



**Federal Reserve Banks
Operating Circular 1**

ACCOUNT RELATIONSHIPS

Effective September 1, 2011

**FEDERAL RESERVE BANKS
OPERATING CIRCULAR NO.1
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1.0 INTRODUCTION¹

This operating circular and its appendices (“Circular”) set forth the terms under which a Financial Institution may open, maintain, and terminate a Master Account with its Administrative Reserve Bank (ARB). It also contains general provisions regarding Financial Services applicable to any Financial Institution, whether or not it maintains a Master Account at a Federal Reserve Bank (Reserve Bank). The Circular describes the tools that an Account Holder may utilize to segregate, report and settle Debit and Credit Transaction Activity in its Master Account and includes terms and conditions applicable to the relationship the Account Holder may have as a Correspondent with other separately-chartered Financial Institutions as Respondents. This Circular also incorporates additional terms applicable to settlement procedures, statement and accounting information services, overdraft policies, and the Federal Reserve Bank Response Program for Unauthorized Access to Sensitive Consumer Information Obtained in the Course of Providing Financial Services.

A Master Account is subject to other applicable Federal Reserve regulations and policies relating to accounts maintained at Reserve Banks, such as Regulation D (Reserve Requirements of Depository Institutions, 12 CFR 204) and the Federal Reserve Policy Statement on Payments System Risk, as they may be revised from time to time. Other types of Reserve Bank accounts may be offered from time to time for purposes of facilitating monetary policy goals, such as Excess Balance Accounts and Term Deposit Facility accounts. These other types of Reserve Bank accounts are not Master Accounts and are established by executing separate account agreements and other required documentation with the eligible Financial Institution and its ARB.

2.0 ACCOUNT RELATIONSHIPS

2.1 INTRODUCTION

The Reserve Banks generally maintain no more than one debtor-creditor relationship with a Financial Institution. Under this structure, an Account Holder may only maintain a single Master Account with its Administrative Reserve Bank unless a specific exception applies as described in Section 2.3.² The Master Account is identified by the Primary Routing Transit Number (Primary RTN).

Additionally, an Account Holder may act as a Correspondent by authorizing its Administrative Reserve Bank to settle certain transactions of Respondents in its Master Account.³

¹ The defined terms used in this section are defined in Section 2.2.

² An exception applies to those Financial Institutions currently required or permitted to have multiple Master Accounts pursuant to regulation, e.g., U.S. branches and agencies of foreign banks, and Edge and agreement corporations.

³ Custodial Inventory Program transactions, Fed Funds checks and Fedwire Funds and Securities transactions may not be settled in a Correspondent’s account. They must settle in a Financial Institution’s own Master Account. Fedwire is a registered service mark of the Federal Reserve Banks.

A Financial Institution's ARB administers all aspects of Federal Reserve account management through an Account Holder's Master Account, including reserve/clearing balance administration, overnight overdraft monitoring, daylight overdraft monitoring, and discount window access.

2.2 DEFINITIONS

For purposes of this Circular, the following definitions apply. Other terms are defined within this Circular.

- a) **Account Holder** means a Financial Institution that has opened and maintains a Master Account with its Administrative Reserve Bank (or any other Reserve Bank maintaining a Master Account identified in Section 2.3).
- b) **Administrative Reserve Bank or "ARB"** means the Reserve Bank in the Federal Reserve District in which the Financial Institution is located (See Section 2.5).
- c) **Financial Institution** means an institution that is:
 - a member bank, as defined in Section 1 of the Federal Reserve Act, 12 U.S.C. § 221;
 - a depository institution, as defined in Section 19(b)(1)(A) of the Federal Reserve Act, 12 U.S.C. § 461(b)(1)(A). (Section 19(b)(1)(A) generally defines "depository institution" to include commercial banks, mutual savings banks, federal savings banks, savings and loan associations, and credit unions);
 - a U.S. branch or agency of a foreign bank, as defined in Section 211.21(b) or (d) of Regulation K, 12 CFR § 211.21(b) or (d);
 - an Edge or agreement corporation, as defined in Section 25A or 25 of the Federal Reserve Act, 12 U.S.C. §§ 611 *et seq.*, or §§ 601 *et seq.*, or
 - any other entity authorized to have a Master Account with a Reserve Bank.⁴
- d) **Financial Services** means any of the financial services provided by a Reserve Bank pursuant to an operating circular including Accounting Information Services as defined in paragraph 4.3 but not including: (1) services that are provided by the Reserve Banks as fiscal agent for the Treasury, and (2) any activities governed by Operating Circular 10, "Lending."
- e) **Master Account** means the record of financial rights and obligations of an Account Holder and the Administrative Reserve Bank (or any other Reserve Bank maintaining a Master Account identified in Section 2.3) with respect to each other, where opening, intraday, and closing balances are determined. A Master Account is identified by a Primary RTN.

