



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

April 22, 2022

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

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

Dear Ms. Misback:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the supplemental notice and request for comment (RFC) issued by the Board of Governors of the Federal Reserve System (Board) regarding guidelines for evaluating requests for accounts and services at Federal Reserve Banks (Reserve Banks). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 130 million consumers with personal and small business financial service products.

NAFCU supports efforts to promote a uniform and transparent framework for evaluating access requests for Reserve Bank services centered on a foundation of risk management. NAFCU agrees that this framework and its component principles should be tailored to recognize the strong prudential supervision that already exists for federally insured depository institutions such as credit unions. With respect to non-federally insured institutions, particularly those not subject to comprehensive federal oversight, the Federal Reserve should apply heightened scrutiny as such applicants, or groups of applicants, may pose unique payment system risks that could arise from business models or differences in prudential supervision.

General Comments

The guidelines for evaluating account and service requests in the supplemental notice are generally the same as those published in the Board’s May 2021 proposal.¹ NAFCU has addressed the substance of those guidelines in prior comments submitted both individually and jointly with other trade associations.² The primary addition in the supplemental notice is the inclusion of a three-tiered review framework to “provide additional clarity regarding the review process for different

¹ See Board of Governors of the Federal Reserve System, “Proposed Guidelines for Evaluating Account and Services Requests,” 86 Fed. Reg. 25865, 25866 (May 11, 2021).

² National Association of Federally-Insured Credit Unions, Letter to Board of Governors of the Federal Reserve System re: Proposed Guidelines for Evaluating Account and Service Requests (July 12, 2021), available at <https://www.nafcu.org/letter-federal-reserve-account-and-services-requests-File>. See also Joint Trades Letter submitted by the American Bankers Association, Consumer Bankers Association and National Association of Federally-Insured Credit Unions (May 11, 2021).

types of institutions.”³ NAFCU supports clarification that insured depository institutions such as credit unions will be categorized as Tier 1 institutions for the purpose of applying the framework and guidelines. The Board’s expectation that review of service and account requests from Tier 1 institutions will be “subject to a less intensive and more streamlined review” appropriately reflects the strong prudential framework that already applies to federally insured credit unions (FICUs).

As noted in NAFCU’s response to the Board’s May 2021 proposal, FICUs are subject to safety and soundness regulations promulgated by the National Credit Union Administration (NCUA), undergo regular examinations, and file public statements of financial condition (Call Reports). As a result, the Reserve Banks have access to ample supervisory material when evaluating individual FICU requests for accounts or services and conducting ongoing monitoring. NAFCU agrees with the principle that the Reserve Banks “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.”⁴ NAFCU supports further clarification that incorporation of such assessments will not entail a more onerous standard for FICUs under the guidelines as compared with current practice.

In general, credit unions should not be the target of additional, discretionary risk assessments under the guidelines. Unlike banks, credit unions face strict limits on investments they can carry, business loans they can originate, and investments they can make. In general, these limits reduce the complexity of credit union balance sheets and greatly minimize the already remote possibility that credit unions would give rise to risks capable of affecting the broader U.S. financial system. Furthermore, credit unions do not operate through complex holding company structures that could frustrate efforts to develop a holistic assessment of risk. Limited organizational complexity and strong prudential supervision of FICUs not only supports the Board’s expectation that review of Tier 1 applications should be, as a general matter, “fairly straightforward,” but also supports an expectation that credit unions should be counted among the least risky Tier 1 entities.⁵

NAFCU supports guidelines that preserve credit unions’ current ability to access accounts and services at the Reserve Banks, while also recognizing the unique risks posed by nontraditional entities that may not be subject to the same close supervision. As not-for-profit, community institutions, credit unions are focused on providing affordable financial service to their members, and the ability to access Reserve Bank services plays a critical part in supporting that mission.

At the core of the supplemental notice and the May 2021 proposal is a desire to reduce the potential for “forum shopping across Reserve Banks.”⁶ Credit unions do not forum shop for Reserve Bank access. However, the Board’s recognition of potential forum shopping does coincide with account requests made by special purpose depository institutions (SPDI).⁷ Credit unions can be sensitive to even small changes in regulatory burden, particularly when efforts to regulate the conduct of a

³ Board of Governors of the Federal Reserve System, “Guidelines for Evaluating Account and Services Requests,” 87 Fed. Reg. 12957, 12958 (March 8, 2022).

⁴ *See id.* at 12960.

⁵ *See id.* at 12960.

⁶ *See* 86 Fed. Reg. 25866.

⁷ Gina Chon, “Cryptocurrency’s Wild West is in Wyoming,” *Reuters* (July 7, 2021), available at <https://www.reuters.com/breakingviews/cryptocurrencys-wild-west-is-wyoming-2021-07-07/>.

few actors translates into rules of broad applicability, so it is essential that the proposed guidelines are appropriately risk-focused.

While the Board's description of Tier 1 reviews is generally reassuring, more can be done to describe how applications from nontraditional, Tier 3 entities will be evaluated and the extent to which individual Reserve Bank discretion may influence any action to approve or deny an application. Additionally, the Board should clarify that requirements related to ongoing monitoring do not translate into additional or duplicative work for credit unions. Credit unions compete most effectively on a level playing where regulatory frameworks are appropriately adjusted to levels of risk and calibrated to reflect the extent of existing supervisory oversight.

