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# Final Guidelines on Federal Reserve Bank Account Access

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## Final Guidelines Provide Risk-Based Principles and a Three-Tiered Framework for Evaluating Institutions for Access to Federal Reserve Bank Accounts or Services

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On August 15, 2022, the Board of Governors of the Federal Reserve System (the “Federal Reserve”) adopted final guidelines (“Final Guidelines”) that establish the framework for Federal Reserve Banks to use in evaluating requests to access Federal Reserve Bank master accounts and payment services.<sup>1</sup> These accounts and services are core components of the U.S. payments system. The Final Guidelines are substantially similar to the initial proposed guidelines issued by the Federal Reserve in May 2021 and the supplemental proposal issued in March 2022 (together, the “Proposed Guidelines”), with targeted adjustments in response to public comments regarding the treatment of state-chartered institutions under the three-tiered review framework. For more information on the Proposed Guidelines, please refer to our memoranda to clients from [May 6, 2021](#) and [March 10, 2022](#).<sup>2</sup>

The Final Guidelines are intended to establish a “consistent, comprehensive, and transparent framework for Federal Reserve Banks to analyze access requests on a case-by-case, risk-focused basis.”<sup>3</sup> The Final Guidelines also reiterate that “legal eligibility does not bestow a right to obtain an account and services.” Rather, the guidelines are intended to “promote consistency across Reserve Banks” when reviewing access requests, while confirming that decisions regarding individual access requests remain at the discretion of the individual Federal Reserve Banks.<sup>4</sup>

The Proposed Guidelines included six risk-based principles to be used by Federal Reserve Banks in evaluating access requests, and these largely have been adopted in the Final Guidelines with limited changes from the Proposed Guidelines, as further described below. The supplemental proposal of the

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Proposed Guidelines included a three-tiered review framework, under which institutions in a higher tier would face progressively greater due diligence and scrutiny than institutions in a lower tier when Federal Reserve Banks evaluate different types of institutions for access requests. This framework has also been largely adopted in the Final Guidelines.

The Federal Reserve received a variety of comments on the three-tiered review framework, some of which objected to the manner in which the tiering framework outlined in the supplemental proposal would result in disparate treatment of certain state-chartered institutions as compared to those with federal charters.<sup>5</sup> After consideration of these comments, the Final Guidelines, as noted, retain the six principles and three-tiered review framework largely unchanged, but Tier 2 of the three tiers has been revised to include a narrower set of non-federally-insured banks than in the Proposed Guidelines. Under the revised Tier 2, a non-federally-insured institution that is federally chartered will be included in Tier 2 only if the institution has a holding company that is subject to Federal Reserve oversight. However, consistent with the Proposed Guidelines, a non-federally-insured institution chartered under state law will be included in Tier 2 if it is itself subject to prudential supervision by a federal banking agency and either does not have a holding company or has a holding company that is subject to Federal Reserve oversight.<sup>6</sup> This change places uninsured federally chartered institutions that are not held by a regulated bank holding company in the same tier as uninsured state-chartered institutions.

As modified, the three tiers are as follows:

- **Tier 1.** This tier consists of eligible institutions that are federally insured. These institutions will generally be subject to a “less intensive and more streamlined review” because they are subject to a “standard, strict, and comprehensive set of federal banking regulations,” and for most institutions, detailed regulatory and financial information would be “readily available, often in public form.” These institutions may, however, receive additional attention in cases where the application of the guidelines identifies potentially higher risk profiles.<sup>7</sup>
- **Tier 2.** This tier includes eligible institutions that are not federally insured, but that are themselves subject by statute to prudential supervision by a federal banking agency, and (i) if such an institution is chartered under federal law, the institution has a holding company subject to Federal Reserve oversight, whether by statute or commitments and (ii) if such an institution is chartered under state law, the institution’s holding company, if any, is subject to Federal Reserve oversight, whether by statute or commitments.<sup>8</sup> These institutions generally receive an “intermediate level of review,” because they are subject to a set of regulations that is “similar, but not identical” to the regulations applicable to federally insured institutions, and therefore may present greater risks, but Federal Reserve Banks would have significant supervisory information about, as well as some level of regulatory authority over, such institutions.<sup>9</sup> The Final Guidelines also clarify that Edge and Agreement Corporations and U.S. branches and agencies of foreign banks fall under a Tier 2 level of review.
- **Tier 3.** This tier includes eligible institutions that are not federally insured and not subject to federal prudential supervision at the institution or holding company level. These institutions generally receive the “strictest level of review” because they may be subject to a regulatory framework that is “substantially different from” the regulatory framework applicable to federally insured institutions, and detailed regulatory and financial information may not exist or may be unavailable.<sup>10</sup>

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In addition, the Final Guidelines clarify that the review of institutions will be conducted on “a case-by-case, risk-focused basis” within each of the three tiers.<sup>11</sup> Accordingly, within each tier, institutions with high-risk businesses are subject to more intensive review than those with lower-risk business models. The Final Guidelines do not specify a timeline for completion of the required review but state that the Federal Reserve expects the Federal Reserve Banks to engage in consultation to implement the Final Guidelines in a consistent and timely manner.