⁴ Other entities that may be authorized under other legal authority to maintain an account with a Reserve Bank, such as the U.S. Treasury, U.S. government agencies, and government sponsored enterprises, are not covered by this definition.

- f) **Debit and Credit Transaction Activity** refers to any debits and credits, including service charges, associated with a Primary or Secondary RTN and that settle in a Financial Institution's Master Account.
- g) **Routing Transit Number (RTN) (also known as an "ABA number")** is a nine digit number assigned by the American Bankers Association (ABA) Registrar of Routing Numbers to identify a Financial Institution.
- h) **Primary RTN** is the RTN assigned by the ABA Registrar of Routing Numbers to a Financial Institution that an ARB uses to identify a Master Account.⁵ Generally, a Financial Institution may only have one Primary RTN.
- i) **Secondary RTN** is an RTN, other than the Primary RTN, that has been assigned to a Financial Institution by the Registrar of Routing Numbers.
- j) **Correspondent** means a Financial Institution: (1) that has authorized a Reserve Bank to settle Debit and Credit Transaction Activity to its Master Account for a Respondent or for any Financial Institution for which the Respondent acts as Correspondent; or (2) that maintains required reserve balances for one or more Financial Institutions in its Master Account.
- k) **Respondent** means: (1) a Financial Institution that settles Debit and Credit Transaction Activity for some or all of its Reserve Bank transactions in the Master Account of a Correspondent; or (2) a Financial Institution that maintains its required reserve balances in the Master Account of a Correspondent.

2.3 MASTER ACCOUNT

Except as provided below, a Financial Institution may maintain only one Master Account with its Administrative Reserve Bank. The Master Account may be used to maintain required reserve balances, clearing balances, and other funds or securities balances. Debit and Credit Transaction Activity of the Financial Institution or of the Financial Institution's Respondents with or through any Reserve Bank, regardless of location, is posted to the Financial Institution's Master Account.

A Financial Institution may have only one Master Account, except that:

- it may retain, for a transitional period not to exceed 12 months, the Master Account of an acquired, failed Financial Institution or a non-surviving Financial Institution with which it has merged or consolidated. The Administrative Reserve Bank may restrict the use of such an account as it deems necessary or appropriate, and may require that the Financial

⁵ Any "institution" may be assigned a Primary RTN by the ABA Registrar of Routing Numbers even if it is not eligible for a Master Account. In some cases, an ARB may issue a Customer Identification Number or CIN, which may be used as a Primary RTN or Secondary RTN for purposes of Reserve Bank processing.

Institution execute a security agreement covering multiple Master Accounts;

- a U.S. branch or agency of a foreign bank, an Edge corporation, or an agreement corporation may maintain a single Master Account, or it may maintain a Master Account for each group of offices located in the same state and the same Federal Reserve District; and
- an Administrative Reserve Bank may, in its discretion, allow multiple Master Accounts in other situations.

If a Financial Institution is allowed to have multiple Master Accounts, any reference in this Circular to “Master Account” should be read as “Master Accounts.”

2.4 TRANSACTION REPORTING

A Financial Institution may request its ARB to have certain of the Financial Institution’s Debit and Credit Transaction Activity segregated for reporting purposes. As a general matter, the segregation is based on Secondary RTNs used in a specific transaction. Secondary RTNs may be used to identify a branch, or an acquired or merged Financial Institution, or otherwise identify groupings of Debit and Credit Transaction Activity.

A Financial Institution that wishes to establish information reporting by routing number should consult with its ARB for further information on the reporting structures that are available and any limits on such reporting.

