



FEDERAL RESERVE SYSTEM

[Docket No. OP – 1557]

Final Guidelines for Evaluating Joint Account Requests

SUMMARY: Under the Federal Reserve Act (FRA), the Federal Reserve Banks (Reserve Banks) have the authority to open accounts for member banks and other eligible depository institutions (collectively, depository institutions). The Reserve Banks routinely open and maintain individual Federal Reserve accounts for eligible institutions. Joint accounts—those where the rights and liabilities are shared among multiple depository institution account-holders—have not in the past been available as a standard account option, but in limited cases the Reserve Banks have opened such accounts for specific purposes. The Board of Governors of the Federal Reserve System (Board) has approved final guidelines for evaluating requests for joint accounts at Reserve Banks intended to facilitate settlement between and among depository institutions participating in private-sector payment systems (private-sector arrangements). The guidelines broadly outline factors that will be considered in evaluating such requests, but are not intended to provide assurance that any specific arrangement would be granted a joint account. Requests will be evaluated on a case-by-case basis, with the type and extent of information necessary to evaluate a particular request likely dependent on the complexity of the arrangement.

DATE: [DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT:

Susan V. Foley, Senior Associate Director (202-452-3596), Kylie Stewart, Manager

(202-245-4207), or Ian C.B. Spear, Senior Financial Services Analyst (202-452-3959), Division of Reserve Bank Operations and Payment Systems; Gavin Smith, Counsel (202-452-3474), Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact 202-263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

On December 22, 2016, the Board requested comment on proposed guidelines for evaluating requests for joint accounts at Federal Reserve Banks intended to facilitate settlement between depository institutions participating in private-sector arrangements within the U.S. payment system.¹ The Reserve Banks routinely open and maintain individual Federal Reserve accounts for depository institutions. Joint accounts have not been available in the past as a standard account option, but in limited cases the Reserve Banks have opened such accounts for specific purposes.² Currently, the Reserve Banks maintain joint accounts to facilitate settlement between users of two private-sector arrangements.³ Both of these joint accounts are long-standing, with the more recent account being established approximately 15 years ago.

¹ 81 FR 93923 (Dec. 22, 2016).

² Section 13(1) of the FRA authorizes each Reserve Bank to receive deposits from its member banks or other depository institutions (12 U.S.C. 342). In addition, section 16(14) of the FRA authorizes the Board to direct a Reserve Bank to exercise the functions of a clearinghouse for depository institutions (12 U.S.C. 248-1).

³ The two joint accounts currently used to facilitate settlement are operated by The Clearing House (TCH): one to facilitate wholesale payments through the Clearing House Interbank Payments System (CHIPS) and another to facilitate TCH's Universal Payment Identification Code (UPIC) service for ACH payments.

CHIPS is a multilateral netting system that continuously settles wholesale payments between two or more participating institutions.

TCH offers a UPIC service that enables its customer's end users to provide payment instructions to third parties without disclosing their bank account information and enables such end users to change banking relationships without needing to notify each payor of the change (the UPIC remains the same).

For purposes of these guidelines, a joint account is an account at a Reserve Bank where the rights and liabilities are shared among multiple account-holders (joint account holders), that is, institutions that are eligible to open an account with a Reserve Bank. The Board contemplates that under these arrangements, the joint account holders will authorize a single entity to serve as their “agent” in providing instructions to the Reserve Bank at which the account would be held (the account-holding Reserve Bank) with respect to the account. The account-holding Reserve Bank would be authorized to act on any instruction provided by the agent, consistent with the provisions of the joint account agreement. The Board also contemplates private-sector arrangements using joint accounts might also use an “operator” (which could be the agent of the joint account or a separate entity) for the running of the arrangement, which might include undertaking various steps in the payment process such as initiation, clearing, settlement, and reconciliation, or establishing rules and governance. “Participants” in the arrangement might include joint account holders, as well as other depository institutions and nondepository institutions that are directly part of the payment system established by the private-sector arrangement.

In 2016, Board and Reserve Bank (collectively, Federal Reserve) staff received a request from an organization to open a new joint account for that organization’s proposed real-time payment system. Given the ongoing evolution of the U.S. payment system, the Board believes that other potential providers may contemplate joint account arrangements,

The joint account for UPIC transactions enables the settlement of ACH credit transactions using UPICs when the transactions are sent by customers of the Reserve Banks’ FedACH service and destined for participants in TCH’s UPIC service.

or may reconsider their options for settlement capabilities if they understand better the availability of joint accounts at Reserve Banks.⁴

The Board therefore proposed to establish a set of guidelines that would be considered in evaluating requests for joint accounts intended to facilitate settlement between depository institutions participating in private-sector arrangements. The Board proposed guidelines based on the following six principles:

- (1) As a necessary condition for evaluating a joint account request, each joint account holder should meet all applicable legal requirements to have a Federal Reserve account, and the Reserve Bank will not have any obligation to any non-account holder with respect to the funds in the account.
- (2) The private-sector arrangement should demonstrate that it has a sound legal and operational basis for its payment system, including an effective legal framework for achieving settlement finality.
- (3) The design and rules of the private-sector arrangement should be consistent with the Federal Reserve's policy objectives to promote a safe, efficient, and accessible payment system for U.S. dollar transactions and be consistent with the intended use of the arrangement.
- (4) The provision of the joint account should not create undue credit, settlement, or other risks to the Reserve Banks.
- (5) The provision of a joint account should not create undue risk to the overall payment system.
- (6) The provision of a joint account should not adversely affect monetary policy operations.

