup> Cynthia Lummis, “The Fed Battles Wyoming on Cryptocurrency,” WSJ (Nov. 30, 2021), available [here](#).

<sup>7</sup> 87 Fed. Reg. at 51102.

1. **Legal eligibility.** Each institution requesting access to Fed Accounts and Services must be eligible under the FRA or other federal statute and should have a well-founded, clear, transparent, and enforceable legal basis for its operations.<sup>8</sup>
2. **Risk to Reserve Banks.** The 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.
3. **Risk to the overall payment system.** The provision of an account and services to an institution should not present or create undue credit, operational, settlement, cyber or other risks to the overall payment system
4. **Risk to the U.S. financial system.** The provision of an account and services to an institution should not create undue risk to the stability of the U.S. financial system.
5. **Risk of facilitating illicit activity.** The 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.
6. **Risk of adverse effects on monetary policy.** The provision of an account and services to an institution should not adversely affect the FRB's ability to implement monetary policy.<sup>9</sup>

Moreover, the Final Guidelines establish a three-tiered review framework to provide additional clarity on the level of due diligence and scrutiny to be applied by Reserve Banks to different types of institutions. Institutions and the level of review within each tier are as follows<sup>10</sup>:

- **Tier 1:** Institutions that are federally-insured institutions.
  - *Level of Review:* These institutions would generally be subject to a less intensive and more streamlined review.
- **Tier 2:** Institutions that are not federally-insured but are subject to prudential supervision by a federal banking agency at the institution and, if applicable, at the holding company level.

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<sup>8</sup> 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 FRA are legally eligible to obtain Fed Accounts and Services.

<sup>9</sup> See Proposed Guidelines, *supra* n. 3, at 25867. A more detailed discussion of the Initial Proposed Guidelines and the principles can be found in the Debevoise Update located [here](#).

<sup>10</sup> See Section III below for changes to the scope of each Tier made by the Final Guidelines.

- *Level of Review:* These institutions would generally receive an intermediate level of review.
- Tier 3: Institutions that are not federally-insured and not subject to prudential supervision by a federal banking agency at the institution or holding company level.
- *Level of Review:* These institutions would generally receive the strictest level of review.

Although institutions in a higher tier (i.e., Tier 3) will face greater diligence and scrutiny than institutions in a lower tier (i.e., Tier 1), the FRB clarifies that Reserve Banks still “retain the discretion to deny a request for access to [Federal Reserve] accounts and services where, in the Reserve Bank’s assessment, granting access to the institution would pose risks that cannot sufficiently be mitigated.”<sup>11</sup> Further, the FRB declined to include a processing timeline for applications to access Fed Accounts and Services in the Final Guidelines, noting that Reserve Banks are expected to “to ensure that the guidelines are implemented in a consistent and timely manner.”<sup>12</sup>

Additionally, in response to commenters against Fed Accounts and Services access for novel institutions and charters, the FRB indicated that a categorical exclusion of Tier 3 entities would be inappropriate. Rather, the FRB notes that the Final Guidelines provide a robust framework for analyzing and mitigating risks.<sup>13</sup>

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## Changes from Prior Proposed Guidelines

The Final Guidelines largely adopt the Supplemental Proposed Guidelines. Notable changes include:

- Credit unions are included as Tier 1 institutions (i.e., those that are federally insured). Relatedly, for purposes of evaluating an institution’s existing regulatory scrutiny (and in particular, whether a federal banking agency already reviews the institution), the National Credit Union Administration is now included as a federal banking agency.

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<sup>11</sup> 87 Fed. Reg. at 51102.

<sup>12</sup> *Id.* at 51106.

<sup>13</sup> *Id.*

- Edge and Agreement Corporations and U.S. branches and agencies of foreign banks are included as Tier 2 institutions (i.e., those not federally insured but subject by statute to prudential supervision).
- Non-federally insured institutions that are chartered under federal law but do not have a holding company, and non-federally insured institutions chartered under state law that are not subject (by statute) to prudential supervision by a federal banking agency or have a holding company that is not subject to FRB oversight are included in Tier 3 institutions (i.e., those not federally insured and not considered in the scope of Tier 2).

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Please do not hesitate to contact us with any questions.

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