



THE **FEDERAL RESERVE**
Financial Services

**The Federal Reserve Banks’
Response as an Operator of the
Fedwire® Funds Service to the
FSB Survey on Continuity of
Access to FMIs for Firms in
Resolution**
December 2023

I. Background

In August 2021, the Financial Stability Board (“FSB”) published a questionnaire to collect information relevant to continuity of access to Financial Market Infrastructures (“FMI”) for firms in resolution to assist FMI participants and resolution authorities in developing resolution plans.¹ To support this effort, the Federal Reserve Banks (each a “Reserve Bank”), as the operators of the Fedwire® Funds Service, are setting forth information pertaining to Fedwire Funds Service access for its participants. The following sections provide a summary of potential risk mitigation actions including credit risk, expectations for notification and communication, and information needed from account holders in resolution.

About the Fedwire Funds Service

The Fedwire Funds Service – owned and operated by all 12 Reserve Banks – is a real-time gross settlement system that processes funds transfers for direct participants.² In addition to being used for time-critical payments, such as the settlement of commercial payments and interbank liabilities, the Fedwire Funds Service is used for funding other systemically important FMIs and payment systems and plays an important role in U.S. monetary policy through the settlement of domestic open-market operations, among other things.³

Eligibility Criteria

The Reserve Banks are authorized under U.S. law to provide the Fedwire Funds Service to the following entities:

¹ See Financial Stability Board, *FSB Continuity of Access to FMIs for Firms in Resolution Streamlined information collection to support resolution planning* (Aug. 20, 2021), available at <https://www.fsb.org/wp-content/uploads/P200821-2.pdf>. This questionnaire is a revised version of the questionnaire that the FSB published in August 2020. The FSB is an international body that coordinates national financial authorities and international standard-setting bodies as they work towards developing effective regulatory, supervisory, and other financial sector policies in the interest of financial stability. For more information on the FSB, see Financial Stability Board, *About the FSB* (last updated Nov. 16, 2020), available at <https://www.fsb.org/about>.

² The Reserve Banks do not allow indirect participation in the Fedwire Funds Service, but the service does handle third-party transfers in which the originator or the beneficiary (or both) is not a Fedwire Funds participant.

³ Federal Reserve Banks, *Fedwire Funds Service Disclosure*, at 5 (Nov. 29, 2021), available at <https://www.frb-services.org/binaries/content/assets/crsocms/financial-services/wires/funds-service-disclosure.pdf>.

- Depository institutions, as defined in section 19(b)(1)(A) of the Federal Reserve Act of 1913 (“FRA”) (12 U.S.C. § 461(b)(1)(A));
- U.S. agencies and branches of foreign banks, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. §§ 3101(1), (3));
- State member banks admitted to the Federal Reserve System under Regulation H of the Board of Governors of the Federal Reserve System (“Board of Governors”) (12 C.F.R. § 208);
- The U.S. Department of the Treasury and other entities specifically authorized by federal statute to use the Reserve Banks as fiscal agents or depositories (e.g., Federal Home Loan Mortgage Corporation (12 U.S.C. § 1452(d));
- Entities designated by the Secretary of the Treasury in accordance with section 15 of the FRA (12 U.S.C. § 391);
- Edge Act and agreement corporations authorized under section 25A and paragraph 3 of section 25, respectively, of the FRA (12 U.S.C. §§ 611, 601(*third*));
- Foreign central banks, foreign monetary authorities, foreign governments, and certain international organizations, subject to the approval of the Board of Governors; and
- Financial Market Utilities designated as systemically important by the Financial Stability Oversight Council, subject to the approval of the Board of Governors.