2.5 LOCATION OF ACCOUNT HOLDERS

A Financial Institution may apply to open a Master Account with the Reserve Bank in the Federal Reserve District in which the Financial Institution is located.

A Financial Institution’s location is specified in Regulation D. Under Regulation D, a Financial Institution is located in the Federal Reserve District specified in its charter or organizing certificate (or, if no such location is specified, in the District where its head office is located), unless the Board has determined otherwise (see Section 204.3(g)(2) of Regulation D).

2.6 ESTABLISHING A MASTER ACCOUNT

Except for a U.S. branch or agency of a foreign bank, in order to establish a Master Account with its ARB, the Board of Directors of a Financial Institution must pass resolutions (in a form prescribed by the Reserve Banks) that authorize certain individuals to conduct business on behalf of the Financial Institution (“Authorized Individuals”).⁶ The Financial Institution must provide its ARB with a certified copy of the resolutions as well as an Official Authorization List (OAL) which identifies Authorized Individuals. An Authorized Individual must then

⁶ Applicable forms are available at www.frb services.org/forms/account_services.html in the “Account Services – Forms” section.

execute a Master Account Agreement (Appendix 1) or, if permitted by the ARB, such other agreement that binds the Financial Institution to this Circular.

A U.S. branch or agency of a foreign bank must execute the Foreign Banking Institution Account Agreement and provide resolutions as well as U.S. and foreign opinions of counsel that are acceptable to the ARB. The Foreign Banking Institution Account Agreement and the additional required documentation are available upon request from the foreign Financial Institution's ARB.⁷

A Financial Institution must execute a "Master Account Agreement" (Appendix 1 of this Circular) to open a Master Account. By opening or maintaining a Master Account, a Financial Institution agrees to be bound by all the provisions, as amended from time to time, of this Circular and of all other Federal Reserve Bank operating circulars that cover services that it obtains from any Reserve Bank. Each Master Account Agreement is subject to approval by the Financial Institution's Administrative Reserve Bank.

2.7 CORRESPONDENT – RESPONDENT TRANSACTION, SETTLEMENT and SERVICE FEE RELATIONSHIPS

An Account Holder may agree to act as a Correspondent and allow its Master Account to be used to settle certain transactions and service fees for a Respondent. To establish a Correspondent – Respondent relationship, the Correspondent and the Respondent both must execute a "Transaction and Service Fee Settlement Authorization Form" (Appendix 2 of this Circular). Each executed Transaction and Service Fee Settlement Authorization Form is subject to approval by the ARB of the Correspondent and the ARB of the Respondent. Correspondent – Respondent relationships cannot be established for Fedwire® Funds and Securities transactions, Fed Funds checks, and Custodial Inventory Program transactions, which must settle in a Financial Institution's own Master Account.

Financial Institutions that do not have a Master Account must identify a Correspondent that agrees to settle any of such Financial Institution's Debit and Credit Transaction Activity. A Financial Institution that does have a Master Account may nevertheless identify a Correspondent in order to settle some or all of its Debit and Credit Transaction Activity. A Respondent can designate different Correspondents to settle for different Financial Services.

⁷ See www.frb services.org/forms/account_services.html in the "Account Services – Board Resolution and Official Authorization List" for the Foreign Bank Board Resolution and OAL.

By executing the Transaction and Service Fee Settlement Authorization Form, the named Correspondent agrees to allow its Master Account to be used to settle certain transactions and service fees for the named Respondent as well as for any other Financial Institution that is currently using (or later agrees to use) the named Respondent as its Correspondent as designated in a Transaction and Service Fee Settlement Authorization Form. The named Correspondent is not required to execute this subsequent Transaction and Service Fee Settlement Authorization Form between its Respondent and the other Financial Institution.