As noted above, the Final Guidelines do not substantially change the six principles the Federal Reserve Banks apply in evaluating access requests. Those principles are the following:

- **Eligibility.** Under the first principle, a Federal Reserve Bank determines whether an institution requesting access to an account or services is eligible for access under the Federal Reserve Act or another statute, and whether the institution has a “well-founded, clear, transparent, and enforceable legal basis for its operations.”<sup>12</sup>
- **Risks to Federal Reserve Banks and the payment system.** Under the second and third principles, a Federal Reserve Bank assesses any credit, liquidity, operational, settlement, cyber or other risks that access to an account or services could pose to itself or to the overall payment system. A Federal Reserve Bank evaluates, among other things, an institution’s risk management and governance, compliance with regulatory and supervisory requirements, financial condition, liquidity, operational capacity and reliability, and settlement processes.
- **Risks to financial stability.** Under the fourth principle, a Federal Reserve Bank assesses risks that access to an account or services by the institution or “a group of like institutions” could pose to U.S. financial stability, including through the transmission of liquidity or other strains in times of financial or economic stress. A Federal Reserve Bank takes into account that there may be a “particularly large” risk of “significant deposit inflows” into an institution that holds mostly central bank balances and is not subject to capital requirements similar to those that apply to federally insured institutions; such an institution could more easily expand its balance sheet during times of stress, allowing investors to deposit funds into the institution, instead of providing short-term funding to financial and non-financial firms and state and local governments, “greatly amplifying stress.”<sup>13</sup>
- **Facilitation of illicit activity.** Under the fifth principle, a Federal Reserve Bank assesses risks to the overall economy that could arise if access to an account or services facilitates illicit activity, such as money laundering, sanctions violations, fraud or cybercrime. A Federal Reserve Bank is required to determine that the institution has an AML program that satisfies the pillars generally required of bank AML programs and also confirm that the institution has an appropriate program to support compliance with sanctions administered by the Office of Foreign Assets Control.
- **Monetary policy effects.** Under the sixth principle, a Federal Reserve Bank assesses the effect that access to an account or services by the institution or a “group of like institutions” could have on the Federal Reserve’s ability to implement monetary policy.

A number of financial institutions, particularly institutions with so-called “novel” state charters and institutions focusing on cryptocurrencies, have been pressing the Federal Reserve to expand access to Federal Reserve accounts. They have been supported by certain elected officials. One of these institutions recently initiated litigation against the Federal Reserve’s failure to act on a request after an extended period of time.<sup>14</sup> It remains to be seen whether, and in what circumstances, the Federal Reserve will determine that these financial institutions and others will be granted accounts.

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ENDNOTES

- 1 Board of Governors of the Federal Reserve System, Guidelines for Evaluating Account and Services Requests, (Aug. 15, 2022), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/files/other20220815a1.pdf>.
- 2 Sullivan & Cromwell LLP, Proposed Federal Reserve Bank Account Access Guidelines (May 6, 2021), *available at* <https://www.sullcrom.com/files/upload/sc-publication-proposed-federal-reserve-bank-account-access-guidelines.pdf>; Sullivan & Cromwell LLP, Federal Reserve Bank Account Access (Mar. 10, 2022), *available at* <https://www.sullcrom.com/files/upload/sc-publication-federal-reserve-bank-account-access.pdf>.
- 3 Final Guidelines at 12.
- 4 While Reserve Banks exercise decision-making authority with respect to access requests, the Federal Reserve has interpretive authority with respect to the Federal Reserve Act and thus is responsible for interpreting the provisions of the Federal Reserve Act concerning legal eligibility.
- 5 Final Guidelines at 24.
- 6 This disparity may create a slight advantage for state-chartered entities over federally chartered entities, in that an uninsured federally prudentially regulated state entity that has no holding company (e.g., a state trust company that is a member of the Federal Reserve) would be considered Tier 2 while an uninsured federally chartered entity that has no holding company would be Tier 3, even if it is prudentially regulated. In practice, however, the types of state entities with this potential advantage may be limited.
- 7 Final Guidelines at 46-47.
- 8 Final Guidelines at 8.
- 9 Final Guidelines at 48.
- 10 Final Guidelines at 48-49.
- 11 Final Guidelines at 46.
- 12 Final Guidelines at 34. This principle corresponds to the first of the Principles for Financial Market Infrastructures, the internationally accepted standards for payment systems and other financial market utilities, and the Federal Reserve's Regulation HH, 12 C.F.R. § 234.3(a)(1), which applies to systemically important payment systems in the United States. See Principle 1, Committee on Payment and Settlement Systems & Technical Committee of the International Organization of Securities Commissions, *Principles for Financial Market Infrastructures* (Apr. 2012), *available at* <https://www.bis.org/cpmi/publ/d101a.pdf>.
- 13 Final Guidelines at 42-43.
- 14 See Complaint, Custodia Bank Inc. v. Federal Reserve Board of Governors et al., No. 1:22-cv-00125, (D. Wyo. June 7, 2022); see also Memorandum in Support of Motion to Dismiss filed by the Federal Reserve Bank of Kansas City Custodia Bank Inc. v. Federal Reserve Board of Governors et al., No. 1:22-cv-00125, (D. Wyo. Aug. 16, 2022).

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