To use the Fedwire Funds Service, each eligible participant must maintain a master account at a Reserve Bank.⁴ As a general matter, at the time an institution requests a master account, the institution’s Administrative Reserve Bank (“ARB”) reviews the institution’s legal eligibility for an account and initiates or updates its assessment of risks associated with the institution in accordance with the Board of Governors’ Guidelines for Evaluating Account and Services Requests (“Account Access Guidelines”).⁵ The ARB is the Reserve Bank in the Federal Reserve district in which the institution is located and is responsible for making risk-management decisions regarding the institutions in its district. Once an account is opened, the ARB continues to review the risks posed by the account holder to assess it against the risks identified in the Account Access Guidelines. Based on such reviews and the level of risks identified, the ARB may seek to mitigate the risks by imposing risk controls, such as account balance monitoring and collateral requirements, or considering to discontinue its provision of an account or financial services to that account holder.

⁴ *Id.* Fedwire Funds participants must settle their Fedwire Funds transactions in their own master account. See 12 CFR §§ 210.25 – 32; Federal Reserve Banks, Operating Circular 6, *Funds Transfers through the Fedwire Funds Service*, § 4.2, available at <https://www.frb services.org/binaries/content/assets/crsocms/resources/rules-regulations/070123-operating-circular-6.pdf>; see also Federal Reserve Banks, Operating Circular 1, *Account Relationships*, §§ 2.3, 2.7, available at <https://www.frb services.org/binaries/content/assets/crsocms/resources/rules-regulations/090123-operating-circular-1.pdf>.

⁵ See Guidelines for Evaluating Account and Services Requests, 87 Fed. Reg. 51099 (Aug. 19, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-08-19/pdf/2022-17885.pdf>. Operating Circular 1, *supra* note 4, §§ 2.2(b), 2.5; see Fedwire Funds Service Disclosure, *supra* note 3, at 83.

II. Potential Risk Mitigation Actions for Account Holders in Resolution

The ARB evaluates an account holder placed into resolution on a case-by-case, risk-focused basis to determine whether to continue the account holder's access to the Fedwire Funds Service with available risk controls.⁶ To complete this evaluation, the ARB must have sufficient information to assess the risk of continued access and be able to effectively coordinate with the account holder's resolution authority. However, the ARB may take certain remedial actions, which may include terminating an account holder's access to the Fedwire Funds Service, if it determines that the account holder's continued use of its master account or financial services poses undue risk to the Reserve Banks or others or that the account holder is no longer legally eligible for a master account or financial services. The ARB exercises discretion in determining whether an account holder poses risk sufficient to terminate its master account or Fedwire Funds Service access while following the framework established by the Account Access Guidelines.

The Reserve Banks' Operating Circular 1, *Account Relationships* ("OC 1") and Operating Circular 6, *Funds Transfers through the Fedwire Funds Service* ("OC 6") each contain provisions that would permit a Reserve Bank to terminate or restrict an account holder's access to the Fedwire Funds Service.⁷ Specifically, a Reserve Bank will terminate an account holder's access to the service in the event that it decides, pursuant to OC 1, to close its master account. In such a scenario, the account holder is no longer able to use the service because participants must settle their Fedwire Funds transactions in their own master account.⁸ Under OC 6, a Reserve Bank may terminate or restrict an account holder's access to the Fedwire Funds Service at any time without notice if it determines that the account holder's use of the service violates any agreement with a Reserve Bank or that such use otherwise poses undue risk to the Reserve Bank or others.⁹

⁶ For purposes of this document, the term "resolution" is intended to cover a variety of resolution scenarios involving account holders that access the Fedwire Funds Service, including, for example, a receivership of (or other resolution scenario involving) a U.S.- or state-chartered institution, a resolution action taken with respect to the head office of a foreign bank with a U.S. branch or agency, or a Federal Deposit Insurance Corporation-led resolution of an institution's holding company. In some circumstances, the legal entity that holds an account at a Reserve Bank is not the legal entity that is in resolution.

⁷ See Operating Circular 1, *supra* note 4, § 2.10; Operating Circular 6, *supra* note 4, § 9.0.

⁸ See *supra* text accompanying note 4.