In the event that a receiver is appointed for an insolvent Correspondent or an insolvent Respondent and another Financial Institution (Acquiring Financial Institution) enters into an agreement with a Reserve Bank in which the Acquiring Financial Institution agrees to continue the insolvent Correspondent's or insolvent Respondent's Financial Services pursuant to the applicable operating circulars, then, 1) in the case of an insolvent Respondent, the Correspondent agrees that its Master Account can continue to be used to settle for those Debit and Credit Transactions for the Acquiring Financial Institution that were designated in the Transaction and Service Fee Settlement Authorization Form submitted by the insolvent Respondent to the same extent as if the Acquiring Financial Institution were a party to that Transaction and Service Fee Settlement Authorization Form and, 2) in the case of an insolvent Correspondent, the Respondent agrees that those Debit and Credit Transactions that were designated in the Transaction and Service Fee Settlement Authorization Form to settle in the insolvent Correspondent's Master Account will be settled in the Correspondent's Acquiring Financial Institution's Master Account as if the Acquiring Financial Institution were a party to that Transaction and Service Fee Settlement Authorization Form. These settlement obligations continue until the Correspondent, Respondent, or the Acquiring Financial Institution terminates the relationship pursuant to Section 2.10.

A Correspondent is responsible at all times for understanding and reviewing the Debit and Credit Transaction Activity of Respondents settling to its Master Account. The Administrative Reserve Bank is not responsible for maintaining a list of Respondents that settle to an Account Holder's Master Account or for notifying a Correspondent if one of its Respondents agrees to act as a Correspondent to another Financial Institution.

2.8 CORRESPONDENT – RESPONDENT PASS - THROUGH RELATIONSHIPS

A pass-through relationship allows a Respondent to hold its required reserve balances with a Correspondent. A balance in the Correspondent's Master Account represents a liability of the Reserve Bank solely to the Correspondent, regardless of whether the funds represent the reserve balances of another Financial Institution that have been passed through the Correspondent, and is subject to the Correspondent's order.⁸

⁸ Reserve balances are to be distinguished from clearing balance requirements. Clearing balances are additional balances that a Financial Institution agrees to hold or is required to maintain with its ARB. Clearing balances only apply to Account Holders and are not applicable to Respondents.

To establish a pass-through relationship, both the Correspondent and the Respondent must complete a "Pass-Through Agreement" (Appendix 3). Each executed Pass-Through Agreement is subject to approval by the ARB of the Correspondent. A Reserve Bank may terminate any pass-through relationship in which the Correspondent is deficient in its record keeping or other responsibilities.⁹

2.9 FED FUNDS CHECKS

An Account Holder may draw checks against its Master Account (Fed Funds Check(s)), if the Fed Funds Checks bear the signature of an Authorized Individual. A Reserve Bank is under no obligation to honor a Fed Funds Check if it is not signed by an Authorized Individual or if the Master Account does not contain sufficient funds to cover the amount of the Fed Funds Check in addition to any other obligations the Financial Institution owes to any Reserve Bank. A Reserve Bank may pay a Fed Funds Check drawn on the Master Account and signed by any Authorized Individual, even if the Fed Funds Check directs payment to the order of the drawer or to any other person.

2.10 TERMINATING A MASTER ACCOUNT AGREEMENT, PASS-THROUGH AGREEMENT, SETTLEMENT AUTHORIZATION FORM, OR OTHER AGREEMENT

Any executed and accepted Master Account Agreement (Appendix 1), Transaction and Service Fee Settlement Authorization (Appendix 2), Pass-Through Agreement (Appendix 3), or other agreement executed by an Authorized Individual of a Financial Institution and relating to a Financial Institution's Master Account is binding on its successors and assigns, and continues in effect until amended or terminated as provided in this Circular or otherwise provided in the agreement. An Account Holder may terminate its Master Account only by giving the Reserve Bank not less than five business days prior written notice. The notice must indicate the date upon which the Account Holder desires to close the Account Holder's Master Account and provide instructions for the transfer of any remaining balance in the Master Account.

A Reserve Bank may terminate a Master Account Agreement (Appendix 1), Transaction and Service Fee Settlement Authorization (Appendix 2), or Pass-Through Agreement (Appendix 3) at any time by notice to the Account Holder but will endeavor to give not less than five business days prior notice. Reserve Banks generally terminate a pass-through relationship effective on the last day of a reserve maintenance period.

A Respondent may terminate a Transaction and Service Fee Settlement Authorization (Appendix 2) or a Pass-Through Agreement (Appendix 3) by giving its Administrative Reserve Bank not less than five business days prior written notice, unless a shorter period of notice is agreed to in writing by its Administrative Reserve Bank.

