

Regionalism and the Federal Reserve Banks

Kathryn Judge[†] & Lev Menand^{††}

Regionalism is central to our country's central banking system. Rather than rely on a single organization to set monetary policy and oversee banks, Congress created a multiplicity of bodies including twelve Federal Reserve Banks (FRBs), each designed to operate in a different part of the country. These FRBs are an early and undertheorized example of how the federal government uses regional bodies to formulate and administer federal policy. When they were first authorized in 1913, their regional character assuaged concerns about centralizing power over the economy. Today, the FRBs continue to play a number of important roles, helping to shape monetary policy, produce original research, respond to local economic concerns, understand regional economic conditions, and connect local banks, households, and businesses to policymakers in Washington.

This Essay examines the regional aspect of the FRBs, highlighting their strengths and identifying areas in need of reform. It distinguishes between three types of regionalism: regional policy variation, in which federal policy differs region to region; regional policy formulation, in which regional voices contribute to setting federal policy; and regional policy implementation, in which regional bodies carry out federal policy. Today's financial system is national and interconnected. As a result, regional policy variation makes less and less sense. The trend of shifting decisions that once belonged to the FRBs to national bodies (such as the Board of Governors of the Federal Reserve or the Federal Open Market Committee) should be continued, and Congress should clarify that it is these bodies that have final say over matters such as access to the payment system. At the same time, regional voice and implementation should be retained. The Open Market Committee, on which the presidents of the FRBs serve, is a critical mechanism for incorporating regional perspectives into the development of uniform, national policy, and the FRBs carry out these policies at a regional level in ways that enhance legitimacy, improve efficacy, and promote resiliency.

[†] Harvey J. Goldschmid Professor of Law at Columbia Law School.

^{††} Associate Professor of Law at Columbia Law School. The authors are grateful to Scott Baker, Michael Held, Patricia Mosser, Nathan Tankus, and the participants at the Washington University Law and Economics Workshop and the Women in Law and Finance Workshop at Wharton for helpful comments on earlier drafts. Brian Japari and Alex MacDonald provided exceptionally helpful research assistance. Research for this publication is made possible in part by The Leichtman-Levine Faculty Research Fund at Columbia Law School.

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INTRODUCTION

The U.S. payment system—an integrated, nationwide network that transfers trillions of dollars per day—has twelve different on-ramps controlled by twelve different organizations. These organizations, known as Federal Reserve Banks (FRBs), evaluate applications from banks and other financial institutions for “master accounts,” which are bank accounts that permit payment system access. The FRBs are subject to oversight by a single agency in Washington, D.C., the Board of Governors of the Federal Reserve System (the Board). Yet while the Board issues the policies that govern whether a particular bank should be able to open a “master account,”¹ applying these policies has become more challenging over the past decade as an increasing number of state-chartered banks with unusual business models have applied for a master account.² Many banks have had their

¹ Guidelines for Evaluating Account and Services Requests, 87 Fed. Reg. 51,099, 51,106–10 (Aug. 19, 2022).

² See *id.* at 51,099, 51,101–02. At least thirty-six financial institutions that lack deposit insurance have applied for a master account since December 23, 2022, or had a pending application as of that date. See *Master Account and Services Database*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (last updated Sept. 20, 2024), <https://perma.cc/344R-S8GW>.

applications rejected, usually after much delay.³ And although, collectively, the FRBs and the Board make up our country's central bank—the Federal Reserve System (the Fed)—it is the FRBs, not the Board, that ultimately decide whether to grant a bank a master account.

The result has been intense lobbying and litigation. For banks, access to a master account is often existential. Master accounts permit banks not only to send and receive wire transfers but also to conduct a host of other central banking services, including collateralizing intraday overdrafts, providing emergency liquidity support, granting check clearing and collection, and delivering currency and coin.⁴

An ongoing dispute between the Federal Reserve Bank of Kansas City and Custodia Bank—a state-chartered institution planning to serve the cryptocurrency ecosystem, including by issuing its own cryptocurrency—is exemplary. After sitting on Custodia's application for two years, the Kansas City Fed (the naming convention we will use for each FRB) denied Custodia's request.⁵ In explaining its decision, the Kansas City Fed cited concerns about the “market volatility” associated with cryptocurrencies, “undue risk to the overall economy” presented by crypto transactions that may “facilitat[e] activities such as money laundering, terrorism financing, fraud, cybercrimes, economic or trade sanctions violations, or other illicit activity,” the lack of federal oversight, and potential problems with Custodia's business model.⁶

Custodia sued—which was not surprising given the stakes for its business plan. What was striking, however, was that a core point of contention in the case was whether the Board—the only body within the Fed constituted entirely of presidentially appointed and Senate-confirmed leadership—played too *great* a role

³ For example, Euroclear Bank's 2018 request for access to Federal Reserve Bank financial services is pending as of August 31, 2024. See *Master Account and Services Database*, *supra* note 2.

⁴ See Julie Andersen Hill, *Opening a Federal Reserve Account*, 40 YALE J. ON REGUL. 459, 462–63 (2023).

⁵ Exhibit CF, Custodia Master Account Summary Analysis, Attachment to Letter from Esther George, President, Fed. Rsrv. Bank of Kan. City, to Caitlin Long, CEO, Custodia Bank, Inc. (Jan. 27, 2023), at 2, 4, *Custodia Bank, Inc. v. Fed. Rsrv. Bd. of Governors*, 728 F. Supp. 3d. 1227 (D. Wyo.) (No. 22-CV-00125), *appeal docketed*, No. 24-8024 (10th Cir. argued Jan. 21, 2025) (available at <https://perma.cc/7KL8-RCGB>).

⁶ *Id.* at 5–8.

in the decision.⁷ In a further twist, Custodia simultaneously argued, on constitutional grounds, that the FRBs should not be permitted to make final decisions (like these) at all.⁸

Custodia's suit, which is currently on appeal in the Tenth Circuit,⁹ has thrust the Federal Reserve's unusual structure into the spotlight.¹⁰ It also has commentators asking, once again, whether the twelve FRBs, which are formally owned by banks and partly governed by them, should simply be taken over by the government and subsumed within the federal agency that oversees them in Washington. Among other things, such a shift would alleviate concerns about the arrangement's constitutionality.¹¹ It would also align the structure of the Federal Reserve with that of other federal regulators, such as the Federal Trade Commission (FTC), the Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC), all of which operate branch offices with local leadership but are not composed of distinct organizations with independent decision-making authority.

We believe that flattening the Federal Reserve in this way would be a mistake. While reform is clearly needed, once a bank secures a master account, for example, the specific FRB from which it was obtained does not matter. There is little reason, therefore, to allow FRBs to set different policies on what types of institutions can have access to master accounts. But within the Fed, the FRBs enhance decision-making and legitimacy in many areas without introducing policy heterogeneity. They are

⁷ See Complaint ¶ 6, *Custodia Bank*, 728 F. Supp. 3d 1227 (No. 22-CV-00125) (“[T]he Kansas City Fed’s consideration and impending approval of Custodia’s application was derailed when, in spring 2021, the Board asserted control over the decision-making process.”).