The Board requested comment on all aspects of the proposed guidelines, including whether the scope and application were sufficiently clear and appropriate to

⁴ A Faster Payments Task Force (Task Force) was established in 2015 to help foster a desired outcome set forth as part of the Federal Reserve's *Strategies for Improving the U.S. Payment System* efforts for "a ubiquitous, safe, faster electronic solution." The *Strategies for Improving the U.S. Payment System* paper is available at <https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf>. The Task Force developed a process to assess proposals for faster retail payment systems. As part of the process, proposers were made aware that they could discuss Reserve Bank services, such as settlement options, with Federal Reserve representatives if they had an interest in using those services to facilitate their proposed faster retail payment systems.

achieve their intended purpose and any other criteria or information that commenters believed may be relevant to evaluate joint account requests. The Board further sought comment specifically on the following:

- What information, if any, about the establishment of an individual joint account should be made public?
- How, if at all, would the possibility (1) that the account agreement with the account holding Reserve Bank may include limits on balances, require information on projected balances or volatility of balances, or restrict further joint accounts; or (2) that the joint account may be closed if warranted affect interest in establishing a joint account, or use of such an account once opened? Are there other types of restrictions or conditions that, while equally effective in attaining the same objectives, might be less burdensome if placed on joint accounts once in use?
- Are there additional criteria or information that may be relevant to evaluate joint account requests for U.S. depository institutions to provide services to foreign clearing and settlement arrangements?
- Should the Board or the Reserve Banks consider other steps or actions to facilitate settlement in light of market participants' efforts to develop faster retail payment solutions?

II. Summary of Comments and Analysis on the Proposed Guidelines

The Board received nine comments in response to its request. Comments were submitted by depository institutions, depository institution trade associations, a national

payments association, service providers and payment system operators, and an individual. All nine commenters supported establishment of the guidelines. No commenter expressed opposition to any of the six proposed principles or the guidelines more broadly. Five commenters requested that the Board clarify certain aspects or consider additional elements as part of the final guidelines.

Each of the proposed principles, the comments received, and the Board's final guidelines are described in additional detail below. Throughout the final guidelines, the Board has made changes to clarify the application of the final six principles and more specifically identify the parties to a private-sector arrangement for which individual principles and evaluation factors are relevant.

1. Each joint account holder must meet all applicable legal requirements to have a Federal Reserve account, and the Reserve Bank will not have any obligation to any non-account holder with respect to the balance in and operation of the account.

Unless otherwise specified by statute, only those entities that are member banks or other depository institutions are legally able to obtain Federal Reserve accounts and payment services.⁵ Therefore, under the first proposed principle, only an institution eligible to have a Federal Reserve account under the applicable federal statute and Federal Reserve rules, policies, and procedures is able to be a joint account holder. Consistent

⁵ Section 13(1) of the FRA permits Reserve Banks to receive deposits from member banks or other depository institutions. 12 U.S.C. 342. Section 19(b)(1)(A) of the FRA includes as depository institutions any federally insured bank, mutual savings bank, savings bank, savings association, or credit union, as well as any of those entities that are eligible to make application to become a federally insured institution. 12 U.S.C. 461(b). In addition, there are certain statutory provisions allowing Reserve Banks to act as a depository or fiscal agent for the Treasury and certain government-sponsored entities (*See i.e.* 12 U.S.C. 391, 393-95, 1823, 1435) as well as for certain international organizations (*See i.e.* 22 U.S.C. sections 285d, 286d, 290o-3, 290i-5, 290l-3). In addition, Reserve Banks are authorized to offer deposit accounts to designated financial market utilities (12 U.S.C. 5465), Edge and Agreement corporations (12 U.S.C. 601-604a, 611-631), branches or agencies of foreign banks (12 U.S.C. 347d), and foreign banks and foreign states (12 U.S.C. 358).

with Federal Reserve policies and procedures, under the first proposed principle the account-holding Reserve Bank must approve all joint account holders that are part of a proposed private-sector arrangement.⁶ The Board also explained that, consistent with the limits on the Reserve Banks' deposit-taking authority, an account-holding Reserve Bank's obligation with respect to any funds in a joint account will be limited to the joint account holders, and non-account holders will not have any rights against the Reserve Bank with respect to those funds.

Three commenters addressed the first proposed principle and supported the proposed principle as consistent with existing account policies regarding Federal Reserve accounts. Two of the three commenters further stated that the first proposed principle would ensure the integrity of the payment system. None of the three commenters proposed changes to the first proposed principle or its considerations.

In the final guidelines, the Board has adopted the first principle as proposed with minor technical changes for clarity. As proposed, only an institution eligible to have a Federal Reserve account under applicable federal statute and Federal Reserve rules, policies, and procedures is able to be a joint account holder. Some institutions may be eligible for a Federal Reserve account but may present atypical risk profiles, such as uninsured institutions. In these cases, a heightened analysis of that institution's participation as a joint account holder may be performed under one or more of the other guidelines. The final guidelines now provide further clarification that under the first principle, the designated agent or operator of the private-sector arrangement would not need to be eligible for a Federal Reserve account, assuming it is not a joint account

⁶ Under the first proposed principle, the designated agent or operator of the private-sector arrangement would not need to be a depository institution.

holder.⁷ In the final guidelines, the first principle also clarifies that no party other than an account holder shall have a claim against the account-holding Reserve Bank in connection with operation of the joint account, including any decision related to opening or refusing to open the account.

2. The private-sector arrangement should demonstrate that it has a well-founded, clear, transparent, and enforceable legal basis in all aspects of its proposed arrangement.⁸

Under the second proposed principle, the Board proposed that a private-sector arrangement seeking a joint account should have a sound legal and operational basis for its payment system, including an effective legal framework for achieving settlement finality. The Board explained that under the second proposed principle, requestors of a joint account would be expected to provide supporting legal analysis as well as the system's rules, agreements, and other governing documents.⁹ The Board also proposed that the private-sector arrangement should have established appropriate compliance procedures and have policies and procedures to minimize disruption to its system when one of its participants, the agent, or the operator fails, when fraudulent activity occurs, or in the event of operational failures. Evaluation under the second proposed principle would further consider the applicable supervisory framework for all parties to the private-sector

⁷ The designated agent would need to enter into an agreement with the account-holding Reserve Bank.