⁹ See Operating Circular 6, *supra* note 4, §§ 9.1, 9.2. A Reserve Bank may otherwise terminate or restrict an account holder's access to the Fedwire Funds Service at any time upon notice. Operating Circular 6, *supra* note 4, § 9.3.

Credit Risk Considerations

Each ARB reviews the credit risk that its account holders pose to the Reserve Banks and the U.S. payment system at least on a quarterly basis to ensure that the appropriate risk controls are being applied. Based on those reviews, the ARB will implement or adjust controls to manage the risk posed by the account holder. The Reserve Banks' operating circulars (e.g., OC 1 and OC 6) and the Federal Reserve Policy on Payment System Risk ("PSR Policy") address certain actions that a Reserve Bank might take to manage the credit risk posed by particular institutions, including Fedwire Funds participants that have access to intraday credit (often referred to as a daylight overdraft).¹⁰

The Reserve Banks have an important role in providing intraday balances and credit to foster the smooth operation and timely completion of money settlement processes among financial institutions and between financial institutions and FMI. Since most Fedwire Funds participants are eligible to access intraday credit provided by the Reserve Banks that hold their accounts, the liquidity risk otherwise borne by them becomes credit risk borne by the Reserve Banks.¹¹ Based on the Reserve Bank's risk assessment of account holders, including if a Fedwire Funds participant in resolution poses undue risk, a Reserve Bank may take remedial actions to manage the credit risk posed by an account holder that is placed into resolution. Those actions might include removing its access to intraday credit, monitoring its balance in real-time, rejecting or delaying certain transactions that would exceed its available balance, imposing a collateral requirement, adjusting margins on pledged collateral, or terminating its access to the service in accordance with OC 1, OC 6, and the Account Access Guidelines.¹²

III. Notification and Communication

As a general matter, it is imperative that a Fedwire Funds participant's ARB is notified about a resolution to allow the ARB to determine the appropriate course of action regarding the provision of accounts or financial services to the account holder. To the extent permitted by law, the Reserve Banks encourage expedited notification of a resolution once account holders and resolution authorities are aware that the account holder has or will enter into resolution.

¹⁰ See Board of Governors of the Federal Reserve System, *Federal Reserve Policy on Payment System Risk* (as amended effective July 20, 2023), available at https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.

¹¹ Under the Federal Reserve Policy on Payment System Risk, institutions that are healthy and have regular access to the discount window are generally eligible to access intraday credit provided by the Reserve Banks.

¹² See Federal Reserve Policy on Payment System Risk, *supra* note 10. For additional details on the remedial actions a Reserve Bank may take to address credit risk posed to it, see also Regulation J (12 C.F.R. §§ 210.25 – 210.32) and Principles 4 (*Credit Risk*), 5 (*Collateral*), and 7 (*Liquidity Risk*) of the Fedwire Funds Service Disclosure.

While not obligated, a Reserve Bank will endeavor to give prior notice to an account holder if it determines to terminate its access to the Fedwire Funds Service or take other remedial actions based on a review of risk. The Reserve Banks are not required to, however, provide predefined notifications to all Fedwire Funds participants in the event of another participant's signs of distress. This reflects the real-time nature of the service and that in taking on credit risk the Reserve Banks are able to insulate Fedwire Funds participants from one another's credit risk with respect to activity through the service.

IV. Information Needed from Account Holders in Resolution

As noted above, the ARB will evaluate whether account holders that are entering into resolution will be permitted to maintain their Fedwire Funds Service access. To conduct this evaluation, the ARB will need to understand whether an account holder in resolution may continue to use the Fedwire Funds Service from a legal and risk perspective. Each resolution is fact and circumstance specific, but at a minimum, the ARB will likely need information from these account holders or their resolution authorities to help address four overarching issues:

1. Nature of the resolution (e.g., bail-in, liquidation, bridge bank, etc.) or other action (e.g., emergency acquisition)
 - a. Resolution actions may be taken at the level of the account holder or by a parent company of the account holder. The entity in resolution and the type of resolution proceeding may affect the ARB's assessment of the risks that continued provision of accounts and financial services may pose to the Reserve Banks.
 - b. Resolution actions with respect to foreign banks may be taken by a home country resolution authority pursuant to home country law. Where a U.S. branch or agency of a foreign bank is the account holder, the ARB will need to understand both the resolution actions taking place in the home country and any actions that may be taken domestically by the branch or agency's licensing authority.
2. Legal status of the account holder in resolution (or its legal successor), so that the ARB can assess whether it may continue to provide an account and financial services as a legal matter and from an enforceability and liability perspective.
 - a. Under the FRA, an institution must be legally eligible to maintain an account with and receive financial services from the Reserve Banks. An account holder in resolution may not have the same legal status as it did before being placed into resolution. Understanding the nature of the resolution will be crucial to this question.
 - b. With respect to enforceability and liability, the ARB will assess whether the account holder in resolution continues to be bound by its obligations to the Reserve Banks (or that its obligations are assumed by its successor). The ARB

may require the account holder (or its successor) to provide documentation confirming this.

3. Certainty around (i) who has the authority to control the account holder in resolution and (ii) who is authorized to transact business with and issue instructions to the Reserve Banks on behalf of the account holder.
4. Level of credit risk posed by the account holder in resolution to the Reserve Banks and the U.S. payment system.
 - a. The ARB will need certain information to understand and evaluate the risk profile of the account holder in resolution, including any credit risk posed to the Reserve Banks and the U.S. payment system.
 - b. As a general matter, the ARB may also need information on any plans to pledge collateral, if not prepositioned, and planned requests to borrow from the Discount Window, as well as account balance expectations and information on any planned requests to access intraday credit.

If an account holder that is not federally insured enters resolution, it should also be prepared to provide its ARB with the following to help address the four issues highlighted above:

1. Information describing the steps to be taken in connection with the resolution, including materials prepared for or by the account holder's resolution authority, supervisor, and/or board of directors;
2. A certification or legal opinion confirming that the following remain in effect: (i) all board resolutions and other authorizations adopted by the account holder to access Reserve Bank accounts, services, and credit; (ii) all agreements and other arrangements with the Reserve Banks; and (iii) all obligations to the Reserve Banks, whether or not contingent. If an account holder engages legal counsel in connection with the resolution, that counsel should prepare the legal opinion; and
3. Updated documentation governing the account holder's access to Reserve Bank accounts, services, and credit, including updated board resolutions, authorizations, and agreements. If an account holder's board of directors takes any action in connection with the resolution, the account holder should ensure that its board ratifies its existing resolutions covering access to Reserve Bank accounts, services, and credit.

V. Additional Information

Board of Governors of the Federal Reserve System, *Federal Reserve Policy on Payment System Risk* (as amended effective July 20, 2023), available at https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf

Federal Reserve Banks, *Fedwire Funds Service Disclosure* (Nov. 29, 2021), available at <https://www.frb services.org/binaries/content/assets/crsocms/financial-services/wires/funds-service-disclosure.pdf>.

Federal Reserve Banks, Operating Circular 1, *Account Relationships* (effective Sept. 1, 2023), available at <https://www.frb services.org/binaries/content/assets/crsocms/resources/rules-regulations/090123-operating-circular-1.pdf>.

Federal Reserve Banks, Operating Circular 6, *Funds Transfers through the Fedwire Funds Service* (effective July 1, 2023), available at <https://www.frb services.org/binaries/content/assets/crsocms/resources/rules-regulations/070123-operating-circular-6.pdf>.

Guidelines for Evaluating Account and Services Requests, 87 Fed. Reg. 51099 (Aug. 19, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-08-19/pdf/2022-17885.pdf>.

Financial Stability Board, *FSB Continuity of Access to FMI for Firms in Resolution Streamlined information collection to support resolution planning* (Aug. 20, 2021), available at <https://www.fsb.org/wp-content/uploads/P200821-2.pdf>.

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