⁸ See *id.* ¶ 69 (“Adopting Defendants’ position—particularly in view of the Kansas City’s Fed purported final decision-making authority over master account applications—would raise a number of constitutional concerns.”).

⁹ For more on the master account disputes, see generally Julie Andersen Hill, *Opening a Federal Reserve Account*, 40 YALE J. ON REGUL. 453 (2023).

¹⁰ See, e.g., Daniel K. Tarullo, *The Federal Reserve and the Constitution*, 97 S. CAL. L. REV. 1, 41–45 (2024). Among the issues is the Fed’s combination of public and private elements. On the one hand, the FRBs are headed by (1) nine directors, six of whom are voted into office by investor-owned banks and three of whom are appointed by the Board, and (2) a president who is selected by six of the directors, three of whom are voted into office by banks. See *id.* at 7–9; 12 U.S.C. §§ 302, 341. On the other hand, the Board retains a veto right on the directors’ appointment of an FRB president and, perhaps more importantly, may well be able to remove that president at any time without cause. See Tarullo, *supra*, at 25–26; Appointment and Removal of Fed. Rsrvt. Bank Members of the Fed. Open Mkt. Comm., 43 Op. O.L.C. 1, 1 (2019).

¹¹ See Tarullo, *supra* note 10, at 24–25.

therefore an example of the virtues of regionalism and of an approach to regionalism that is often underappreciated. By adjusting the authority of the FRBs without collapsing them into national bodies, policymakers might preserve and promote a structure that has enhanced Federal Reserve decision-making for over a century.

This Essay proposes a way to modernize the Federal Reserve's regional structure. It also draws lessons from the experience of Federal Reserve regionalism for central bank administration and federalism more generally. In so doing, it distinguishes between three types of regionalism: regional policy variation, regional policy formulation, and regional policy implementation. First, regional policy variation. Regional policy variation involves government bodies carrying out federal programs in different ways in different regions. Master account access is a case in point. Emergency lending through the Fed's discount window is another example. The Federal Reserve Act¹² (FRA) authorizes each FRB to make its own decisions regarding account access and emergency lending (although, in each case, certain terms may be set uniformly by the Board).

Second, regional policy formulation. Even where policy is not permitted to vary by region, Congress can give regional bodies or officials a role in formulating it. Regional voices can help to counter groupthink and incorporate a more diverse and diffuse set of perspectives in shaping federal policy.¹³ The FRA is exemplary. Prior to 1935, the FRBs made individual decisions about buying and selling financial assets like Treasury securities, leading to monetary policy and financial market dysfunction. But in 1935, rather than simply shift these decisions to the Board, Congress created the Federal Open Market Committee (FOMC).¹⁴ All twelve FRB presidents and all seven Board governors participate in FOMC meetings. All seven governors, the New York Fed President, and four other FRB presidents, on a rotating basis, have a right to vote at these meetings. Although the Board, when fully staffed, holds the balance of power on the Committee, the FRB presidents all share what they are seeing and hearing in their districts in ways that inform monetary policy decisions. FRB views carry weight.

¹² Pub. L. No. 63-43, 38 Stat. 251 (1913) (codified as amended at 12 U.S.C. §§ 221 et seq.).

¹³ For one of the most thorough accounts of how diverse viewpoints may enhance policymaking by the Federal Reserve and the role the FRBs play in promoting that diversity, see Marvin Goodfriend, *The Role of a Regional Bank in a System of Central Banks*, 2000 FED. RSRV. BANK OF RICHMOND ECON. Q. 7.

¹⁴ Banking Act of 1935, Pub. L. No. 74-305, § 205, 49 Stat. 684, 705.

This gives the FRB presidents internal influence and enhances their credibility and sway in the myriad settings outside of FOMC meetings where much of the debate about monetary policy actually occurs.

Third, regional policy implementation. Congress can authorize agencies to carry out policies at a regional level, with local offices akin to those operated by the SEC or the FTC. The FRBs engage in extensive regional implementation for the Fed. They not only administer payment and lending services, but they also facilitate cash distribution, check clearing, information technology, and research development at a regional level. Regional implementation enhances the Fed's legitimacy, produces economic insights specific to different parts of the nation, and counters certain forms of capture.

The present mix of policy variation, voice, and implementation in the Federal Reserve's regional structure is not optimal. The master account saga demonstrates an area where the costs of regional policy variation exceed the benefits. The country's financial system, once more regional in nature, is now national and interconnected. And even though the Board recently issued guidance with respect to how the FRBs should evaluate master account applications, there is meaningful policy being made in the process of applying that guidance, as reflected in the lawsuit by Custodia and others.

We recommend transferring decision-making regarding master accounts entirely to the Board (or at least authorizing *de novo* appeals). We also recommend shifting to uniform policies in other areas and clarifying the public nature of the FRBs. For example, at present, compliance with the Administrative Procedure Act¹⁵ (APA) and the Freedom of Information Act¹⁶ (FOIA) varies between FRBs. We recommend applying both statutes evenly across all FRBs, with exceptions carved out on a nationwide basis as appropriate.

But Congress should retain (with some adjustments) regional voice and implementation for these and other matters. We see great benefits in how the FRBs use regional insights to help shape national policy, producing economic data useful to financial and nonfinancial firms, engaging with local communities to explain and legitimize the Fed's workings, and promoting many other

¹⁵ 5 U.S.C. § 500 et seq.

¹⁶ *Id.* § 552.

aims associated with regionalism.¹⁷ Although it has gone largely overlooked in both the public and private law literatures, the FOMC marks a distinct and vital way that Congress enhances both the quality and legitimacy of federal decision-making by allowing a greater diversity of voices to play a meaningful role in the process. In contrast to most common forms of regionalism in the federal government—where policy is set in D.C. and then carried out in ways that allow for local accommodation—the most important form of regionalism within the Federal Reserve entails a uniform policy that is made in a way that gives voice and thereby influence to the FRBs, thus providing a bottom-up way of getting regional feedback and support. Implementation should be subject to more clear checks and appeals, but it is still best located in bodies with regional character.

We recognize that there are other reforms that may be warranted alongside those proposed. For example, despite massive shifts in the structure of the economy, the contours of the twelve Federal Reserve Districts have not changed since the Fed was set up over a century ago. The governance structure is also a vestige of an era when central bank independence meant independence from government in toto. We would support changing both of these aspects.¹⁸ Yet the aim here is different. Our project is to illuminate and protect the way a vibrant regional design can and should persist even when uniform, national policies are needed, and to show how it can promote democratic legitimacy, broadly construed. Eliminating some of the harms that arise from outdated aspects of the regionalism embodied in the Federal Reserve would go a long way to protect the many benefits that accrue from its distinctive regional structure.