⁸ As described below, in the final guidelines the Board has clarified certain aspects of the second proposed principle. Significant changes from the proposed language are indicated in italics: The private-sector arrangement should demonstrate that it has *a well-founded, clear, transparent, and enforceable* legal basis *in all aspects of its proposed arrangement* (the second principle as proposed read "The private-sector arrangement must demonstrate that it has a sound legal and operational basis for its payment system, including an effective legal framework for achieving settlement finality").

⁹ For example, the Board explained that requestors would be expected to analyze the application of laws and regulations, such as U.C.C. 4A, the Electronic Funds Transfer Act, U.S. sanction programs, Bank Secrecy Act and anti-money-laundering requirements or regulations, and other relevant laws and regulations. In addition, the arrangement would be expected to analyze significant matters that may pose legal risks, such as the attachment risk related to the funds in the joint account and the impact of participant insolvency on the account.

arrangement, with the expectation that the agent and operator should be subject to the examination authority of a federal or state supervisory agency.

Three commenters addressed the second proposed principle. All three commenters were generally supportive, stating that the expectations described under the second proposed principle reduce risks to participants and the broader payment system. Only one of the commenters, a payment system operator, suggested modifications. Specifically, the commenter suggested that joint account requests only be approved if the agent and operator are subject to federal examination authority, in particular the Federal Financial Institutions Examination Council's significant service provider or technology service provider programs.¹⁰

In considering the appropriate level of supervision for an arrangement whose participants use a joint account at a Reserve Bank, the Board seeks to reduce risks for the Reserve Banks and the payment system as a whole while at the same time avoiding posing unwarranted access barriers. However, the Board does agree that, at some point in the maturity of a private-sector arrangement, federal supervision or examination may be important. For example, a successful private-sector arrangement is likely to grow over time in terms of number of participants and geographic reach (interstate or international), which may pose increasing risks to the overall payment system in light of the potential to operate on a 24/7/365 basis. The Board sees benefit in uniform supervision and examination authority for private-sector arrangements that have reached this point of maturity.

¹⁰ The significant service provider program was formerly known as the Multi-Regional Data Processing Servicers program.

Therefore, the Board has added to the provision that the private-sector arrangement be subject to federal or state supervision an expectation that the payment system established by a private-sector arrangement (including the operator) is also subject to the jurisdiction of a federal banking agency with the authority to examine or inspect the private-sector arrangement and take supervisory actions against the arrangement or its participants.¹¹ This means for a payment system established by a private-sector arrangement and supervised by a state regulatory body, a federal banking agency need not be engaging in active supervision or examination, but should have the authority to do so when the risk, scope, and operations call for such supervision or examination. For example, under the Bank Service Company Act, federal banking agencies have the authority to examine third-party service providers that perform services for depository institutions that the depository institution could otherwise do itself.

The Board also believes that consideration of those supervisory factors, as well as consideration of issues related to the operational soundness of the private-sector arrangement, would be more appropriately addressed under the final guidelines' third principle as part of considering the Federal Reserve's objectives to promote a safe, efficient, and accessible payment system for U.S. dollar transactions. In the final guidelines, the Board has therefore identified those elements as considerations under principle three.

Finally, as part of the final guidelines, and as indicated above, the Board has clarified the phrase "sound legal basis" in the second principle to mean a well-founded,

¹¹ A federal banking agency would include the Board; the Federal Deposit Insurance Corporation (FDIC); and the Office of the Comptroller of the Currency (OCC).

clear, transparent, and enforceable legal basis in all aspects of the proposed arrangement. The Board has also made other minor technical changes for clarity.

3. The design and rules of a private-sector arrangement should be consistent with the Federal Reserve’s policy objectives to promote a safe, efficient, and accessible payment system for U.S. dollar transactions.

As explained under the third proposed principle, a private-sector arrangement using a joint account to facilitate settlement would be expected to manage risks consistent with Part I of the Board’s Policy on Payment System Risk (PSR Policy), even if the private-sector arrangement is not otherwise subject to the PSR Policy. Also of relevance was (1) whether the system is widely available for use by its intended end users and is designed to minimize the risk of disruption (rejection or delay of payments) to end users and (2) whether the system creates undue inefficiencies in the payment process or undue barriers to interoperability within the U.S. dollar payment system. The Board also explained that evaluation of a joint account request would assess whether the private-sector arrangement promotes payment system improvements and innovations and the extent to which the arrangement fosters competition in the payment system. The design and rules of the private-sector arrangement, including rules relating to the funding of and disbursements from the joint account, should also be consistent with the intended use of the account. For example, the rules should not provide an incentive for a participant that is not a joint account holder and not eligible for its own individual Federal Reserve account to use its participation in the arrangement, including the funding of its obligations under the arrangement through a joint account holder, to inappropriately take advantage of the credit-risk-free nature of the joint account for purposes other than settling payments through the arrangement.

The Board did not receive any comments suggesting modifications under the third proposed principle but did receive one comment from a national payments association related to principle five that the Board believes has implications for principle three. The commenter suggested that it would be relevant for the Board to consider the extent to which a private-sector arrangement facilitates payments as part of a transparent payment system, noting that less transparent mechanisms could reduce effective risk management of participants by providing inadequate visibility for all parties to sufficiently monitor and manage risks, which may affect the payment system more broadly. The Board believes that effective risk management will be adequately considered in the final guidelines but agrees that promoting transparency in the overall payment system is also an important policy objective. Therefore the final guidelines include under the third principle a consideration of the extent to which a private-sector arrangement promotes transparency for end users and the public more broadly (for example by making operating rules, rulemaking processes, list of participants, or certain network statistics publicly available).

