



Transparency at Federal Reserve Banks

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The 12 regional Federal Reserve Banks play crucial roles in monetary policy, payment systems operations, bank supervision, and economic research. These public welfare roles were assigned to them by Congress and codified in statutes. But all too often the Reserve Banks hoard information and operate in secrecy, leaving them unaccountable to Congress and the public. This brief examines several measures for increasing their transparency. Congress could require that the Reserve Banks comply with the Freedom of Information Act (FOIA),¹ a statute that allows members of the public access to government records. Congress could require that the Reserve Banks release their decisions about access to Federal Reserve accounts and payment services. Congress could also require that the Reserve Banks respond to information requests from members of Congress regardless of whether the information requested is covered by a FOIA exemption. Finally, Congress could ensure that independent investigations are conducted when serious questions arise about Reserve Bank actions.

WHAT ARE THE FEDERAL RESERVE BANKS?

The Federal Reserve System includes two well-known entities: the Board of Governors (the Board), which is the system's governing body, and the Federal Open Market Committee (FOMC), which sets monetary policy. In comparison, the other components of the Federal Reserve System—the Federal Reserve Banks—are more obscure. When Congress established the Federal Reserve System in 1913, it divided the country into 12 geographic districts, each with its own Federal Reserve Bank.² The Reserve Banks operate in a strange space somewhere between private companies and governmental entities. Although they have private shareholders,³ the Reserve Banks have congressionally created public welfare roles. Public roles require public accountability.

WHAT ARE THE FEDERAL RESERVE BANKS' PUBLIC ROLES?

The Federal Reserve Banks have four public roles: (1) assisting in monetary policy, (2) providing account and payment services to banks and others, (3) supervising banks and bank holding companies, and (4) collecting data and conducting economic research.

First, by statute, five Federal Reserve Bank executives are members of the FOMC, which sets monetary policy. The president of the Federal Reserve Bank of New York is a permanent member. The other Reserve Bank presidents serve rotating terms.⁴ (The FOMC also includes the seven members of the Board of Governors.)

Second, Congress created the Federal Reserve Banks in part to improve the efficiency of the existing payments infrastructure.⁵ Accordingly, statutes establish the Reserve Banks' role in providing accounts and payment services to commercial banks.⁶ Today, the Reserve Banks offer currency and coin services, check-clearing services, and a variety of electronic payment systems.⁷ The newest offering is FedNow, an instant electronic payment system.⁸

Third, the Federal Reserve Banks supervise commercial banks and bank holding companies to ensure that they are operating safely.⁹ Although bank supervisory authority is shared with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and state bank supervisors, the Reserve Banks' supervisory role is vital to maintaining a healthy banking sector.

Finally, Federal Reserve Banks are required to make regular reports to the Board of Governors.¹⁰ From their earliest days, the Reserve Banks collected economic data and conducted research.¹¹ That information and research is used to set monetary policy.¹² Research also informs the Reserve Banks' approach to payments and bank supervision.¹³

To hold the Federal Reserve Banks accountable for fulfilling these public welfare roles, Congress and the public must have access to information about the Reserve Banks' activities.

WHAT SORTS OF INFORMATION DO THE FEDERAL RESERVE BANKS WITHHOLD?

It is not always clear whether the Federal Reserve Banks are faithfully implementing their public roles within the bounds of the law. They often withhold information that would allow the public to evaluate their performance or assess conflicts of interest. Consider the following examples.

Monetary Policy Conflicts

In 2021, press reports revealed that the presidents of two Federal Reserve Banks actively traded stock just as the Fed was adjusting monetary policy to address the COVID-19 pandemic.¹⁴ Members

of Congress understandably sought information that would allow them to evaluate whether these trades were evidence of widespread conflicts of interest and self-dealing at the Reserve Banks. Senator Elizabeth Warren (D-MA) sent information requests to all 12 Reserve Banks asking for information about “stock, bond, and other investments trades by senior officials.”¹⁵ Although the identified Reserve Bank officials ultimately relinquished their positions, Senator Warren received no responses from the Federal Reserve Banks.¹⁶ As the *New York Times* summarized, “the fact that the world may never know what the two presidents traded during their final months in office highlights the peculiarities of the Fed’s structure—and how it can limit accountability.”¹⁷