This Essay proceeds in four parts. First, it reviews the recent scholarship on regionalism in federal administration. Second, against this background, it explains the creation and evolution of the Fed with a focus on the importance and shifting roles of the FRBs. Third, it provides a brief overview of some of the ways the regionalism of the Fed promotes broader engagement, advances legitimacy, and could enhance decision-making processes around important issues, in particular in the setting of monetary policy.

¹⁷ See *infra* Part III.A.

¹⁸ Bank supervision is another area where the Federal Reserve engages in regional policy variation, formulation, and implementation. In recent years, the Board has centralized control over more aspects of supervision. This shift merits further attention, although we do not examine it here.

Finally, it suggests that beyond these core areas, Congress should clarify and expand the powers officially vested in the Board, even if executed by the FRBs.

I. REGIONALISM

The United States also has a long and robust history of regionalism. Particularly, albeit not exclusively, during periods of increasing federal regulation, federal legislators have embraced regionalism to mediate, shape, check, and enable more expansive federal administration.¹⁹ The literature on regionalism also seeks to provide a more accurate descriptive account of how the federal government actually works. The recent anti-administrative turn at the Supreme Court is premised in part on concerns about an ever-growing federal bureaucracy.²⁰ But, as the federalism literature emphasizes, much of today's administrative state consists not of federal bureaucrats regulating the country from inside the Beltway; rather, 85% of federal employees work outside the D.C. area.²¹ Federal regulations are frequently made and implemented through structures that delegate meaningful authority to offices spread across the country.

In one recent example, Professor Dave Owen provided a vivid account of the regional character of the Army Corps of Engineers' implementation of the Clean Water Act.²² Based on significant field research, including extensive interviews, Owen showed that the "operations and decisionmaking structures are deliberately decentralized, with consequences throughout the regulatory

¹⁹ For examples of scholarship focused on the role of regionalism in U.S. federalism, see generally Jessica Bulman-Pozen, *Our Regionalism*, 166 U. PA. L. REV. 377 (2018) (providing an account of regionalism in the United States over the past century); Dave Owen, *Regional Federal Administration*, 63 UCLA L. REV. 58 (2016) (analyzing the U.S. Army Corps of Engineers' implementation of the Clean Water Act); Yishai Blank & Issi Rosen-Zvi, *Reviving Federal Regions*, 70 STAN. L. REV. 1895 (2018) (emphasizing the role of regions as mediators and coordinators).

²⁰ *E.g.*, *City of Arlington v. FCC*, 569 U.S. 290, 313 (2013) (Roberts, C.J., dissenting) ("The Framers could hardly have envisioned today's 'vast and varied federal bureaucracy' and the authority administrative agencies now hold over our economic, social, and political activities." (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010)); *Buffington v. McDonough*, 143 S. Ct. 14, 16 (2022) (Gorsuch, J., dissenting from the denial of certiorari) (citing concerns that agency interpretation of statutes would lead to "administrative absolutism"); see also Gillian E. Metzger, *The Supreme Court, 2016 Term—Foreword: 1930s Redux: The Administrative State Under Siege*, 131 HARV. L. REV. 1, 34–38 (2017).

²¹ *E.g.*, Bulman-Pozen, *supra* note 19, at 388–89; Owen, *supra* note 19, at 61.

²² Pub. L. No. 92-500, 86 Stat. 816 (1972) (codified as amended at 33 U.S.C. §§ 1251 et seq.).

process.”²³ This takes an array of interrelated forms: employees engaged in permitting and other decision-making are geographically dispersed, which “facilitates more localized communication with the public,” in part because local staff often have personal knowledge and relationships in the areas where they are working;²⁴ regional offices enjoy a significant amount of decision-making authority, subject to efforts to maintain consistency along some fronts; and the public experiences meaningful engagement with state and local authorities.²⁵ These and other features mean that the “agency routinely adjusts its regulatory program to local conditions.”²⁶ In addition to illuminating the importance of understanding intra-agency dynamics, Owen’s work “undercuts conventional assumptions about federal centralization” by “show[ing] that power within the federal government need not be, and sometimes is not, centered in Washington, D.C.”²⁷

The role of regionalism in federal administration is, of course, nothing new, even if it often seems to fade from view only to be rediscovered by each succeeding generation, as Professor Jessica Bulman-Pozen showed in her work on “our regionalism.”²⁸ Bulman-Pozen provided one of the most comprehensive accounts of the myriad forms and rationales for regionalism, its interplay with federalism, and the evolving roles that regionalism has played as the administrative state has taken form and morphed at critical junctures over the past century.

Starting her account in the 1920s and 1930s, while recognizing that regionalism’s roots go even further back, Bulman-Pozen identified in the regionalism of the era an apparent antidote to the dangers of centralization and homogenization. This was particularly pressing at a time when there was widespread appreciation of the value, even need, for a more expansive and engaged federal government.²⁹ Many hoped “that, if regions were in a cultural or political sense more ‘real’ than states or the federal government, then regions were useful, underutilized sites of governance.”³⁰ Although the aspirations for regionalism have evolved over time, the formative role that regionalism played during this

²³ Owen, *supra* note 19, at 105.

²⁴ *Id.* at 87.

²⁵ *See id.* at 89–92.

²⁶ *Id.* at 92.

²⁷ *Id.* at 63.

²⁸ *See* Bulman-Pozen, *supra* note 19, at 379–82.

²⁹ *See id.* at 395–97.

³⁰ *Id.* at 399.

era continues to shape many of the institutions that arose out of that period, as “regional offices of federal agencies continue to furnish regional accommodation and to implement federal law in different ways,” and regionalism continues to serve as mechanism for state involvement in designing and implementing federal policy.³¹

Bulman-Pozen further explored how regionalism reemerges during periods of renegotiation and expansion of federal administration. For example, regionalism played a distinct and formative role during the Great Society era of the 1960s, offering a “new hope for interagency and intergovernmental coordination alike,” and one that transcended the challenges embedded in federalism.³² Regionalism is once again being rediscovered today, yet its meaning, function, and the possibilities it embodies vary in each era.³³ The most significant recent developments, in Bulman-Pozen’s account, portend the possibility of “regionalism without regions.”³⁴ She suggested that as partisanship becomes more defining than sectional allegiances, noncontiguous, multijurisdictional alliances could become the vehicles for negotiation, resistance, and action in ways that remain grounded in territory but with the possibility of configurations that transcend traditional bounds.

The thoroughness of Bulman-Pozen’s account makes it all the more striking that of the myriad models she set forth, there is little attention paid to the model that remains core to regionalism at the Fed: regionally chosen leaders (albeit subject to a centralized check) that subsequently play a role in setting uniform national policy.³⁵ And while she may well be right about the direction regionalism is taking in other settings, regionalism at the Fed is notably still bounded not only to geography but to a map of where economic and political power lay more than a century ago, providing regions often overlooked today in other settings with a relatively outsized role in shaping conversations and helping to make policy.