A Correspondent may terminate a Transaction and Service Fee Settlement Authorization (Appendix 2) or a Pass-Through Agreement (Appendix 3) by giving

⁹ See Section 204.3(i) of Regulation D for pass-through rules.

its Administrative Reserve Bank and its Respondents not less than one business day prior written notice to the other parties, except as otherwise specifically provided in Reserve Bank Operating Circulars 3 and 4 with respect to check and ACH services.

Notwithstanding any other provision of this section 2.10, a Financial Institution may be required by its ARB to maintain at all times settlement arrangements acceptable to its ARB. The ARB may, among other things, set certain conditions or limitations on such Financial Institution's capacity to terminate its Master Account or Correspondent-Respondent relationship under this section.

In addition, the ARB may require a Financial Institution that engages in certain transactions to maintain adequate balances with a Reserve Bank in such amount as the ARB determines. A Federal Reserve Bank shall have the right, in its discretion, to transfer funds from an Account Holder's Master Account to a suspense account and to hold those funds after a Master Account has been terminated in order to cover potential future payment system risk claims arising from the Financial Institution's use of Financial Services.

Termination of an agreement or authorization form by a Financial Institution does not affect any liability arising from transactions received by a Reserve Bank before or on the effective date of the termination.

2.11 MAINTENANCE OF AGREEMENTS AND OTHER RECORDS

An Account Holder must maintain all Master Account agreements and all other Reserve Bank account agreements continuously as official records of the Financial Institution. A copy of the Master Account Agreement, this Circular, any other account agreement, amendments thereto, and a copy of the relevant portions of the minutes of the meeting(s) at which the Financial Institution's governing body authorized execution of the account agreement(s), shall at all times be kept together in one place.

3.0 SETTLEMENT

An Account Holder's Master Account is used to settle Debit and Credit Transaction Activity arising from transactions that the Account Holder conducts with or through any Reserve Bank.

An Account Holder may serve as a Correspondent to a Respondent if both parties provide the Respondent's ARB with a properly executed Transaction and Service Fee Settlement Authorization Form (Appendix 2) instructing the ARB(s) of the Respondent and the Correspondent to settle some or all of the Respondent's transactions in the Correspondent's Master Account.¹⁰ A separate Transaction and Service Fee Settlement Authorization Form is necessary for

¹⁰ Custodial Inventory Program transactions, Fed Funds checks and Fedwire Funds and Securities transactions must settle in a Financial Institution's own Master Account. Special transaction settlement authorizations for loans and net settlement transactions are found in Operating Circulars 10 and 12, respectively. A designation executed prior to January 2, 1998, remains in effect until superseded, but is subject to the terms of this Circular.

each Correspondent/Respondent relationship except that a Respondent will not be required to execute a new form where its named Correspondent chooses to settle to another Financial Institution's Master Account.¹¹

The Transaction and Service Fee Settlement Authorization Form must be used to designate any separate settlement arrangements for particular transaction types. A Respondent that maintains required reserve balances with a Correspondent in a pass-through relationship, but desires to settle directly for some or all Reserve Bank services may, with the approval of its ARB, open its own Master Account for that purpose.

A Respondent remains responsible for settling for its Debit and Credit Transaction Activity if settlement through the Master Account of its Correspondent fails for any reason. Where a Respondent directs settlement of Debit and Credit Transaction Activity to a Correspondent's Master Account, a Reserve Bank's credit to the Correspondent's Master Account or to another account designated by the Correspondent constitutes final settlement to the Respondent. A Reserve Bank may also debit or credit a Master Account as provided by regulation, operating circular, agreement or applicable law.

4.0 STATEMENTS AND ACCOUNTING INFORMATION SERVICES

4.1 STATEMENT OF ACCOUNT

An ARB provides a daily Statement of Account to each Account Holder. The Account Holder is responsible for verifying the information on each daily Statement of Account and must promptly notify its ARB of any error in its Statement of Account. If an Account Holder fails to provide written notice to its ARB of an error in its Statement of Account within 30 calendar days of the date of the entry, it is deemed to have approved the entry. A Reserve Bank will investigate any notice of error and determine whether an error actually occurred.