As described in the discussions regarding the Board's second and fourth proposed principles, the Board believes, based on the comments received, that several considerations proposed under those principles would be more appropriately evaluated as part of principle three, specifically factors related to supervision, operational soundness (such as policies and procedures to minimize disruption when one of its participants, the agent, or the operator fails or in the event of operational failures), and financial soundness of the operator (such as financial statements and cash flow projections). The third principle of the final guidelines also provides greater clarity on the consideration of the Board's PSR Policy, specifically that a private-sector arrangement would be expected to

comply with the general policy expectations for payment systems outlined within Part I of the PSR Policy at a minimum, even if it is not otherwise subject to the policy, in addition to any supervisory obligations.¹²

The Board has also clarified that as part of the third principle, the arrangement's rules should sufficiently address the responsibilities and liabilities of the participants, agent, and operator in cases of operational disruption, or erroneous or fraudulent conduct. Lastly, the final guidelines provide additional clarity related to consideration under the third principle of the extent to which the design and rules of the arrangement are consistent with the intended use of the arrangement.

4. Provision of a joint account should not create undue credit, settlement, or other risks to the Reserve Banks.

The Board in its proposal explained under the fourth proposed principle that granting a request for a joint account should not create undue risks to a Reserve Bank. For instance, the Board proposed that an operator for an arrangement must be financially sound and that the agent should demonstrate an ongoing ability to meet all obligations under the joint account agreement with the account-holding Reserve Bank. Evaluation under this proposed principle would consider the manner in which the joint account will be used, including any anticipated use of Reserve Bank services and methods in place by the private-sector arrangement to avoid overnight and intraday overdrafts, which would not be permitted in a joint account. Under the fourth proposed principle, the agent would also need to demonstrate that it has ways to monitor the joint account and transactions

¹² Those expectations are identified in Part I, section C of the PSR Policy, "General policy expectations for other payment systems within the scope of the policy" (as amended effective September 23, 2016). The PSR Policy is available at https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.

into and out of the account, including the ability to avoid overdrafts and promptly cover any inadvertent overdrafts.

One commenter, a depository institution, addressed the fourth proposed principle. The commenter suggested that evaluation under the principle should consider the contingency processing capabilities of owners, participants and operators of a private-sector arrangement. The Board agrees that contingency processing capabilities will be important when evaluating joint account requests and believes that such considerations are already accounted for under several of the principles, including consideration of the private-sector arrangement's ability to minimize disruption to its system and to meet the requirements of the PSR Policy (principle three), the agent's ability to monitor transactions originated and received by the account (principle four), and whether the arrangement poses undue risk to the overall payment system (principle five). As those considerations are included in the final guidelines, the Board does not intend to include a separate contingency assessment as part of principle four.

The same commenter asked that the guidelines set forth a clearly defined review process for assessing the financial soundness of operators. The Board agrees that providing further information may be helpful to requestors and the final guidelines clarify that it will likely be necessary to review (among other things) the financial statements of operators, as well as cash flow projections (including capital and operating expenses). The Board also believes that those financial soundness factors would be more appropriately addressed under the final guidelines' third principle when considering the Federal Reserve's objectives to promote a safe, efficient, and accessible payment system for U.S. dollar transactions. In the final guidelines, the Board has therefore identified

those elements as considerations under principle three. The Board does not believe, however, it would be appropriate to create a standardized review process for assessing the financial soundness of every operator, or to establish expectations that only certain information related to the financial condition of the operator will be relevant as part of assessing a joint account request. Ultimately, the specific considerations necessary to determine whether an operator is financially sound will vary depending on the nature of the private-sector arrangement and the individual entity.

The final guidelines no longer discuss an assessment of the financial soundness of each participant under principle four (absent a potential for further analysis of any atypical risk presented by a potential joint account holder, as discussed under the first guideline). The Board believes that the Reserve Banks already apply appropriate controls to account holders as necessary to mitigate risks that may result from financially unsound institutions. Moreover, the financial soundness of participating depository institutions is already considered by a depository institution's supervisor. In light of these various factors, the Board does not believe it is necessary to assess each individual joint account holder's financial soundness as part of evaluating a request.

Lastly, the explanatory paragraphs to the final guidelines provide that the account agreement with the account-holding Reserve Bank at the time of account opening, or any time thereafter, may include obligations relating to, or conditions or limitations on, use of the joint account as necessary to limit any operational, credit, legal, or reputational risks posed to the Reserve Banks.

5. Provision of a joint account should not create undue risk to the overall payment system.

Under the fifth proposed principle, a private-sector arrangement should not cause undue credit, settlement, or other risks to the efficient operation of other payment systems or the payment system as a whole. In evaluating a joint account request under this proposed principle, the Board proposed that the operational and financial interaction with, and use of, other payment systems would be relevant, as would the extent to which use of the joint account may restrict a portion of funds from being available to support intraday liquidity needs of depository institutions for other payment and settlement activity.

Three commenters addressed the fifth proposed principle. While all three commenters were generally supportive, two of the commenters suggested modifications to the proposed principle and its considerations. As discussed above, the Board received one comment from a national payments association under principle five that the Board believed was relevant for evaluation under principle three. One depository institution commenter suggested that the principle should include an assessment of individual joint account holders' liquidity needs to ensure that the private-sector arrangement does not negatively impact the ability to meet further obligations. The Board does not believe, however, that it would be appropriate to assess the liquidity needs of each individual account holder in considering a joint account request. Joint account holders should be effectively managing their unique liquidity needs, which may change over time. Institutions participating in private-sector arrangements should ensure liquidity management is appropriately robust and quantitative in light of the nature of the arrangement, particularly where its objective is to facilitate faster payments. Moreover,

the liquidity of participating depository institutions will likely already be considered by a depository institution's supervisor. However, the Board agrees that issues of liquidity will be a critical consideration in evaluating joint account requests and believes that the overall impact of the private-sector arrangement on liquidity should already be adequately assessed as part of the fifth principle, which includes consideration of the extent to which the use of the joint account may restrict a portion of funds from being available to support liquidity needs of depository institutions for other payment and settlement activity.