Consistent with Bulman-Pozen’s account, there has been a resurgence in scholarship highlighting the important role that regionalism can and does play in administration. Alongside case

³¹ *Id.* at 413–14, 413 n.189 (noting, for example, how “the EPA’s regional offices differ substantially in the number and type of inspections they make, the enforcement citations they issue, the number and size of penalties they assess, and the manner in which they audit state compliance with [federal] laws”).

³² *Id.* at 423.

³³ See Bulman-Pozen, *supra* note 19, at 427–28.

³⁴ *Id.* at 436.

³⁵ See, e.g., *id.* at 391.

studies, such as Owen's, scholars are resurfacing and expanding accounts of regionalism as a deeply embedded but still often overlooked mode of shaping federal policy. In *Reviving Federal Regions*, for example, Professors Yishai Blank and Issi Rosen-Zvi argued that the tendency to see regions "as mere enforcers and implementers of central policies—the long arms of a wholly centralized bureaucracy[,] . . . has led in turn to their weakening through deficient legal authorization by Congress and misguided interpretations of their powers by administrators and courts."³⁶ Their account emphasizes the role of regions in "mediat[ing] between regional and national preferences, values, and norms"³⁷ and as "coordinators" capable of overcoming "inevitable problems of interstate and intergovernmental coordination and cooperation," but in a decentralized way.³⁸

The Federal Reserve System is often cited as an example of regionalism in this scholarship. There is also an array of accounts of the Federal Reserve System that study its history and evolution, including the role of the FRBs, on its own terms.³⁹ And there is a robust body of literature on central bank independence and the design of central banks within financial regulatory architecture.⁴⁰ So far as we can tell, however, there has yet to be any effort to study the particularities of the Fed against a backdrop of the transsubstantive role that regionalism has and should play in U.S. policymaking and administration.

Bringing these myriad strands of literature together to illuminate the current workings of the Fed generally, and the FRBs

³⁶ Blank & Rosen-Zvi, *supra* note 19, at 1900; *see also id.* at 1939 ("From the 1980s through the early twenty-first century, federal regions' role as mediating and coordinating entities gradually faded, and they were reconfigured as predominately enforcing bodies.").

³⁷ *Id.* at 1916.

³⁸ *Id.* at 1916–17.

³⁹ *See generally* 1 ALLAN H. MELTZER, A HISTORY OF THE FEDERAL RESERVE: 1913–1951 (2003); 2 ALLAN H. MELTZER, A HISTORY OF THE FEDERAL RESERVE: BOOK 1, 1951–1969 (2009); 2 ALLAN H. MELTZER, A HISTORY OF THE FEDERAL RESERVE: BOOK 2, 1970–1986 (2009); ALAN S. BLINDER, A MONETARY AND FISCAL HISTORY OF THE UNITED STATES, 1961–2021 (2022); PETER CONTI-BROWN, THE POWER AND INDEPENDENCE OF THE FEDERAL RESERVE (2016); LEV MENAND, THE FED UNBOUND: CENTRAL BANKING IN A TIME OF CRISIS (2022); ROGER LOWENSTEIN, AMERICA'S BANK: THE EPIC STRUGGLE TO CREATE THE FEDERAL RESERVE (2015).

⁴⁰ *See generally* SYLVESTER C.W. EIJJFINGER & JAKOB DE HAAN, THE POLITICAL ECONOMY OF CENTRAL-BANK INDEPENDENCE (1996); Alex Cukierman, Pantelis Kalaitzidakis, Lawrence H. Summers & Steven B. Webb, *Central Bank Independence, Growth, Investment, and Real Rates*, 39 CARNEGIE-ROCHESTER CONF. SER. ON PUB. POL'Y 95 (1993); Helge Berger, Jakob de Haan & Sylvester C.W. Eijffinger, *Central Bank Independence: An Update of Theory and Evidence*, 15 J. ECON. SURVS. 3 (2001).

in particular, yields fruit of two kinds. First, it provides insights into why and how to reform the Fed to preserve and promote the regionalism it embodies.⁴¹ The concerns that animated the more decentralized structure at the founding of the Fed ebb and flow but have never died, and with good reason. The Fed today is far more powerful than the Fed as it existed at its founding. The FRBs enhance its effectiveness in ways that have enhanced the functioning of the government as a whole on many occasions. During COVID-19, for example, when Congress wanted to provide businesses access to the cash they may need to withstand the forced economic hibernation but were wary of providing too much authority to a Treasury Department overseen by a President many did not trust, the Federal Reserve proved to be the crucial link allowing the government to create a regime that had the potential to provide widespread credit.⁴² This type of independence is somewhat in tension with the overall trend toward presidentialism over the past fifty years, yet we see it as critical to the health of the Federal Reserve, and government generally, precisely because of that trend. This Essay further suggests that as flawed as the FRB governance regime may be, the FRBs have managed in practice to play an important role helping to promote the sociological legitimacy of the Fed, broadly construed, by providing additional loci for two-way engagement between policymakers and those affected by their actions.⁴³

Second, close study of the Fed affirms the important role that regional institutions can have in making federal policy even when the setting calls for a uniform policy and shifting power to shape conversations around those policies outside of the Beltway. This is the core, but far from only, way that a principled account of both the value and limits of regionalism in the Federal Reserve system could enhance both theory and practice.

⁴¹ Economist Jeffrey Lacker has provided a thorough internal account of the value of regionalism within the Federal Reserve System and indications that it is in decline. Jeffrey Lacker, *Governance and Diversity at the Federal Reserve*, MERCATUS CTR.: GEORGE MASON UNIV. (Jan. 8, 2024), <https://perma.cc/5HA6-XATU>.

⁴² See NICK TIMIRAOS, TRILLION DOLLAR TRIAGE: HOW JAY POWELL AND THE FED BATTLED A PRESIDENT AND A PANDEMIC—AND PREVENTED ECONOMIC DISASTER 152–75 (2022).

⁴³ The role of the FRBs in enhancing legitimacy, albeit in a way not recognized by current doctrine (and potentially in tension with it), is akin to the dynamics surrounding “internal administrative law.” See Gillian E. Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1239, 1256–59 (2017).

II. REGIONALISM IN THE FEDERAL RESERVE SYSTEM

The regionalism now embodied in the Federal Reserve System is the byproduct of a statutory scheme and norms that have developed over time. The initial FRA embedded regionalism by diffusing power among twelve FRBs subject to oversight by a central board in Washington. Subsequent amendments shifted power away from the FRBs and toward the central board. Understanding how the modern Fed has developed is critical to understanding where we actually are and why it matters.