4.2 STATEMENT OF AND SETTLEMENT FOR SERVICE CHARGES

A monthly Statement of Service Charges is provided to each Account Holder by the seventh business day after the end of each month. Service fees are computed on a calendar month basis, and are charged on the 15th day of the following month (or the next business day), appearing on the daily Statement of Account as FRB Service Charges. Charges are debited from an Account Holder's Master Account unless the Financial Institution designates a Correspondent for settlement of such charges by executing a Transaction and Service Fee Settlement Authorization Form (Appendix 2).¹² An ARB reserves the right to accelerate the debiting of FRB Service Charges without notice to the Account Holder.

¹¹ Unless a Respondent wishes to change its settlement designation, Respondent and Correspondent need not execute a new Transaction and Service Fee Settlement Authorization Form if a form is already on file with the Correspondent's ARB.

¹² See Section 3.0

An Account Holder is responsible for verifying the information on each Statement of Service Charges and must promptly notify its ARB in writing of any error on the monthly statement. If the Account Holder fails to provide written notice to its ARB of an error in the monthly Statement of Service Charges within two calendar months from the day the Account Holder receives the statement, the Account Holder is deemed to have approved the service charges listed in the Statement of Service Charges.

4.3 ACCOUNTING INFORMATION SERVICES

An eligible Financial Institution may request certain intra-day and end-of-day accounting information services as well as other account or transaction inquiry and report generation services as offered by the Reserve Banks from time to time such as the FedTransactionsm Analyzer Service described in Appendix 4 (together Accounting Information Services). Operating Circular 5, "Electronic Access," applies to Accounting Information Services accessed by electronic connection. Charges set forth in Reserve Bank fee schedules may apply to certain Accounting Information Services. Accounting information provided by a Reserve Bank may not be timely as a result of Reserve Bank processing or transmission delays.

If a Financial Institution or its agent determines that it has received information through Accounting Information Services that is not intended for that institution, the Financial Institution should immediately notify its Administrative Reserve Bank.

5.0 OVERDRAFTS

5.1 OVERDRAFT POLICY

An overdraft occurs when a Master Account has a negative balance at any time during the Reserve Bank's business day (daylight overdraft) or at the end of the Reserve Bank's business day (overnight overdraft). An Account Holder does not have a right to incur an overnight overdraft in its account. An Account Holder may incur daylight overdrafts in its account only to the extent permitted by its Administrative Reserve Bank.

5.2 COLLECTION OF OVERDRAFTS

An overdraft is due and payable immediately, without the need for a demand by the Reserve Bank, at the earliest of the following times:

- at the end of the funds transfer business day for purposes of Fedwire transactions (see Operating Circular 6, "Funds Transfers Through Fedwire");
- at the time the Reserve Bank, in its sole discretion, deems itself insecure and gives notice to the Account Holder; or
- at the time the Account Holder suspends payments or is closed.

The Account Holder is responsible for having in its account, at the time the overdraft is due and payable, a balance of actually and finally collected funds sufficient to cover the aggregate amount of all its obligations to the Reserve Bank.

5.3 SECURITY INTEREST

To secure any overdraft in the Master Account, as well as any other obligation now existing or arising in the future, of the Account Holder to any Reserve Bank, the Account Holder transfers and assigns to each Reserve Bank maintaining a Master Account for the Account Holder and grants to such Reserve Bank for itself and, to the extent permitted by law or regulation, as agent for each other Reserve Bank to which an obligation is or becomes owing, a continuing security interest in and lien on all the Account Holder's right, title, and interest in property, whether now owned or hereafter acquired, in the possession or control of, or maintained with, any Reserve Bank, including but not limited to any account or deposit of the Account Holder which is maintained with any Reserve Bank, items in the process of collection and their proceeds, and any investment property (including securities, security entitlements, and security accounts), but excluding any investment property in any Unrestricted Securities Account (as such term is defined in the Reserve Banks' Operating Circular 7) maintained at any Reserve Bank that the Account Holder may not encumber under applicable law. This security interest is in addition to, and shall be construed to be consistent with, any other security interest granted to any Reserve Bank by the Account Holder under regulation or agreement.

Any Reserve Bank may take any action authorized by law to recover the amount of an overdraft or other obligation that is due and payable, including, but not limited to, the exercise of setoff without demand or notice and, even if the obligations are contingent or unmatured, the realization on any available collateral, and the exercise of any rights the Reserve Bank may have as a creditor under applicable law.