In addition, the explanatory paragraphs of the final guidelines provide that the account agreement with the account-holding Reserve Bank at the time of account opening or any time thereafter may include obligations relating to, and conditions or limitations on, use of the joint account to limit risks to financial stability and the implementation of monetary policy (see principle six), as well as other risks that may arise.

6. Provision of a joint account should not adversely affect monetary policy operations.

Finally, the provision of a joint account could have important implications for monetary policy implementation, particularly if the end-of-day balances in a joint account or joint accounts in the aggregate fluctuate to the extent that they materially affect the demand for or supply of reserve balances.¹³ Such fluctuations would be a concern in a monetary policy framework that relies on controlling the supply of reserves and in which reserve balances are relatively scarce. Under the sixth proposed principle, a joint account would not be opened if it would adversely affect the conduct of monetary policy. The Board explained that evaluation of the potential monetary policy implications would

¹³ End-of-day balances refers to the balances in joint accounts at the time the Federal Reserve's accounting system closes for a given day.

include whether the balance in the joint account would be treated as reserves (that is, would either be available to satisfy any joint account holder's reserve balance requirement or be treated as excess reserves), the expected predictability and volatility of the aggregate end-of-day balance of the joint account, and the potential for a Reserve Bank to impose limitations on account volatility without affecting the intended function of the arrangement. The Board further identified several areas where it may be necessary for the account agreement with the account-holding Reserve Bank to include limits or controls, such as limiting account volatility and account size or requiring a private-sector arrangement to provide information related to such issues.¹⁴ The Board requested comment on (1) how, if at all, the possibility of such limits affected interest in establishing a joint account or use of such an account once opened and (2) whether commenters believed other types of restrictions or conditions might be less burdensome, while being equally effective in attaining the same objectives.

Four commenters addressed these issues. One commenter suggested that the Board treat balances held in a joint account as reserves. The treatment of joint account balances, however, will depend on the nature of the private-sector arrangement, including the rights and obligations of the parties involved. Determining whether balances held in a joint account qualify as reserves therefore will be assessed for each request individually. Moreover, the determination of whether balances in joint accounts are treated as reserves will not affect the potential need to predict and limit the volatility in the joint accounts. If joint account balances are determined to be reserve balances, then these balances will

¹⁴ An information requirement might include a notice period within which the agent must notify the Reserve Bank of shifts in account balances greater than a designated threshold. The Board further explained that if other potential conditions discussed above are ineffective at mitigating the risks identified or if the obligations, limits or controls are breached, the account agreement with the account-holding Reserve Bank might be restricted further or the joint account may be closed if warranted.

affect the demand for such balances, which is closely monitored and supplied by the Federal Reserve in a scarce reserve regime. Likewise, if joint account balances are not treated as reserves, they are a factor affecting the supply of reserve balances, meaning, all else equal, movements in joint account balances have similarly sized but opposite effects on the supply of reserve balances, which the Federal Reserve will need to offset to provide the appropriate level of reserves in a scarce reserve regime.

None of the commenters opposed the principle or objected to the potential imposition of limits or controls. One commenter stated that institutions would be able to adequately adjust to any necessary limits or controls placed on the account. Two commenters suggested that any limits or controls be identified prior to opening a joint account, or be included in the account agreement with the account-holding Reserve Bank to provide clarity and certainty to private-sector arrangements. While the Board agrees that providing certainty would be beneficial to private-sector arrangements, limits or controls placed on joint accounts to mitigate monetary policy implications will necessarily depend on the framework in which the Federal Reserve is conducting monetary policy. Under a monetary policy framework where the policy rate is targeted by tightly managing the supply of reserves balances, the magnitude and predictability of daily changes in joint account balances would become important for monetary policy operations, and therefore it may be necessary to limit the volatility or size of a joint account or require advance notice of significant daily changes. However, under a monetary policy framework where the supply of reserve balances far exceeds the demand for reserve balances, joint account balances are likely to have a negligible effect on monetary policy operations, and such controls may not be necessary. The Board does not believe it would be possible to

identify the exact limitations and controls that will be needed in all future policy frameworks.

As explained previously, the explanatory paragraphs of the final guidelines provide that the account agreement with the account-holding Reserve Bank at the time of account opening or any time thereafter may include obligations relating to, or conditions or limitations on, use of the joint account to limit risks to financial stability and the implementation of monetary policy, as well as other risks that may arise. Accordingly, the final guidelines have been modified to include only the evaluation considerations under principle six. Finally, the Board has made minor technical changes under principle six for clarity.

7. Responses to Additional Questions Posed by the Board

In response to the Board's request for comment on any other criteria or information that commenters believed may be relevant to evaluate a joint account request, one national payments association commenter suggested that the final guidelines include separate elements to evaluate a designated agent or operator of a joint account.¹⁵ The Board agrees that evaluation of the agent and operator is important. The Board does not believe, however, that it would be appropriate to establish separate, distinct criteria to evaluate the agent and operator apart from the private-sector arrangement, because the roles (and corresponding risks) of an agent or operator may vary depending on the specific design of a private-sector arrangement. Evaluating a private-sector arrangement's joint

¹⁵ The commenter suggested that such separate criteria include, among other things, an appropriate risk assessment addressing the risks posed to the participants of the private-sector arrangement, the safety and integrity of the particular payment system established by the private-sector arrangement, and risks posed to the payment system as a whole, and an assessment of the agent's or operator's compliance with legal requirements and regulatory oversight.

account request will necessarily consider the agent and operator, and the Board believes that both entities will be appropriately evaluated as part of that process under the final guidelines. For example, the risks posed to the participants of the private-sector arrangement will be necessarily considered in determining whether the private-sector arrangement has a sound legal and operational basis under principles two and three respectively, and the risks posed to the payment system as a whole would be considered under principle five.