A. The Original Design and Subsequent Evolution

Among its peers, the United States was slow to establish a durable central banking system. The Federal Reserve was created only in 1913.⁴⁴ A core reason for the nation's slowness was a distrust of centralized power, both public and private. Central banks by their nature are powerful institutions. One of the main reasons Congress was finally able to coalesce around legislation to create a central bank was the realization that the absence of one had not precluded the centralization of power over the economy.⁴⁵ Worse, that absence had created a vacuum that facilitated centralization in private hands, most notably those of financier J.P. Morgan and the small group of executives who controlled the New York Clearing House.⁴⁶

That centralization became politically and socially salient during the Panic of 1907—a banking panic followed by an acute recession. The crisis, which began with the decision of private individuals to refuse to clear checks for the Knickerbocker Trust, was subsequently also halted by private individuals.⁴⁷ J.P. Morgan led the response. The Treasury was involved, and provided financial support, but appeared subordinate, with the Treasury Secretary

⁴⁴ See generally Federal Reserve Act, 38 Stat. 251.

⁴⁵ See ROBERT F. BRUNER & SEAN D. CARR, *THE PANIC OF 1907: LESSONS LEARNED FROM THE MARKET'S PERFECT STORM* 9 (2007) ("Much of the volume of new debt and equity financing . . . flowed through a relatively small circle of financial institutions in New York, including J. P. Morgan & Company; Kuhn, Loeb & Company; the First National Bank; the National City Bank; Kidder, Peabody & Company; and Lee, Higginson & Company."); Lev Menand, *The Logic and Limits of the Federal Reserve Act*, 40 *YALE J. ON REGUL.* 197, 233–34 (2023) ("Public concern with the power of . . . large firms . . . reached a fever pitch in 1912 during the Pujo Hearings, which according to the Senate Banking Committee, revealed 'a vast concentration of power in the hands of a few men over the credit system of the United States.'" (quoting S. REP. NO. 63-133, at 6 (1913))).

⁴⁶ See Menand, *supra* note 45, at 233.

⁴⁷ *Panic of 1907*, FED. RSRV. BANK OF BOS. 5, <https://perma.cc/8RL9-Y2Y3>.

having to go to New York to meet with Morgan, rather than Morgan going to the Secretary.⁴⁸ The severe consequences of the crisis, and the perception that its course was outside meaningful public control, broadened support for a central bank, but it still took years before Congress, the President, and other stakeholders could agree to an institutional arrangement.⁴⁹

Core among the compromises that enabled the FRA was regionalism. There would be a central board, based in Washington, D.C., and chaired by the Treasury Secretary. But much of the new system would lie outside of Washington in (up to) twelve regional FRBs spread across the country.⁵⁰ The FRBs are cooperatives; their members are local investor-owned commercial banks.⁵¹ These investor-owned banks hold one-third of the seats on the boards of directors of the FRB, elect another third of the board among the industrial leaders to whom they provide credit, hold shares in the regional banks, and receive dividends from the FRBs (which are paid in amounts established by statute).⁵²

Many aspects of Fed policymaking were vested in these regional banks. Most significantly, the FRBs were designed as the operational arms of the Fed. Congress delegated to the FRBs the authority to decide whether to maintain deposits for member banks.⁵³ Although Congress and the Board limited what assets the FRBs could hold and lend against, it was the FRBs that largely chose whether to lend to member banks and on what terms.⁵⁴ And they determined whether to buy and sell eligible financial instruments and with whom to engage in these transactions.⁵⁵ The Board has no balance sheet of its own; it was designed instead to make policy, oversee the FRBs, and coordinate their activities.⁵⁶ This design soon proved to be too decentralized, and the structure was meaningfully reformed in 1935 to shift more

⁴⁸ See Lowenstein, *supra* note 39, at 115–16; *Panic of 1907*, *supra* note 47, at 6–7.

⁴⁹ See Menand, *supra* note 45, at 236–38.

⁵⁰ See Federal Reserve Act §§ 2, 4, 13, 38 Stat. at 251–57, 263–64.

⁵¹ See *id.* § 2, 38 Stat. at 251–53.

⁵² See 12 U.S.C. §§ 287 (capital stock), 289 (dividends), 304 (directors).

⁵³ See Federal Reserve Act § 13(1), 38 Stat. at 263.

⁵⁴ See, e.g., *id.* § 13(2), 38 Stat. at 263–64. The Board, however, has the “right to determine or define the character of the paper thus eligible for discount,” i.e., to serve as collateral for loans. *Id.*

⁵⁵ See *id.* § 14, 38 Stat. at 264–65.

⁵⁶ See *id.* § 11, 38 Stat. at 261–63; see also Menand, *supra* note 45, at 237. To this end, the Board was given extensive policymaking authority. Most notably, the Board, not the relevant FRB, has always had the authority to review and rule on applications for membership in the Fed by state-chartered depository institutions. Federal Reserve Act § 9, 38 Stat. at 259–60. Additionally, the Board has authority over note issuance; the FRBs have to apply to the Board for notes. *Id.* § 16, 38 Stat. at 265–68.

power to a newly constituted Board, but that restructuring preserved the decentralized structure in important ways.⁵⁷

The regionalism embodied in the original design of the Fed also served at least two aims beyond reducing concentrations of power. First, it rendered the Federal Reserve a true public-private hybrid, placing significant power into the hands of the bank members of the FRBs. The nature of the private influence has waned significantly over time, both as a result of changes in the law and changes in practice. As former General Counsel of the Federal Reserve Howard Hackley aptly noted in a 1969 memorandum: “[O]wnership of the stock [in a Federal Reserve Bank] does not give member banks a ‘proprietary’ interest in the Reserve Banks like that usually attached to ownership of stock in a private corporation.”⁵⁸ Nonetheless, the FRBs remain a key locus through which banks have some capacity—real and perceived—to shape Fed policymaking.

Second, regionalism enabled New York banks—those organizations already exercising quasi-central banking powers through the instrument of the New York Clearing House—to continue to exercise significant influence over the monetary and financial system through their partial control of the New York Fed. The New York Fed quickly became the most powerful regional bank, a status that was cemented in statute in 1935 when it was given a permanent seat on the Federal Open Market Committee.⁵⁹

The creation of the FOMC in 1935 was part of the most significant set of reforms to the Federal Reserve since its 1913 founding. The Depression revealed the need for a more powerful and centralized central bank, both to ward off crises and to facilitate the policies needed for recovery. These structural changes reduced the role of the FRBs and expanded the authority of the Board.⁶⁰ They also increased the independence of Federal Reserve

⁵⁷ See Menand, *supra* note 45, at 236–38.

⁵⁸ HOWARD H. HACKLEY, SHOULD THE STOCK OF THE FEDERAL RESERVE BANKS BE RETIRED? 9 (1969) (available at <https://perma.cc/7U49-26LJ>).

⁵⁹ See Banking Act of 1935 § 205, 49 Stat. at 705–06.