6.0 FEDERAL RESERVE BANK RESPONSE PROGRAM FOR UNAUTHORIZED ACCESS TO SENSITIVE CONSUMER INFORMATION OBTAINED IN THE COURSE OF PROVIDING FINANCIAL SERVICES

6.1 THE RESERVE BANK'S POSSESSION AND USE OF CONSUMER INFORMATION

The Reserve Banks do not hold accounts for individuals and do not provide Reserve Bank services to individuals. In the course of providing Financial Services to Depository Institutions and other authorized users of Reserve Bank services, the Reserve Banks obtain, store, and transmit information that includes Sensitive Consumer Information.¹³ Under the general supervision of the Board of Governors, the Reserve Banks have implemented information security measures designed to protect the security and confidentiality of nonpublic personal

¹³ The terms "Financial Services" and "Accounting Information Services" are defined in this Circular in Sections 2.2 and 4.3, respectively. The terms "Depository Institutions," and "Sensitive Consumer Information" are defined in Section 6.2 of this Circular.

information obtained by them, to protect against any anticipated threats or hazards to the security or integrity of such information, and to protect against unauthorized access to or use or reuse of such information that could result in substantial harm or inconvenience to a Depository Institution's customer.

As part of their information security programs, the Reserve Banks have created a risk-based program to address incidents of unauthorized access to Sensitive Consumer Information that takes into account the size and complexity of the Reserve Banks and the nature and scope of the Reserve Banks' activities. This Section 6 is an integral part of the Reserve Banks' response program.

6.2 DEFINITIONS FOR PURPOSES OF SECTION 6

- a) **Consumer** means a natural person who maintains an account with or obtains Financial Services from a Depository Institution.
- b) **Depository Institution** means a U.S. institution, including a U.S. branch or agency of a foreign institution, which uses Reserve Bank Financial Services or is otherwise bound by a Reserve Bank operating circular.
- c) **Incident** means an event or series of events that causes a Reserve Bank to determine that misuse of Sensitive Consumer Information has occurred or is reasonably possible.
- d) **Sensitive Consumer Information** means a consumer's name, address or telephone number, in conjunction with the consumer's social security number, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the consumer's account, if the Reserve Bank or any other party that holds Sensitive Consumer Information as an agent of the Reserve Bank obtains such information in the course of providing Financial Services.

6.3 INCIDENT RESPONSE BY THE RESERVE BANK

- a) Suspected Incident:

If a Reserve Bank has reason to believe that an Incident might have occurred, the Reserve Bank will promptly investigate to determine whether in the judgment of the Reserve Bank an Incident has in fact occurred.

- b) Confirmed Incident:

If the Reserve Bank becomes aware that an Incident has occurred, the Reserve Bank will:

- (i) notify the Board of Governors as soon as possible. If it is appropriate to do so, the Reserve Bank will also notify law enforcement authorities,
- (ii) assess the nature and scope of the Incident to identify what Sensitive Consumer Information has been or might be misused,
- (iii) take appropriate steps to contain and control the Incident while preserving records and other evidence, and

- (iv) after notifying the Board of Governors, follow the notification procedures set forth below unless requested by an appropriate law enforcement agency to delay providing such notice.

c) Reserve Bank Notification to Depository Institution of Confirmed Incident

If the Reserve Bank determines that an Incident has occurred, the Reserve Bank will take the following actions for the purpose of facilitating notice to consumers whose Sensitive Consumer Information has been or might be misused as a result of the Incident.

If the Incident involves Sensitive Consumer Information identified with a consumer, customer, or customers of a particular Depository Institution or a discrete group of Depository Institutions, the Reserve Bank will:

- (i) provide notice of the Incident to each of the identified Depository Institutions which shall include a description of the Incident in general terms, the type of Sensitive Consumer Information that was misused or the subject of possible misuse as well as a general description of what the Reserve Bank has done to protect the Sensitive Consumer Information from further unauthorized access;
- (ii) provide each affected Depository Institution with whatever information the Reserve Bank is reasonably able to identify, retrieve, and deliver, which the Depository Institution needs to identify its customers whose Sensitive Consumer Information might have been misused as a result of the Incident; and
- (iii) cooperate in the Depository Institution's efforts to identify and provide notice to affected consumer customers of the Depository Institution.