Accounts and Payments

In 2021, questions arose about why the Federal Reserve Bank of Kansas City granted account and payment services to an uninsured Colorado fintech firm, Reserve Trust Company, but allowed other similar requests to languish.¹⁸ Some worried that Reserve Trust’s account was the product of corruption: one of Reserve Trust’s directors had previously served on the Federal Reserve Board of Governors.¹⁹ Amid the controversy, the Kansas City Fed issued a short statement explaining that it had initially denied Reserve Trust’s account because Reserve Trust “did not meet the definition of a depository institution.”²⁰ According to the Kansas City Fed, “[a]fter this denial, [Reserve Trust] changed its business model and the Colorado Division of Banking reinterpreted the state’s law in a manner that meant [Reserve Trust] met the definition of a depository institution.”²¹ The Colorado Division of Banking, however, said that it had not reinterpreted state law.²² Senator Pat Toomey (R-PA) requested additional information about the Kansas City Fed’s handling of Reserve Trust’s account, but his requests were largely fruitless.²³ Again, the public may never know whether the Kansas City Fed had legally defensible reasons to deny and then later grant Reserve Trust access to its payment systems.²⁴

Controversy about access to Federal Reserve Bank accounts and payments surfaced again in 2023, when the Kansas City Fed denied an account request from Custodia Bank, a Wyoming cryptocurrency custody bank. Although Federal Reserve Chairman Jerome Powell has acknowledged that the Custodia application is “hugely precedential,”²⁵ the Kansas City Fed did not publicly announce or explain its decision. Instead, policymakers and the public learned of the decision from court filings.²⁶ Later, the Kansas City Fed denied an information request for its Custodia decision, claiming that “[r]eleasing this type of information can negatively impact the [Reserve] Bank’s operations by deterring requestors from sharing all information necessary for the Bank to fully analyze requests for master accounts or Federal Reserve financial services.”²⁷ Without access to information about why a particular account request is denied, outside observers cannot say whether account and payments access decisions are consistent and fair. Moreover, if future applicants cannot learn about the established precedent, they may waste time and resources traveling the same unfruitful path.²⁸

Bank Supervision

When Silicon Valley Bank collapsed in spring 2023, Congress and the public had questions about why its supervisors at the Federal Reserve Bank of San Francisco had not caught and corrected the bank's problems earlier.²⁹ The San Francisco Fed did not comment. Speaking from the White House, President Joe Biden explained, “[w]e must get the full accounting of what happened and why [so] those responsible can be held accountable.”³⁰ Amid bipartisan calls for an independent investigation of Silicon Valley Bank's failure,³¹ the Federal Reserve Board announced that Vice Chair for Supervision Michael Barr would conduct an investigation into the Fed's supervision of the failed bank.³² Of course, before the failure, Vice Chair Barr was responsible for overseeing the Federal Reserve's supervisory activities, including the supervision conducted by the San Francisco Fed. Given this obvious conflict, other academics observed that Vice Chair Barr could not lead a robust and credible review.³³ Nevertheless, Vice Chair Barr proceeded with this internal investigation. Unsurprisingly, the Barr report pulls some punches. For example, the report says that the Reserve Bank staff “may have lacked experience with governance and risk-management practices,” that Reserve Bank staff “may” have inappropriately deferred to Board staff, and that “[b]udgetary resources may have mattered.”³⁴ For each of these issues, an independent investigator would be better positioned to investigate and credibly opine.

Even when they are not faced with a crisis, the Federal Reserve Banks tend to hoard supervisory information in ways that other federal bank supervisors do not. For example, the federal bank regulators are required to provide an interagency process for banks to appeal material supervisory determinations.³⁵ The Federal Deposit Insurance Corporation publicly releases redacted decisions issued as part of its appeals process.³⁶ The Office of the Comptroller of the Currency posts summary opinions on its webpage.³⁷ In contrast, the Federal Reserve does not release its decisions in any form.³⁸ The Federal Reserve Banks should be held to the same transparency standards as other federal banking supervisors.