⁶⁰ *E.g., id.* § 201, 49 Stat. at 703–07 (codified at 12 U.S.C. § 228) (requiring Board approval for FRB presidential and vice presidential appointees); Banking Act of 1933, Pub. L. No. 73-66, § 5(c), 48 Stat. 162, 165 (codified at 12 U.S.C. §§ 321–323) (requiring each member bank to provide its FRB and the Board at least three reports per year disclosing potential conflicts of interest).

policymaking from the President by removing the Comptroller of the Currency and the Secretary of the Treasury from the Board.⁶¹

The most significant reform curtailed the authority of individual FRBs to decide when and how to buy and sell financial assets, i.e., to engage in open-market operations. Marriner Eccles, a chief architect of the 1935 reforms who would go on to chair the Fed, defended the need for this reform in a speech to bankers, explaining that “open-market operations [are not] a regional or local matter. Their effect cannot be confined to a single district, but is nationwide and affects all classes.”⁶² The notion that decisions that could have national ramifications because of the interconnectedness of financial markets should not be made at a regional level is the core rationale we argue should extend to shape the allocation of decision-making authority in the Fed today.

At the same time, as Eccles went on to explain, “far from destroying their regional autonomy, the bill in a variety of ways increases that autonomy in all purely regional and local matters.”⁶³ Moreover, rather than shifting authority over open-market operations to the Board, the 1935 reforms provided that these important decisions over monetary policy would be vested in a newly created FOMC—a body composed of both the Board and FRB presidents. Unchanged to this day, the FOMC consists of twelve voting members: all seven governors on the Board, the President of the New York Fed, and four other FRB presidents, selected on a rotating basis.⁶⁴ All FRB presidents also fully participate in FOMC meetings even when they are not serving as voting members.⁶⁵

Despite the important roles the FRBs have played throughout the history of the Federal Reserve system, the legal status of the FRBs in relation to the federal government has never been fully resolved. In a subsequent and influential memorandum, Hackley opined in 1972:

The Federal Reserve Banks are corporate instrumentalities of the United States established and operated for public purposes and not for private profit. Although the stock of each Reserve Bank is wholly owned by its member banks and six

⁶¹ See Banking Act of 1935 § 203(b), 49 Stat. at 704–05. Although the President can remove the Treasury Secretary at pleasure, in the case of the Comptroller, Congress requires the President to communicate reasons for removal to the Senate. 12 U.S.C. § 2.

⁶² Marriner S. Eccles, Governor, Fed. Rsrv. Bd., Address Before the Annual Convention of the Pennsylvania Bankers Association: The Banking Bill of 1935 (June 5, 1935).

⁶³ *Id.*

⁶⁴ 12 U.S.C. § 263(a).

⁶⁵ See *About the FOMC*, BD. OF GOVERNORS OF THE FED RSRV. SYS., <https://www.federalreserve.gov/monetarypolicy/fomc.htm>; 12 U.S.C. § 263.

of its nine directors are elected by the member banks, the operations of the Reserve Banks are in no way subject to direction or control by the member banks. On the other hand, the Reserve Banks are not parts of the United States Government in the same sense as the Board and the FOMC; and Reserve Bank employees are not employees of the United States. Whether the Reserve Banks are “agencies” of the United States is a debatable question; its determination for purposes of Federal statutes must depend largely upon the nature and intent of the particular statute involved.⁶⁶

The biggest change since Hackley’s memorandum reduced the influence of member banks over the leadership of the FRBs. The Dodd-Frank Wall Street Reform and Consumer Protection Act,⁶⁷ adopted after the 2008 financial crisis, changed how FRB presidents are elected. Today, leaders of member banks still constitute one-third of each FRB board, and they remain involved in most matters that come before those boards, but they are no longer allowed a role in selecting FRB presidents.⁶⁸

B. Policy and Constitutional Considerations

The Fed’s design raises both policy and constitutional concerns. As financial markets have become increasingly interconnected and national, some of the autonomy granted to FRBs today clashes with the basic divide envisioned by Eccles: when the impact of a policy decision cannot be contained to a district, final say over that decision should not lie with an individual FRB. We further suggest that as the Fed and FRBs have become more public and less private over time, it is worth reevaluating how the APA and other obligations imposed on federal agencies apply to actions and materials of the FRBs.

Constitutionally, the shift, both in judicial doctrine and in practice, toward a more unitary executive poses a distinct potential threat to the design of the Federal Reserve. We both believe that the FRA, in its current form, clearly comports with the Constitution, even after changes to long-standing precedents in

⁶⁶ HOWARD H. HACKLEY, *THE STATUS OF THE FEDERAL RESERVE SYSTEM IN THE FEDERAL GOVERNMENT* 196 (1972) [hereinafter HACKLEY, *STATUS OF THE FEDERAL RESERVE SYSTEM*] (available at <https://perma.cc/GMW9-T9S7>).

⁶⁷ Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended in scattered sections of 2, 5, 7, 11, 12, 15, 18, 20, 22, 26, 28, 31, 42, and 44 U.S.C.).

⁶⁸ *See id.* § 1107, 124 Stat. at 2126.

the last few years.⁶⁹ But with the Supreme Court as the arbiter of constitutionality in the U.S. system, the obligations and constraints that “the Constitution” imposes are not necessarily constant or consistent. Among the many focal points of heightened recent contestation is the scope of Congress’s authority “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.”⁷⁰ For most of U.S. history, through an iterative process involving all three branches of government, Congress used this authority to develop the government in ways that allowed the public sector to promote the general welfare. Rather than set monetary policy directly, for example, Congress decided to establish a central bank, empower it with certain tools, provide it an intelligible principle for making decisions, and then empower—indeed, obligate—it to make those decisions.

With the Court now reconsidering the scope of permissible agency structure, the policy authority of the FRBs and their relationship to the Board, the President of the United States, and Congress takes on additional importance.⁷¹ The following are aspects of the Fed’s design related to regionalism likely to face challenge in the coming years. First, the appointment and removal provisions that govern the presidents and boards of directors of the FRBs. Investor-owned member banks—nongovernment actors—still play a significant role in these appointments. Moreover, FRB presidents serve on the FOMC, the final decision-making authority in the federal government for core monetary policy matters, yet the bases upon which they may be removed from office has not been tested in the courts. Although they may well be removable

⁶⁹ See, e.g., *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2197 (2020) (holding unconstitutional statutory limits on the President’s power to remove the director of the Consumer Financial Protection Bureau); *Collins v. Yellen*, 141 S. Ct. 1761, 1783 (2021) (holding unconstitutional provisions of the Housing and Economic Recovery Act that limit the President’s power to remove the Federal Housing Finance Agency director); *United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1985–86 (2021) (holding unconstitutional provisions of the Leahy-Smith America Invents Act that limit the President’s power to appoint Administrative Patent Judges).

⁷⁰ U.S. CONST. art. I, § 8, cl. 18.

