



# Americans for Financial Reform Education Fund

July 12, 2021

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

---

Dear Ms. Misback:

Americans for Financial Reform Education Fund is grateful for the opportunity to respond to the Federal Reserve Board's Request for Comment on "Proposed Guidelines for Evaluating Account and Services Requests" (Docket No. OP-1747). We strongly urge the Board to limit any expansion of access to Fed master accounts and access to Federal Reserve Bank financial services only to institutions that (a) take deposits; (b) have federal deposit insurance; and (c) are subject to the same robust supervision and regulation as traditional banks.

The Board should not expand access to master accounts and financial services to firms that do not meet these criteria, as that would turbocharge the growth of financial institutions that are subject to weaker consumer protection and prudential regulations. This in turn would:

- ¶ *compromise consumer protections* by encouraging more firms to seek non-bank bank charters so as to preempt state consumer protection laws without being subject to the same laws, community reinvestment requirements, supervision and regulation of firms with federal deposit-insurance;
- ¶ *create risks to the payments system and financial stability*; and
- ¶ *distort competition in commercial markets* by affording some non-banks access to Federal Reserve accounts and services but not their competitors;

We are also concerned that allowing these firms to enjoy the same access to Fed master accounts and financial services that well-regulated federally insured deposit-taking institutions do without the same level of supervision and regulation will prod regulated and insured banks either to take more risk or to push for laxer supervision and regulation. Allowing nonbanks to have the same privileges as insured depository banks without similar and appropriate levels of supervision and regulation would distort banking markets.

We echo the concerns that the Board and its staff have expressed with the dangers of expanding charters and the powers and privileges of banking to firms that are not subject to consolidated supervision.<sup>1</sup> 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.<sup>2</sup>

We also note the scholarship<sup>3</sup> that has highlighted the consumer protection, financial stability, and other risks associated with non-bank bank charters, including 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”);<sup>4</sup> and
- ¶ the Office of the Comptroller of the Currency inventing a new fintech charter.<sup>5</sup>

---

<sup>1</sup> E.g., BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FEDERAL DEPOSIT INSURANCE CORPORATION, & OFFICE OF THE COMPTROLLER OF THE CURRENCY, REPORT TO THE CONGRESS AND THE FINANCIAL STABILITY OVERSIGHT COUNCIL PURSUANT TO SECTION 620 OF THE DODD-FRANK ACT at 33-34 (Sept. 2016) available at

<https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160908a1.pdf> (last visited July 10, 2021) (expressing concerns with lack of consolidated supervision for industrial loan companies).

<sup>2</sup> Lev Menand, *Why Supervise Banks? The Foundations of the American Monetary Settlement*, 74 VAND. L. REV. 951 (2021).

<sup>3</sup> E.g., Arthur E. Wilmarth, Jr., *The FDIC Should Not Allow Commercial Firms to Acquire Industrial Banks*, 39 BANKING & FIN. SVCS. POL'Y REP. No. 5 (May 2020) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3613022](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3613022) (last visited July 10, 2021); Arthur E. Wilmarth, Jr., *The OCC's and FDIC's Attempts to Confer Banking Privileges on Nonbanks and Commercial Firms Violate Federal Laws and Are Contrary to Public Policy*, 39 BANKING & FIN. SVCS. POL'Y REP. No. 10 (Oct. 2020) available at [https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2780&context=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2780&context=faculty_publications) (last visited Apr. 11, 2021); Testimony of Kristin Johnson, Asa Griggs Candler Professor of Law, Emory University School of Law Before the United States House of Representatives Committee on Financial Services Subcommittee on Consumer Protection and Financial Institutions, Hearing on “Banking Innovation or Regulatory Evasion?: Exploring Trends in Financial Institution Charters” (Apr. 15, 2021) available at <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-johnsonk-20210415.pdf> (last visited, July 10, 2021); Testimony of Erik F. Gerding, Professor of Law, University of Colorado Law School Before the United States House of Representatives Committee on Financial Services Subcommittee on Consumer Protection and Financial Institutions, Hearing on “Banking Innovation or Regulatory Evasion?: Exploring Trends in Financial Institution Charters” (Apr. 15, 2021) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3835503](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3835503) (last visited July 10, 2021).

<sup>4</sup> See FDIC Final Rule, “Parent Companies of Industrial Banks and Industrial Loan Companies,” 86 Fed. Reg. 10,703 (Feb. 23, 2021) available at <https://www.fdic.gov/news/board/2020/2020-12-15-notice-dis-b-fr.pdf> (last visited July 8, 2021).

<sup>5</sup> See Office of the Comptroller of the Currency, Policy Statement on Financial Technology Companies' Eligibility to Apply for National Bank Charters (July 31, 2018) available at <https://www.occ.gov/news-issuances/news-releases/2018/pub-other-occ-policy-statement-fintech.pdf> (last visited July 8, 2021); Office of the Comptroller of the Currency, Comptroller's Licensing Manual Supplement: Considering Charter Applications From Financial Technology Companies (July 2018) available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/considering-charter-apps-from-fin-tech-companies.html> (last visited July 8, 2021).

There are deep benefits to respecting clearly defined and traditional regulatory categories for which firms have access to the powers and privileges of banking – including access to the Federal Reserve’s payment systems. These benefits of banking must also come with the burdens – robust supervision and regulation – necessary to ensure that consumers are protected, the payment system remains secure, and banking and nonbanking markets are not distorted. Inventing new hybrid categories of firms with access to the powers and privileges of banking without supervisory and regulatory safeguards risks opening Pandora’s Box. It is unclear how Federal Reserve Banks could begin to reinvent consumer protections and prudential regulations for non-insured depository institutions on an *ad hoc* basis.

The expansion of non-bank bank charters – and 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. However, it is far from clear what actual binding commitments other 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 actually benefit and whether these customers and communities are those most in need, such as communities that historically suffered from redlining or other discrimination. Claims of greater access too often have turned out in practice to be targeting for predatory products. Companies that have more monoline business models and do not offer deposit insurance also do not have the same broad range of services to serve the consumer holistically the way banks can. Vague promises of greater access cannot justify firms enjoying the privileges of Fed accounts and services.

We note that non-bank firms are not subject to the Community Reinvestment Act. Although we believe that the CRA needs strengthening, it does provide a legal framework that incorporates the needs of low- and moderate-income communities into bank supervision, examination, and licensing. Meeting the needs of these communities is part of the bargain of banking: in exchange for receiving the powers and privileges of banks – including access to the Federal Reserve payments infrastructure – banks must demonstrate measurable results in meeting community needs. Non-deposit-taking banks would not be subject to this framework and these expectations and therefore should not enjoy the core powers and privileges of banking.

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.<sup>6</sup> 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 Erik Gerding, Senior Fellow at [erik@ourfinancialsecurity.org](mailto:erik@ourfinancialsecurity.org).

Sincerely,

Americans for Financial Reform Education Fund

---

<sup>6</sup> See, e.g., Morgan Ricks et al., *FedAccounts: Digital Dollars*, 89 GEO. WASH. L. REV. 113 (2021). Other proposals for public options exist. See, e.g., Saule T. Omarova, *The People’s Ledger: How to Democratize Money and Finance the Economy*, \_\_ VAND. L. REV. \_\_ (forthcoming).