Research Activities

Of the Federal Reserve Banks' activities, the information-gathering and research functions seem the least secretive. After all, the Reserve Banks routinely publish economic data, hold conferences, and circulate research papers. Indeed, access to the Reserve Banks' research materials is likely what led Senator Pat Toomey and others to question whether Reserve Banks' research activities have strayed beyond the Federal Reserve's statutory mission.³⁹ Nevertheless, the Reserve Banks' research functions are not fully transparent. In 2021, Senator Toomey requested information about Reserve Bank spending related to climate change and racial justice research. He also sought information about what he perceived as a shift in the Reserve Banks' research focus.⁴⁰ But the Reserve Banks were not forthcoming. Although Senator Toomey's office “repeatedly requested documents on research activity from Minneapolis, San Francisco, Boston, Atlanta and Kansas City [Federal

Reserve Banks, it came] up empty on all fronts.”⁴¹ Yet again, the Reserve Banks’ secrecy makes it difficult to assess their compliance with the public roles.

DOES FOIA ALREADY APPLY TO THE FEDERAL RESERVE BANKS?

The Federal Reserve Banks sometimes avoid responding to information requests by claiming that they are not subject to FOIA. FOIA generally requires that government agencies provide public access to their records (unless the information is exempt from disclosure).⁴² The Reserve Banks claim they are not government agencies and thus not subject to FOIA.⁴³ Whether the Reserve Banks are subject to FOIA is a legal question that has not been conclusively resolved by courts.⁴⁴ Future courts might conclude that the Reserve Banks are subject to FOIA because their public purposes make them more like government actors than private corporations.⁴⁵ Nevertheless, resolving this question through litigation would be time consuming. In the meantime, the Federal Reserve Banks’ secrecy will continue.

ARE VOLUNTARY FEDERAL RESERVE BANK DISCLOSURES SUFFICIENT?

The Federal Reserve Banks recently issued a joint statement announcing a “commit[ment] to transparency and accountability.”⁴⁶ They explained that although “each Reserve Bank has existing procedures for providing information to the public,” the “12 Reserve Banks have agreed to adopt a common policy for requests for information.”⁴⁷ They have not yet released the common policy, but there is little reason to think that voluntary disclosures will be sufficient. Currently, most of the Federal Reserve Banks explain that they voluntarily follow the “spirit of FOIA.”⁴⁸ But the spirit of FOIA is considerably less robust than actual FOIA, because those who are denied information have no legal remedy. Moreover, not all Reserve Banks follow the spirit of FOIA. At least one Reserve Bank considers things such as the “burden” of the information request and whether the disclosure would somehow “impair[] the effectiveness” of the Reserve Bank’s operations.⁴⁹ In any event, without legally required disclosures, Federal Reserve Banks decide what will be released.

HOW CAN CONGRESS MAKE THE FEDERAL RESERVE BANKS MORE TRANSPARENT?

Congress created the Federal Reserve Banks and entrusted them with their public roles. Congress also holds the power to make them more transparent. Members of Congress on both sides of the political aisle have proposed transparency reforms.⁵⁰ Four reforms deserve careful consideration.

Make Reserve Banks Subject to FOIA

First, Congress could make the Federal Reserve Banks subject to FOIA. This approach would require that the Federal Reserve Banks operate under the same transparency standards as the

other federal bank supervisors. Not all supervisory information would be disclosed. Under FOIA, bank supervisors can withhold information “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency.”⁵¹ FOIA also protects from disclosure the “trade secrets” of banks subject to supervision.⁵² But making the Reserve Banks subject to FOIA would likely encourage them to release information that other federal bank supervisors already release. The Reserve Banks’ research and information-gathering function would benefit from the transparency brought by FOIA. For example, FOIA has facilitated the release of information about agency spending⁵³ and agency staffing.⁵⁴