⁷¹ E.g., *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024) (holding that the APA requires courts to “exercise their independent judgment in deciding whether an agency has acted within its statutory authority”); *SEC v. Jarkesy*, 144 S. Ct. 2117, 2139 (2024) (holding, in a case where the SEC sought civil penalties against a defendant for federal securities fraud through an administrative proceeding, that the Seventh Amendment entitled the defendant to a jury trial).

by the Board,⁷² Board officials can be removed by the President only for cause.⁷³

Second, the FRBs are formally outside of the federal government. They may well not be subject to the APA or FOIA, although this question have not been fully resolved. They fund themselves primarily through issuing base money: Federal Reserve notes and deposit account balances known as reserves.⁷⁴ They are not subject to any ongoing appropriations process in Congress or any budgetary review by government agencies aside from the Fed Board. Although their officers can be removed by the Board, many of their decisions are not subject to appeal to the Board or reversal by the Board, including, for example, the decision to reject a master account application.⁷⁵ Indeed, in some circumstances, their discretion is expressly insulated from Board review, such as whether to extend discount window loans.⁷⁶

Although none of these institutional features conflict with current doctrine, dicta in certain opinions raise concerns about whether the doctrine will evolve in ways that undermine the current statutory framework and the regionalism it reflects. For example, some members of the Court may seek to revisit *Humphrey's Executor v. United States*,⁷⁷ the canonical 1935 opinion upholding the power of Congress to create term-tenured nonjudicial offices for which the President is empowered to cut tenure short only for cause.⁷⁸ Other Justices, meanwhile, have suggested the Appointments Clause⁷⁹ sweeps more broadly than previously thought.⁸⁰ And in *United States v. Arthrex, Inc.*,⁸¹ the Court cast

⁷² Federal Reserve Act § 11(f), 38 Stat. at 262; Appointment and Removal of Fed. Rsrv. Bank Members of the Fed. Open Mkt. Comm., *supra* note 10, at 1.

⁷³ *Id.* § 10(2), 28 Stat. at 261.

⁷⁴ See Conti-Brown, *supra* note 39, at 207; see also Tarullo, *supra* note 10, at 7 n.15 (“The Reserve Banks, in turn, derive their revenue primarily from interest on securities acquired in open market operations. Other sources of income include priced services provided to depository institutions—such as check clearing, funds transfers, and automated clearinghouse operations.”).

⁷⁵ See Hill, *supra* note 9, at 502–04.

⁷⁶ *E.g.*, Federal Reserve Act § 13(3), 38 Stat. at 264 (authorizing the FRBs to lend when notes are “indorsed or otherwise secured to the satisfaction of the Federal Reserve bank”).

⁷⁷ 295 U.S. 602 (1935).

⁷⁸ See *id.* at 631–32.

⁷⁹ U.S. CONST. art. II, § 2, cl. 6.

⁸⁰ See, e.g., *Lucia v. SEC*, 138 S. Ct. 2044, 2056 (2018) (Thomas, J., concurring) (“The Founders likely understood the term ‘Officers of the United States’ to encompass all federal civil officials who perform an ongoing, statutory duty—no matter how important or significant the duty.”).

⁸¹ 141 S. Ct. 1970 (2021).

doubt on the constitutionality of allowing final agency decisions to be rendered by officials not appointed by the President and not confirmed by the Senate, even when there were a host of soft mechanisms by which principal officers could influence those decisions.⁸²

III. GOOD AND BAD REGIONALISM IN THE FEDERAL RESERVE SYSTEM

Having laid down in broad terms some of the rationales for regionalism and the specific dynamics shaping the regionalism embodied in the Federal Reserve System at its founding, we turn in this Part to explaining and assessing regionalism as it operates today. The descriptive contribution responds to and amplifies Owen's call for further study of the internal workings of federal agencies. Letting go of the notion that there is "a" Federal Reserve and embracing the reality of myriad, overlapping decision-making bodies provides valuable insights into how the Federal Reserve System fulfills the roles Congress assigned it and the varied mechanisms through which its officials engage with their different constituencies. This Part also offers a normative frame for evaluating the Fed's regionalism—one that elevates and celebrates many features but is critical of others.

A. The Good

The process of categorizing some features of the Fed's regionalism as "good" and critiquing others as "bad" clearly requires a baseline. Our aim here is to make those baselines and our assumptions plain, acknowledging the possibility of contestation both normatively and as a matter of design. For example, as has already come through, on matters that have a national impact, we believe there should be a single, national standard that should carry through to implementation when necessary to promote uniformity. This is "good" policy both because it promotes consistency (a proxy for fairness) and because it enhances the likelihood that a policy will be implemented in a way that achieves its desired aims. Similarly, with respect to decision-making, we celebrate as "good" processes that the economics literature suggests are more likely to result in welfare-enhancing outcomes and that enhance political legitimacy by giving real voice and influence to a broader

⁸² See *id.* at 1981.

and more diffuse network of actors. We recognize that these baselines may well be contested and seek to make them plain precisely to invite such contestation and discussion.

1. Monetary policy.

One of the most important roles of FRB presidents is shaping monetary policy as both participants and, on a rotating basis, voting members on the FOMC. Some downplay their significance. Professor Daniel Tarullo, for example, has emphasized the rarity of FRB presidents casting deciding votes and noted that when they have had such an impact, they have been aligned with the Board Chair.⁸³ There is much to this. The FOMC is, of course, tilted toward D.C., with Board members holding seven of the twelve votes (when all seats are filled). The outsized role that the Board Chair exercises in monetary policy decisions also diminishes the relative impact of any of the other FOMC members.⁸⁴

Yet this is too narrow a frame to capture the various ways FRBs can and have shaped monetary policy. Although difficult to prove, the status of FRBs as actual decision-makers in matters of monetary policy likely enhances their ability to use their voice in settings far removed from formal gatherings of the FOMC. Members of the press regularly attend and publicize speeches by FRB presidents and regularly seek them out for interviews and comment.⁸⁵ Their status as official policymakers transforms the weight that their views carry and allows them to amplify work (discussed further below) done by the FRBs' research departments in addition to allowing them to air views about matters of monetary policy.

Another important, if informal, mechanism through which one FRB president plays an important role shaping policy is the status of the New York Fed President, alongside the Chair and Vice Chair of the Board, as part of the "troika" of Fed policymakers that are perceived to play a critical role in actually deciding optimal policy in advance of FOMC meetings.⁸⁶

⁸³ See Tarullo, *supra* note 10, at 36–37.

⁸⁴ *E.g.*, Makram El-Shagi & Alexander Jung, *Does the Greenspan Era Provide Evidence on Leadership in the FOMC?*, 43 J. MACROECONOMICS 173, 174–77 (2015) (noting that the Board Chair's outsized influence over FOMC decisions is partially explained by the Chair's communications advantage and the implementation of congressional transparency mandates inadvertently disincentivizing dissent).

⁸⁵ See, *e.g.*, Nik Popli, *S.F. Federal Reserve Bank President Mary Daly Believes AI Can Boost the Labor Market*, TIME (June 30, 2024), <https://perma.cc/747D-TN2U>.