Application of Tiered Review Framework

The supplemental notice acknowledges that the guidelines proposed in the Board's May 2021 notice have not undergone substantive change. While the three-tiered review framework establishes a hierarchical standard of review based on certain institutional characteristics (e.g., federally insured vs. not federally insured), the manner in which the guidelines are actually applied at each tier could be made clearer.

For example, the guidelines note that a Reserve Bank should use its judgment to determine whether an institution has adequate capital to continue as a going concern and to meet its current and projected operating expenses under a range of scenarios. NAFCU recognizes that a range of capital management practices may exist for different types of institutions and that a one-size fits all standard may not be desirable. However, the guidelines should identify baseline expectations aligned with federal standards. The Board should clarify the meaning of "adequate capital" and refer to the capital adequacy standards issued by the NCUA in the case of FICUs.

For Tier 3 entities, clarification of capital and other prudential standards will help ensure more transparent treatment if the entity is not subject to the prudential oversight of a federal banking regulator. For Tier 3 entities, the guidelines should also articulate how compliance with prudential standards will be assessed by the Reserve Banks on an ongoing basis.

The Board should clarify how it will consider capital adequacy under "a range of scenarios" for Tier 3 institutions. NAFCU recommends that the Board retain the current approach for assessing credit unions' financial health using existing supervisory assessments, such as NCUA Call Reports, which already provide sufficient information to understand, for example, whether a credit union is adequately capitalized based on the NCUA's prompt corrective action (PCA) standards.⁸

For Tier 3 institutions, NAFCU encourages the Board to describe the procedures Reserve Banks will utilize when formal assessments of capital, liquidity or operational risk management are either unavailable or insufficient because the entity's supervisory framework is "substantially different from, and possibly weaker than, the supervisory and regulatory framework that applies to federally-insured institutions."⁹ As noted in NAFCU prior comments, novel charter recipients,

⁸ See 12 CFR Part 702 Subpart A.

⁹ See 87 Fed. Reg. 12958

such as SPDIs, may not be subject to the same comprehensive federal supervision as FICUs and federally insured banks. In some cases, supervision of SPDIs may entail a relatively discretionary standard for capital adequacy that is not equivalent to federal PCA standards.¹⁰ Furthermore, novel charter recipients may adopt business models that correspond with unique risk exposures. These Tier 3 entities should be held to a higher standard of due diligence and monitoring, particularly in cases where their overall risk profile may be magnified by the volatility of digital assets, quality of reserves, or exposure to affiliates engaged in high risk activities.¹¹

For Tier 3 entities that fail to meet the safety and soundness standards applicable to federally insured depository institutions, the Reserve Banks should not take advantage of their discretionary authority to interpret the guidelines permissively. The stability of the Federal Reserve's payment system depends on transparent and consistent management of risk. To ensure that payment system risk is appropriately mitigated, the Board should articulate how specific requirements, such as capital adequacy and liquidity management, will apply to entities not subject to federal prudential regulation and supervision. Entities that fail to meet minimum standards should not be granted payment system access and the Reserve Banks should not use the ambiguity of the tiering structure as it exists currently to avoid articulating tangible requirements for Tier 3 entities.

Considerations Related to Digital Assets

Non-federally insured entities eligible to obtain Reserve Bank services could harbor novel types of counterparty risk due to their unique (or difficult to examine) business models. For entities substantially involved in facilitating cryptocurrency or stablecoin transactions, the Board should commit to updating its guidelines once federal banking agencies have settled upon an appropriate supervisory framework for managing risks associated with these digital assets. The President's "Executive Order on Ensuring Responsible Development of Digital Assets" will likely accelerate efforts to propose regulatory frameworks that address operational and settlement risks unique to digital assets and may encompass specific requirements related to payment system operations. The development of such a regulatory framework should inform future adjustments to the principles described in the Board's guidelines.

Conclusion

While the supplemental notice provides a starting point for better understanding how the proposed guidelines will be applied, NAFCU requests that the Board incorporate additional clarification to address key issues related to the risk assessment process for Tier 3 entities. NAFCU also urges the Board to clarify that the intent of the guidelines is not to produce more onerous application or monitoring standards for Tier 1 entities such as FICUs. As federally insured institutions, FICUs

¹⁰ For example, Wyoming's latest capital guidance for SPDIs states "The Division's Banking Commissioner is authorized to set the capital requirement on a case-by-case basis, in a manner commensurate with the risk profile and proposed activities of the institution." See Wyoming Division of Banking, Special Purpose Depository Institutions: Capital Requirement Guidance, 1 (July 7, 2021), available at https://drive.google.com/file/d/11RdmmL_ayo7cfigsMVACaCNtHtBgDbfVv/view.

¹¹ See President's Working Group Report On Stablecoins, 12-13 (November 2021), available at https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf.

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are already subject to comprehensive prudential supervision and have demonstrated that they are responsible users of Federal Reserve accounts and services.

NAFCU and its members appreciate the opportunity to comment on the supplemental proposal. Should you have any questions or require any additional information, please contact me at amorris@nafcu.org or (703) 842-2266.

Sincerely,

A handwritten signature in black ink that reads "Andrew Morris". The signature is written in a cursive, slightly slanted style.

Andrew Morris
Senior Counsel for Research and Policy