COMMENT LETTER

Guidelines for Evaluating Account and Services Requests

January 17, 2023
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Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. OP?1788

Re: Guidelines for Evaluating Account and Services Requests

Dear Ms. Misback:

The Conference of State Bank Supervisors ("CSBS") appreciates the opportunity to comment on the proposed amendments to the Federal Reserve Board's ("Board") Guidelines for Evaluating Account and Services Requests ("proposal" or "Guidelines"). The proposal would require the Federal Reserve Banks ("Reserve Banks") to publish a periodic list of depository institutions with access to Reserve Bank account and/or financial services.

The subsequently enacted James M. Inhofe National Defense Authorization Act for FY2023[1] ("FY2023 NDAA") now obliges the Board to create and maintain a public, online, and searchable database that contains lists of every entity that has access to a Reserve Bank master account and services as well as every entity that submits a request for such access. The published information must also identify whether each listed depository institution is FDIC insured.

In July 2021, CSBS submitted a comment letter[2] encouraging the Board and/or the Reserve Banks to publish decisions on access requests, including any supporting analyses, and maintain an accessible up?to?date list of all institutions that have been granted access. These and other steps were recommended to help enhance transparency and promote consistent treatment of access requests. State regulators are pleased to see that the Board's proposal, as well as Section 5708 of the FY2023 NDAA, incorporate a number of our suggestions.

The Board should publish under which tier of the Guidelines an access request will be evaluated and provide the appropriate state regulator with timely information and analysis underlying an account access decision regarding a state?chartered entity.

To more fully achieve the goals of transparency and consistency, state regulators request the Board publish an additional data element which identifies the entity's tier designation under the Guidelines. This will provide

important context to a Reserve Bank's view of that entity and, in conjunction with publishing the date the entity requested account access, a better understanding of how Tier 2 and Tier 3 applications will be assessed and reviewed vis?à?vis Tier 1 applications.

Further, in the case of state?chartered institutions, state regulators request that Reserve Banks provide prompt notification to the appropriate state regulator upon receipt of an access request involving a state?chartered institution and when decisions are made regarding the same.

Moreover, the Reserve Bank should provide any supporting analyses to state regulators if a state?chartered institution is granted or denied account access. State regulators believe this communication channel will improve our ongoing collaboration with the Board and Reserve Banks in achieving our shared supervisory mandates to maintain a strong and resilient banking system that facilitates responsible financial innovation.

The Board's Guidelines remain biased against state?chartered and supervised entities.

State bank regulators reiterate our belief that access, and the evaluation of access requests, to Reserve Bank accounts and services should be done on an equitable and impartial basis consistent with applicable law for all eligible institutions regardless of charter. The Guidelines continue to favor federal charters, thus introducing bias against similarly situated non?federally? insured institutions chartered under state law.

It remains unclear whether a non?federally?insured state charter could qualify for Tier 2 treatment[3], which is an intermediate level of review under the Guidelines. A non?federally? insured state?chartered institution has just one path to meet the "supervision by a federal banking agency" requirement established for Tier 2 treatment: applying for and being granted membership in the Federal Reserve System ("FRS"). At a minimum, this represents an additional hurdle for such state?chartered institutions compared to similar institutions chartered under federal law.

Federal Reserve oversight of a non?federally?insured entity's holding company is the second prong for Tier 2 treatment under the Guidelines. This holding company oversight can be achieved through "commitments." This is an undefined and opaque regulatory determination with no public insight, established application process, objective standards, or meaningful precedent. Since FRS membership is mandatory and automatic for federal charters, such an entity's holding company would undoubtedly enjoy an advantage when seeking Board oversight via "commitments" because its non?federally?insured subsidiary chartered under federal law is already an FRS member.

Given these structural barriers in the Guidelines, it appears likely that most, if not all, non? federally?insured state?chartered entities will be evaluated under Tier 3 and subjected to the strictest level of review.

State regulators strongly recommend that the Board revisit the Guidelines and rectify this bias against state? chartered institutions. Instead of the current rudimentary approach, state regulators recommend that the Board establish guidelines that evaluate the effectiveness of an institution's risk management framework, governance arrangements, and the rules pertaining to a particular institution, regardless of chartering or supervisory authority.

Conclusion

State bank regulators appreciate the opportunity to share our recommendations for providing more transparency around access to Federal Reserve accounts and services. We believe disclosing under which tier of the Guidelines an entity's request will be evaluated will provide much needed transparency regarding access to

Federal Reserve accounts and services. In the case of state?chartered entities, state regulators also request that the Reserve Banks share relevant information and analysis regarding access request decisions with the appropriate state regulator.

However, state regulators continue to have significant concerns about the tiered review framework in the Guidelines, which results in disparate treatment between state and federal charters. This unequal playing field established by the Guidelines must be remedied to provide consistent and equitable treatment between similar institutions eligible for Federal Reserve accounts and services.

Sincerely,

James M. Cooper

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1 Public Law 117?263 § 5708.
2 CSBS Comment Letter - July 9, 2021 - Docket No. OP?1747.
3 Tier Designations as established in Docket No. OP?1747.

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