Three commenters supported making some level of information public about joint accounts established under the final guidelines. Two commenters noted that certain information should not be made public. One payment system operator commenter stated that confidential information (such as functional, technical, or operational details) should not be made public as it may result in risk or harm to the private-sector arrangement or its participants. Another commenter, a depository institution trade association, stated that unsuccessful joint account applications should not be made public.

In considering these comments, the Board believes that public announcement of joint accounts could be interpreted by some as an endorsement by the Federal Reserve of the private-sector arrangement or of its safety and soundness. The Board believes it is necessary to avoid any appearance of endorsing a private entity or arrangement using a joint account. The Board also believes that making the disapproval of a joint account arrangement public could result in competitive harm to the entities involved. Therefore, the Board has determined that neither it nor the Reserve Banks intend to announce the opening of individual joint accounts or the corresponding individual private-sector arrangements. The Board believes that the private-sector arrangement will provide

sufficient transparency to participants and end users about the method of settlement, including the use of a joint account. This approach is generally consistent with the treatment of other Federal Reserve accounts, for which neither the Board nor the Reserve Banks publish information upon account openings, with limited exceptions.¹⁶

Consistent with the foregoing, the Board has clarified in the final guidelines that establishment of a joint account by the Reserve Banks is not intended as an endorsement or approval by the Federal Reserve of the payment system established by the private-sector arrangement and does not relieve any party to the private-sector arrangement or end user from conducting its own diligence on the arrangement generally, the associated risks of using the system established by the arrangement, or the acceptability of such risks.

Commenters were generally silent as to additional criteria or information that may be relevant to evaluating joint account requests for U.S. depository institutions to provide services to foreign clearing and settlement arrangements. The final guidelines will generally apply in the event that a request is received related to a foreign clearing or settlement arrangement, but the level of scrutiny and information necessary may vary from domestic arrangements.¹⁷

Finally, the Board requested comment on other steps or actions the Federal Reserve should consider to facilitate settlement in light of market participants' efforts to develop faster retail payment solutions. One commenter, a payment system operator,

¹⁶ For example, the Board's H2 release publishes actions of the Board and the Reserve Banks, including authorizations to establish accounts for designated financial market utilities in accordance with the Dodd-Frank Act.

¹⁷ Like domestic arrangements, requests will be evaluated on a case-by-case basis; the considerations and information to evaluate a particular request will likely be based on the complexity of the arrangement and other factors. For example, in considering a request related to a foreign clearing or settlement arrangement, the relevant supervisory and examination framework under principle three may be whether the payment system established by the private-sector arrangement is subject to a level of supervision and examination commensurate with those of domestic arrangements.

suggested that the Board coordinate with the Office of the Comptroller of the Currency's initiative on evaluating national bank charter applications from financial technology companies that engage in the business of banking. The Board does collaborate with other federal banking agencies on efforts to improve the payment system. Another depository institution trade association commenter recommended that the Federal Reserve continue to foster collaboration among a wide range of payments stakeholders across a broad range of issues in the same model as the Faster Payments Task Force to facilitate payment system improvements. The Board agrees that a collaborative approach has been productive and believes that it will continue to be valuable as the Federal Reserve and industry work to achieve the desired outcomes set forth in the *Strategies for Improving the U.S. Payment System* paper.

Another payment service provider commenter suggested that the final guidelines be applied using a risk-based approach to evaluating joint account requests so that smaller private-sector arrangements or new entrants are evaluated in light of their specific volumes and risks. The Board does not believe that it would be prudent to evaluate smaller arrangements or new entrants under less-stringent criteria; an evaluation under the final guidelines should necessarily consider the specific risks posed by each private-sector arrangement. In certain instances, that may mean a smaller private-sector arrangement presents less risk by nature of its size. In other instances, a smaller private-sector arrangement may present significant risks in spite of its size. For these reasons, evaluation under the final guidelines will consider the specific risks posed by a joint account request, regardless of size.

One commenter, a depository institution, asked the Federal Reserve to study how new payment methods have affected the payment system. Two other commenters recommended that the Board strive to balance burdens imposed by the final guidelines against the importance of payment system developments. The Board agrees that ensuring balanced guidelines is important to further the Federal Reserve's objectives of a safe, efficient, and accessible payment system, while avoiding undue burdens that lead to unintended consequences. The Board also agrees that monitoring existing and emerging payment methods provides useful information for achieving those objectives, and Federal Reserve staff will continuously consider developments in the payment system and any corresponding implications.¹⁸

II. Final Guidelines for Evaluating Joint Account Requests

The Board of Governors of the Federal Reserve System (Board) has adopted six principles and corresponding considerations (collectively, the guidelines) to be used in evaluating requests to the Federal Reserve Banks (Reserve Banks) for joint accounts intended to facilitate settlement between and among member banks and other eligible depository institutions (collectively depository institutions) participating in private-sector payment systems (private-sector arrangements).

For purposes of these guidelines, a joint account is an account at a Reserve Bank where the rights and liabilities are shared among multiple account holders (joint account holders), that is, institutions that are eligible to open an account with a Reserve Bank.