If the Reserve Bank is unable to associate the Incident with Sensitive Consumer Information related to the customers of a particular Depository Institution or discrete group of Depository Institutions, the Reserve Bank may take whatever actions it deems appropriate to provide notice of the Incident to affected consumers, including but not limited to providing notice to every Depository Institution.

A Reserve Bank may take any actions in addition to those set forth in this subsection 6.3(c) that the Reserve Bank deems appropriate.

d) Obligations of a Depository Institution that Receive Notice of an Incident from the Reserve Bank

A Depository Institution that receives notice of an Incident from the Reserve Bank must notify its affected Consumers unless the Depository Institution, based on information not available to the Reserve Bank, reasonably determines that the Incident does not create a reasonable possibility of misuse. The Depository Institution will provide the Reserve Bank with any requested information relating to (i) what actions the Depository Institution has taken or plans to take in order to notify its affected Consumers pursuant

to this subsection, and (ii) the basis for any determination by the Depository Institution that the Incident does not create a reasonable possibility of misuse.

The notice from the Depository Institution to its Consumers must be made in a manner reasonably calculated to provide actual notice of the Incident to affected customers of the Depository Institution and must contain an accurate description of the Incident, the type of Sensitive Consumer Information at issue and the steps taken by the Reserve Bank to protect the data from further misuse based on the information provided by the Reserve Bank and include any other information that the Depository Institution provides when its own Sensitive Consumer Information has been compromised.

Whenever the Reserve Bank intends to trigger the obligations in this Section 6.3(d), the notice provided by the Reserve Bank will expressly notify the Depository Institution of this intention. Any other communication from a Reserve Bank to a Depository Institution relating to an Incident, a suspected Incident, or any other data security issue does not trigger the obligations in this section.

6.4 RECEIPT OF UNINTENDED SENSITIVE CONSUMER INFORMATION BY A DEPOSITORY INSTITUTION

If the Depository Institution or its agent receives Sensitive Consumer Information that is not intended for receipt by that Depository Institution, the Depository Institution must immediately notify the Administrative Reserve Bank.

6.5 COSTS

The Reserve Bank will reimburse a Depository Institution for an appropriate allocation of the Depository Institution's reasonable costs of providing notice to its Consumers pursuant to section 6.3(d) of this Circular. The parties agree to consult in good faith to determine an "appropriate allocation."

7.0 GENERAL

7.1 DUTY OF CARE

Unless otherwise specifically provided in another Reserve Bank operating circular, a Reserve Bank shall be liable only to an Account Holder and only for actual damages incurred by the Account Holder and proximately caused by the Reserve Bank's lack of good faith and failure to exercise ordinary care. A Reserve Bank is not liable for lost profits, claims by third parties, or consequential or incidental damages, even if the Reserve Bank has been informed of the possibility of such damages.

7.2 RELIANCE ON AUTHORIZATIONS

A Reserve Bank may rely on instructions and authorizations purporting to be issued by an Authorized Individual of an Account Holder or Respondent, whether by written or electronic means, that the Reserve Bank reasonably believes to be authorized by the Account Holder or Respondent, and may continue to rely on

such instructions and authorizations until they are revoked by the Account Holder or Respondent.

7.3 DISCLOSURE OF INFORMATION

All the information, including but not limited to all transaction record and related information, obtained by any Reserve Bank while providing Financial Services under any operating circular may be used or disclosed by any Reserve Bank, in its sole discretion, for monetary policy, research, supervision, regulation, financial services or any other purpose related to a Reserve Bank's authority. Institutions using Financial Services hereby consent to such use and/or disclosure to the full extent permitted by applicable law.

7.4 GOVERNING LAW AND ACTIONS

This Circular shall be governed by Federal law, and, to the extent not inconsistent with Federal law, by the laws of the State of the Financial Institution's Administrative Reserve Bank. Any action against a Reserve Bank for any act or omission relating to an account relationship or transaction must be brought within one calendar year from the date of the transaction in the United States District Court and Division where the Administrative Reserve Bank is located.

7.5 RIGHT TO AMEND

The Reserve Banks reserve the right to amend this Circular at any time without prior notice.