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: Request for Comment: Guidelines for Evaluating Account and Services Requests (Docket No. OP-1765)

Dear Ms. Misback:

Americans for Financial Reform Education Fund respectfully submits comments on the Federal Reserve Board's guidelines for evaluating account and services requests. Americans for Financial Reform Education Fund is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups deeply concerned about the negative impacts of the highly consolidated banking system on the economy, communities, consumers, and businesses.

We support the guidance's provision of a clear, consistent, and enforceable legal basis that will be used across all the Reserve Banks. Additionally, we support the provision of a framework for evaluating risk to the Federal Reserve Banks, the payments system, and the broader U.S. financial system.

However, although the guidance gives detailed factors to consider when Reserve Banks are evaluating an application, it falls short by not outlining what firms are eligible to apply in the first place. Additionally, we believe applicants who fall under Tier 3, that is applicants who have neither deposit insurance nor are subject to prudential supervision by a federal banking agency, pose significant threats to our financial system. Although the guidance will subject these types of applications to the strictest level of scrutiny, it still provides a path to entry to approval and access to the payment infrastructure, a primary benefit of obtaining a traditional banking charter.

While we can imagine a future regulatory framework that allowed fintech companies who did not replicate the traditional banking model by bundling payments, lending, and deposits, to gain access to the Fed's payment system with proper safeguards and responsibilities, the current realities do not allow for this. State and federal chartering authorities have attempted to create new charters for fintech firms, but in fact allow these fintech firms to be a bank in everything but name.[1] State banking regulators are continuing to provide charters to companies viewed as "innovative" –for example, the special depositary institutions in Wyoming and digital asset depositaries (DADs) in Nebraska– without subjecting them to sufficient regulation, which makes it particularly important for the FRB to remain vigilant with regard to who it grants access to its payments' infrastructure.

This infrastructure includes the ability to send and receive payments via the FedWire and Federal Reserve Automated Clearinghouse (FedACH) systems, access to custody and settlement services and the planned FedNow real-time payments network, and the ability to obtain intraday overdraft credit.[2] Additionally, Federal Reserve member banks elect the directors of the Federal Reserve Banks and thus help shape monetary policy.[3]

As it stands, access to this privilege should be reserved for institutions that are subject to the suite of federal banking regulations designed to protect consumers and the larger economy. By providing Tier 3 applicants a path to approval, the FRB is implicitly sending the message that firms can receive the same benefits as an insured depositary institution without the regulation that comes with it. We believe this will encourage applications from novel charters and further fuel growth in an industry that has flouted consumer protections.[4]

We echo the concerns the Board and its staff have expressed about the dangers of expanding charters and the powers and privileges of banking to firms that are not subject to consolidated supervision.[5] Robust supervision and regulation have historically and necessarily gone hand-in-hand with the federal government's delegation of powers over the money supply to private firms.[6]

The risks created by these novel charters gaining access to the national payment system are very real. It will compromise consumer protection by allowing firms to preempt state consumer protection laws, be exempt from community reinvestment requirements and lack federal deposit insurance. Additionally, it will distort competition in commercial markets by affording some non-banks access to Federal Reserve accounts and services but not their competitors.

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[1] Professor Dan Awrey, Unbundling Banking, Money, and Payments, June 2021, pg 9
[2] *Supra* note 1, pg 28
[3] Federal Reserve System Publication. The Fed Explained: What the Central Bank Does, August 2021, pg 4
[4] Erik Gerding's Written Testimony before the U.S. House Financial Services Committee; Hearing "Banking Innovation or Regulation Evasion?:Exploring Modern Trends in Financial Institution Charters," April 15, 2021, Pg 12.
[5] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation & Office of the Comptroller of the Currency, Report to Congress and the Financial Stability Oversight Council, Sept 2016, pgs 33-34
[6] Lev Menand, Why Supervise Banks? The Foundations of the American Monetary Settlement, October 2019

We also highlight the scholarship detailing the risks and damage to the architecture of financial institution regulation caused by the Federal Deposit Insurance Corporation reopening deposit insurance to new industrial loan companies ("ILCs").[7] Granting Federal Reserve account and payments system access to ILCs, given the lack of consolidated supervision, introduces exactly the type of risk the proposed guidance was designed to prevent. Likewise, the growing number of ILC applications and the popularity of the ILC charter among financial technology firms suggest that these applications will become more frequent.

The expansion of non-bank bank charters–and subsequently calls for greater access by non-bank financial firms to Fed master accounts and financial services–have often been linked to promises of greater financial inclusion and wider access to financial services.[8] However, it is far from clear what actual binding commitments financial regulators have obtained in terms of greater financial inclusion and access in exchange for granting non-bank bank charters. We do not have data on which customers and communities would benefit, and whether these customers who have historically been victims of financial malfeasance and discrimination, such as redlining and predatory sub-prime lending would do so. Claims of greater access too often have turned out in practice to be either empty, or a cover for targeting of predatory products.[9] Vague promises of greater access cannot justify firms enjoying the privileges of Fed accounts and services.

In this regard, we would like the FRB to be cognizant of the many state proposals to create public banks. Public banks, such as the Bank of North Dakota (BND) and the Territorial Bank of American Samoa (TBAS), have been proven to serve the needs of their surrounding communities.[10] When the only banks in the American Samoa—Bank of Hawaii and ANZ Amerika Samoa—TBAS filled the gap created to provide basic banking services to the residents of the territory.[11] Similarly, North Dakota provided the greatest amount of PPP loans, relative to the state's workforce, when compared to the other states primarily because of their state bank.[12] The Fed's current framework does not account for the unique structures of these institutions, which typically do not have federal deposit insurance. The TBAS waited almost two years to receive a routing number, which is given on the basis that an institution is eligible to open a master account.[13] As the demand for public banking grows, we think it would be a mistake for the FRB to evaluate these institutions using the

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[7] Arthur E. Wilmarth, Jr., The FDIC Should Not Allow Commercial Firms to Acquire Industrial Banks, June 2020

[8] The Cato Institute's Comments to FRB on Proposed Guidelines Guidelines for Evaluating Account and Services Requests, May 2021, pg 2

[9] Remarks by Former Fed Chairman Alan Greenspan on Consumer Finance (comments on subprime mortgages providing access to immigrants) April 2005

[10] Andrew Van Dam, North Dakota businesses dominated the PPP. Their secret weapon? A century-old bank founded by radical progressives, The Washington Post, May 2020 and Professor Julie Anderson Hill paper pg. 57

[11] See Professor Julie Hill, note 2, page 53

[12] *Supra* note 11

[13] Supra note 12 pg 59

same metrics and risk-rating guidelines it uses to evaluate private enterprises.

As TBAS and the Bank of North Dakota show, there are better ways of expanding access to banking services to the unbanked and underbanked, including public options such as proposals for Fed Accounts for All.[14] Public options would offer true access with consumer protections and affordable prices, but without selectively favoring financial firms that are subject to light consumer protection, prudential regulation, or supervision.

To discuss these issues further please contact Renita Marcellin at renita@ourfinancialsecurity.org.

Sincerely,
Americans for Financial Reform Education Fund

[14] Morgan Ricks et al., FedAccounts: Digital Dollars, 2021; Other proposals for public options exist. E.g., Saule T. Omarova, The People's Ledger: How to Democratize Money and Finance the Economy,