The Board contemplates that under these arrangements, the joint account holders will

¹⁸ Including, for example, as part of the Federal Reserve Payments Study and through the Reserve Banks' payment research groups. https://www.federalreserve.gov/paymentsystems/payres_about.htm.

authorize a single entity to serve as their “agent” in providing instructions to the Reserve Bank at which the account would be held (the account-holding Reserve Bank) with respect to the account. The account-holding Reserve Bank would be authorized to act on any instruction provided by the agent, consistent with the provisions of the joint account agreement. The Board also contemplates that private-sector arrangements using joint accounts might also use an “operator” (which could be the agent of the joint account or a separate entity) for running the arrangement, which may include undertaking various steps in the payments process such as initiation, clearing, settlement, and reconciliation, or establishing rules and governance. “Participants” in the arrangement might include joint account holders, as well as other depository institutions and nondepository institutions that are directly part of the payment system established by the private-sector arrangement.

The guidelines broadly outline considerations necessary for evaluating requests, but are not intended to provide assurance that any specific arrangement would be granted a joint account. Every request will be evaluated on a case-by-case basis, with the type and extent of information necessary to evaluate a particular request likely dependent on the complexity of the arrangement. The guidelines apply to both domestic private-sector arrangements and foreign clearing or settlement arrangements. In the event that a request is received related to a foreign clearing or settlement arrangement, the level of scrutiny and information necessary may vary from domestic arrangements.

In addition to the evaluation under the guidelines, the account agreement with the account-holding Reserve Bank may include (at the time of account opening or any time thereafter) obligations relating to, or conditions or limitations on, use of the joint account

as necessary to limit operational, credit, legal, or reputational risks posed to the Reserve Banks. The account agreement may also impose obligations relating to, or conditions or limitations on, use of the joint account to limit risks to financial stability and the implementation of monetary policy, as well as other risks that may arise. Obligations, limitations or conditions to limit risks to financial stability, the implementation of monetary policy, or other risks that may arise would be used only as deemed necessary and may include, for example, limits on the level or volatility of account balances and requirements for information on projected balances or volatility of balances. An information requirement might include a notice period within which the agent must notify the account-holding Reserve Bank of shifts in the end-of-day account balances greater than a designated threshold. If the obligations, limitations, or controls are ineffective at mitigating the risks identified or if the obligations, limitations, or controls are breached, the account agreement with the account-holding Reserve Bank might be restricted further or the joint account may be closed if warranted.

Establishment of a joint account by the Reserve Banks under these guidelines does not relieve any participant in the private-sector arrangement or any end user from conducting its own diligence on the arrangement generally, on any associated risks of using the payment system established by the private-sector arrangement, or on the acceptability of such risks. Establishment of a joint account by the Reserve Banks under these guidelines is not an endorsement or approval by the Board or Reserve Banks (collectively the Federal Reserve) of the payment system established by the private-sector arrangement. Moreover, nothing in the Board's guidelines relieves any institution from compliance with obligations imposed by an institution's supervisor.

The following will be used in evaluating requests to the Reserve Banks for joint accounts intended to facilitate settlement between depository institutions participating in private-sector arrangements:

1. *Each joint account holder must meet all applicable legal requirements to have a Federal Reserve account, and the Reserve Bank will not have any obligation to any non-account holder with respect to the balance in and operation of the account.*
 - Only an institution that is eligible to have a Federal Reserve account under applicable federal statute and Federal Reserve rules, policies, and procedures is able to be a joint account holder. Unless otherwise specified by statute, only those entities that are member banks or meet the definition of a depository institution under section 19(b) of the Federal Reserve Act are legally able to obtain Federal Reserve accounts and payment services.¹⁹
 - As part of evaluating any joint account requests, and consistent with Federal Reserve policies and procedures, the account-holding Reserve Bank must approve all joint account holders that are part of a proposed private-sector arrangement. Some institutions may be eligible for a Federal Reserve account but may present atypical risk profiles, such as uninsured institutions. In these cases, a heightened analysis of that institution's participation as a joint account holder may be performed under one or more of the other guidelines.
 - The designated agent or operator of the private-sector arrangement would not need to be a depository institution, assuming it is not a joint account holder.
 - Consistent with the Reserve Banks' deposit-taking authority, a Reserve Bank's obligation with respect to any balance in a joint account will be owed solely to the joint account holders, and no non-account holders may have any rights against the Reserve Bank with respect to the balance. No party other than an account holder shall have a claim against the account-holding Reserve Bank in connection with the operation of the joint account, including any decision related to opening or refusing to open the account.

¹⁹ There are certain statutory provisions allowing Reserve Banks to act as a depository and fiscal agent for the Treasury and certain government-sponsored entities (*See i.e.* 12 U.S.C. 391, 393-95, 1823, 1435) as well as for certain international organizations (*See i.e.* 22 U.S.C. sections 285d, 286d, 290o-3, 290i-5, 290l-3). In addition, Reserve Banks are authorized to offer deposit accounts to designated financial market utilities (12 U.S.C. 5465), Edge and Agreement corporations (12 U.S.C. 601-604a, 611-631), branches or agencies of foreign banks (12 U.S.C. 347d), and foreign banks and foreign states (12 U.S.C. 358).