Require Disclosure of Reserve Bank Account and Payments Access Decisions

Second, Congress could ensure transparency about bank access to Federal Reserve account and payment services. The Federal Reserve has adopted guidelines establishing a rigorous risk-vetting process for banks accessing Reserve Bank account and payment services.⁵⁵ Chairman Powell has acknowledged that decisions about which banks get access to accounts and payments are “hugely precedential.”⁵⁶ Yet, the Reserve Banks still do not release their access decisions.⁵⁷ FOIA, however, requires that agencies electronically provide their opinions and orders.⁵⁸ As the Supreme Court has explained, this disclosure provision “represents a strong congressional aversion to ‘secret [agency] law.’”⁵⁹ Currently, the Reserve Banks’ decisions about account and payments access are secret law. FOIA could change that. Lest there be any confusion, Congress could explicitly clarify that account and payments access decisions are opinions and orders under FOIA.⁶⁰

Require Reserve Banks to Provide Information to Members of Congress

Third, Congress could legislatively direct the Reserve Banks to respond to information requests from members of Congress. FOIA gives Congress special access to agency information, even when that information would otherwise be exempt from disclosure under FOIA.⁶¹ Among other things, this broader investigatory power enables Congress to investigate corruption. Unfortunately, “the scope of the special access rule has been the subject of debate between the executive and legislative branches.”⁶² The Department of Justice, for example, takes the position that Congress’s special access applies only to requests from Congress as a whole, and not to requests from individual members of Congress.⁶³ This position is inconsistent with a DC Circuit Court opinion explaining that “[i]t would be an inappropriate intrusion into the legislative sphere for the courts to decide without congressional direction that, for example, only the chairman of a committee shall be regarded as the official voice of the Congress for purposes of receiving such information.”⁶⁴ Nevertheless, given the Reserve Banks’ past refusals to provide information, Congress should anticipate future reluctance. Congress could end this debate by legislatively specifying that Federal Reserve Banks must provide requested information to members of Congress regardless of whether the information is subject to a FOIA exemption. Congress could craft narrower exemptions and limit congressional disclosures to protect trade secrets and other especially sensitive materials.

Require Independent Investigations of Serious Concerns

Finally, Congress should be skeptical of Federal Reserve attempts to investigate the activities of the Federal Reserve Banks. The Board of Governors is already tasked with supervising the Reserve Banks. Thus, failings at the Reserve Banks may also indicate failings of the Board. Only independent investigations can preserve the credibility of the Federal Reserve System.

In the past, Congress has used independent investigations to explore corruption and government failures related to financial markets. Following the stock market crash of 1929, the investigation by the Senate Committee on Banking and Currency, led by former New York Deputy Attorney Ferdinand Pecora, exposed abuses that led to the crash.⁶⁵ More recently, the House Committee on Oversight and Government Reform investigated reports that banks were closing accounts for payday lenders and other disfavored groups. Its investigation, which consisted of hearings and document collection, uncovered evidence that bank regulators influenced the de-banking.⁶⁶ Congress could use this same approach when serious questions arise about Federal Reserve Bank actions.

Congress could also empower the Office of Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau to conduct truly independent investigations. As currently structured, the inspector general is appointed by the chair of the Federal Reserve Board and reports to the Federal Reserve Board and the director of the Consumer Financial Protection Bureau.⁶⁷ This approach means that the Office of Inspector General is not well positioned to conduct any investigation that might require scrutiny of the Federal Reserve Board or its chair. Given the generally symbiotic relationship between the Federal Reserve Board and the Federal Reserve Banks, the inspector general is not well positioned to investigate the Reserve Banks either. Many other government agencies (including the Department of the Treasury and the Federal Deposit Insurance Corporation) have inspectors general who are appointed by the president of the United States and subject to Senate confirmation.⁶⁸ These inspectors general do not report to one of the entities they are tasked with investigating.⁶⁹ Congress could restructure the Federal Reserve's Office of Inspector General to make it operate independently from the Federal Reserve Board.⁷⁰

CONCLUSION

Congress has empowered the Federal Reserve Banks to perform important public functions. The Reserve Banks should not be able to shield their public functions from scrutiny through secrecy. By adopting information disclosure reforms, Congress could ensure sufficient oversight of the Federal Reserve Banks.

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NOTES

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69. Wilhelm, "Statutory Inspectors General," 13-14, 29-30.
70. See Rick Scott, "Federal Reserve Out of Control: Americans Shouldn't Have to Pay for Wall St-Washington Mistakes," Fox News, March 21, 2023.