2. *The private-sector arrangement should demonstrate that it has a well-founded, clear, transparent, and enforceable legal basis in all aspects of its proposed arrangement.*
 - Requestors of a joint account should provide supporting legal analysis as well as the system’s rules, agreements, and other governing documents. The legal analysis should consider the application of applicable laws and regulations, such as U.C.C. 4A, the Electronic Funds Transfer Act, U.S. sanction programs, Bank Secrecy Act and anti-money-laundering requirements or regulations, and other relevant laws and regulations; the attachment risk related to the account; and how the operation of the account would be affected by a participant’s insolvency.
3. *The design and rules of the private-sector arrangement should be consistent with the Federal Reserve’s policy objectives to promote a safe, efficient, and accessible payment system for U.S. dollar transactions.*
 - In addition to any party’s supervisory obligations, a private-sector arrangement that uses a joint account approved under these guidelines will be expected to manage risks consistent with the general policy expectations for payment systems outlined within Part I of the Board’s *Federal Reserve Policy on Payment System Risk* (PSR Policy) at a minimum.²⁰ These policy expectations apply even if the private-sector arrangement is not otherwise subject to the PSR Policy.²¹ Thus, before authorizing the establishment of a joint account, the private-sector arrangement would be expected to demonstrate that it has a general risk-management framework appropriate for the risks the system poses to the operator, agent, participants, the Reserve Bank granting the joint account, and other relevant parties and payment systems.
 - The private-sector arrangement should have policies and procedures to minimize disruption to its system when one of its participants, the agent, or the operator fails or in the event of operational failures. The arrangement’s rules should also sufficiently address the responsibilities and liabilities of the participants, agent, and operator in cases of operational disruption, or erroneous or fraudulent

²⁰ As of the date of publication of the final guidelines, those expectations are identified in Part I, section C of the PSR Policy, “General policy expectations for other payment systems within the scope of the policy” (as amended effective September 23, 2016). The PSR Policy is available at https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.

²¹ The Board’s PSR Policy sets forth standards regarding the management of risks that financial market infrastructures (FMIs) present to the financial system when an FMI expects to settle a daily aggregate gross value of \$5 billion on a given day and when providing accounts and services to FMIs. Generally, FMIs are multilateral systems among participating financial institutions, including the system operator, used for the purposes of clearing, settling, or recording payments, securities, or other financial transactions. For the purposes of a system that uses a joint account to facilitate settlement, the standards would be applicable regardless of the daily aggregate gross value in a given day.

conduct.

- Requests for joint accounts involving a financially unsound operator would not be approved. Evaluation may include, among other things, reviewing financial statements of the operator, as well as cash flow projections (including capital and operating expenses).
- Evaluation under this principle will take into account the applicable supervisory framework for the private-sector arrangement.²² The payment system established by a private-sector arrangement (including the operator) should be subject to federal or state supervision and should also be subject to the jurisdiction of a federal banking agency with the authority to examine or inspect the private-sector arrangement and take supervisory actions against the arrangement or its participants.²³ This means for a payment system established by a private-sector arrangement and supervised by a state regulatory body, a federal banking agency need not be engaging in active supervision or examination, but should have the authority to do so when the risk, scope, and operations call for such supervision or examination. For example, under the Bank Service Company Act, federal banking agencies have the authority to examine third-party service providers that perform services for depository institutions that the depository institution could otherwise do itself.
- An evaluation under this principle would assess whether the system is widely available for use by its intended end users, is designed to minimize the risk of disruption (rejection or delay of payments) to end users, and promotes transparency for end users and the public more broadly (for example, by making its operating rules, rulemaking processes, list of participants, or certain network statistics publicly available). Evaluation under this guideline would also assess whether the system creates inefficiencies in payment processes or barriers to interoperability within the U.S. dollar payment system. Also of relevance is whether the private-sector arrangement promotes payment system improvements and innovations and the extent to which the arrangement fosters competition in the payment system (for example between providers of payment services).

²² Nothing in the Board's guidelines should be interpreted to relieve any participant in the private-sector arrangement from compliance with obligations imposed by an institution's supervisor, including for example related to financial resources, liquidity, participant default management, and other aspects of risk management.

²³ A federal banking agency would include the Board; the Federal Deposit Insurance Corporation (FDIC); and the Office of the Comptroller of the Currency (OCC).

- Finally, the design and rules of the private-sector arrangement, including rules relating to the funding of and disbursements from the joint account, should be consistent with the intended use of the account, such that a participant can only use the balances for the intended purpose of settling payments in the associated system.
4. *The provision of the joint account should not create undue credit, settlement, or other risks to the Reserve Banks.*
- The agent and the joint account holders should demonstrate an ongoing ability to meet all obligations under the joint account agreement with the account-holding Reserve Bank.
 - The manner in which the joint account will be used in support of the private-sector arrangement and any anticipated use of Reserve Bank services should be identified.
 - Reserve Banks will not extend overnight or intraday credit to a joint account. The private-sector arrangement should structure its use of the joint account and Reserve Bank services in a manner that seeks to avoid intraday overdrafts. The agent also should demonstrate ways to monitor the joint account on an ongoing basis to avoid overdrafts and to promptly cover any inadvertent overdrafts.
 - Further, the agent should demonstrate the ability to appropriately monitor transactions into and out of the joint account.
5. *The provision of a joint account should not create undue risk to the overall payment system.*
- The private-sector arrangement should not cause undue credit, settlement, or other risks to the efficient operation of other payment systems or the payment system as a whole.
 - The operational and financial interaction with and use of other payment systems should be identified.
 - The extent to which the use of the joint account may restrict a portion of funds from being available to support liquidity needs of depository institutions for other payment and settlement activity will also be considered.
6. *The provision of a joint account should not adversely affect monetary policy operations.*
- Evaluation of the potential monetary policy implications of the use of a joint account will include whether the balance in the joint account would be treated as reserves (that is, treated as available to satisfy any joint account holder's reserve balance requirements or as excess reserves), the expected predictability and volatility of the end-of-day joint account balances, and the potential for the account agreement with the account-holding Reserve Bank to impose

limitations on account volatility without affecting the intended function of the arrangement. This evaluation will occur regardless of the current monetary policy implementation framework in place.

By order of the Board of Governors of the Federal Reserve System, August 9, 2017.

Ann E. Misback,
Secretary of the Board.

[FR Doc. 2017-18705 Filed: 9/1/2017 8:45 am;
Publication Date: 9/5/2017]