⁸⁶ *E.g.*, Tarullo, *supra* note 10, at 33.

Although also difficult to prove, the FRBs' home bases outside the Beltway may help presidents engage in more independent thinking and reduce groupthink.⁸⁷ Taking dissenting votes as a concrete manifestation of a willingness to take a contrary view, there is some support for this conjecture. At least in recent decades, dissents from FRB presidents are far more common than dissents from governors, despite their possessing fewer votes.⁸⁸ Jeff Lacker, President of the Richmond Fed from 2004 until 2017, dissented in fifteen of the thirty-two votes he cast as a member of the FOMC.⁸⁹ In slightly earlier times, Paul Volcker, as President of the New York Fed, cast four dissenting votes.⁹⁰

Moreover, focusing solely on the instances in which FRB presidents cast decisive votes is an artificially narrow way of assessing their capacity to impact outcomes. Recent empirical work suggests that the inflation conditions in the regions represented by a voting FRB president may have a statistically significant impact on the Fed's chosen course for monetary policy, but this influence appears to be exercised and accommodated in the process of reaching a broad (if not uniform) consensus.⁹¹

If FRB presidents do in fact shape monetary policy in ways that go beyond expanding the information set and instead shape outcomes in ways that are biased away from what would be optimal for the national as a whole, this may seem suboptimal. Particularly considering that the districts are by no means economically equivalent, this could not only mean that monetary policy is affected by the arbitrary question of which districts happen to be voting in a given year, but it could also mean that, over time, monetary policy would skew modestly in ways that make it better suited to economically less significant districts. If the magnitude of the impact were significant, this might well be an issue.

⁸⁷ See Aaron Klein & Olivia V. Weiss, *Reform the Fed? Get Rid of Groupthink*, BIPARTISAN POL'Y CTR. (Apr. 7, 2015), <https://perma.cc/8DXU-WAHP>.

⁸⁸ See Daniel L. Thornton & David C. Wheelock, *Making Sense of Dissents: A History of FOMC Dissents*, 96 FED. RESV. BANK ST. LOUIS REV. 213, 216 fig.2 (2014).

⁸⁹ Kate Davidson, *Richmond Fed President Jeffrey Lacker to Retire in October*, WALL ST. J. (Jan. 10, 2017), <https://www.wsj.com/articles/richmond-fed-president-jeffrey-lacker-to-retire-in-october-1484069052>.

⁹⁰ Thornton & Wheelock, *supra* note 88, at 215.

⁹¹ See Vyacheslav Fos & Nancy R. Xu, *Do the Voting Rights of Federal Reserve Bank Presidents Matter?* 28 (Eur. Corp. Governance Inst., Working Paper No. 856/2022, 2024), (available at <https://perma.cc/2EE9-HMHP>) (showing that when there is dispersion between districts with respect to inflation, these conditions affect monetary policy decisions based on which FRB presidents are voting); see also Sara Sinnathamby, *The Regional Familiarity of FOMC Members and Monetary Policy Preferences* 23 (Apr. 2024) (draft paper) (on file with authors).

In practice, however, while the impact appears to be statistically significant in one study, that result remains contested. What this suggests instead is that having FRB presidents both present and voting plays a role in enabling regional influences to meaningfully shape policy.

Similar dynamics are at play with respect to discourse during FOMC meetings. The research suggests that governors are more likely to reference local economic conditions of the districts that have a president eligible to vote at a given meeting.⁹² This could indicate a troubling tilt given that the rotation is arbitrary from a policy perspective. Yet it also reflects how having voting FOMC members who represent districts can turn the attention of D.C.-based policymakers toward the realities of people living in those districts.

The FRBs have also at times played formative roles in the mix of information that FOMC members consider in the process of determining monetary policy. The *Beige Book*, for example, is one of the inputs provided to all FOMC members in advance of meetings to help them assess current economic conditions and implications for the appropriate approach to monetary policy.⁹³ As the Fed explains on its website, the *Beige Book* compiles “anecdotal information on current economic conditions in [each] District through reports from Bank and Branch directors and interviews with key business contacts, economists, market experts, and other sources.”⁹⁴ When Neel Kashkari became the President of the Minneapolis Fed, he noticed that the range of inputs often failed to capture the way that, even within districts, different types of businesses and groups may experience economic conditions in different ways.⁹⁵ Particularly given the Fed’s stated commitment, following its 2020 monetary policy framework review, to interpret

⁹² Fos & Xu, *supra* note 91, at 20–21 (analyzing FOMC transcripts to find that “a district is 20% more likely to be mentioned [by a governor or Reserve Bank president] if its president is a voting member of the meeting”).

⁹³ *What Is the Beige Book, and What Role Does It Play in Setting Interest Rates for Monetary Policy?*, FED. RSRV. BANK OF S.F. (Nov. 1, 2003), <https://perma.cc/M72L-FXTL>.

⁹⁴ *Beige Book*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (last updated Sept. 4, 2024), <https://perma.cc/DU5V-SEL3>.

⁹⁵ See Dan Burns & David Gregorio, *Fed’s Kashkari Aims for Beige Book that Looks Beyond Business*, REUTERS (Oct. 7, 2020), <https://www.reuters.com/article/us-usa-fed-kashkari-beige/feds-kashkari-aims-for-beige-book-that-looks-beyond-business-idUSKBN26S3KQ/>.

its maximum employment mandate as “a broad-based and inclusive goal that is not directly measurable,”⁹⁶ Kashkari argued that the information the *Beige Book* provided FOMC members was too thin. Thus, starting in 2021, the Minneapolis Fed added two new sections: “Worker Experience” and “Minority- and Women-Owned Business Enterprises.”⁹⁷ Kashkari was not only providing a pipeline for anecdotal, qualitative information to flow from the Midwest to key policymakers based in D.C. and across the country, he was also using that pipeline to provide a different way of framing the information and highlighting experiences that may otherwise be overlooked.

Yet another way that the FRBs inform policy is by shaping the public discourse. There are more FRB presidents than governors, and every single FRB president gets to speak.⁹⁸ As one former president of the Atlanta Fed noted: “There is little or no coordination from Washington with the presidents and the presidents are almost entirely free to express their own views” (with the possible exception of New York, discussed further below).⁹⁹ And speak out they do. According to one source, “presidents can give three or more speeches and interviews a month, and multiple presidents can give speeches in the same week.”¹⁰⁰

Often, however, they are not speaking apart from, but rather with and alongside members of the Fed’s Board. The Monetary Policy Forum—an annual event sponsored by the University of Chicago Booth School of Business that brings together Fed officials, other leading policymakers, academics, and industry—for example, always has both governors and FRB presidents.¹⁰¹

⁹⁶ 2020 Statement on Longer-Run Goals and Monetary Policy Strategy, BD. OF GOVERNORS OF THE FED. RSRV. SYS., <https://perma.cc/6F9H-TM59>.

⁹⁷ FED. RSRV. DIST., THE BEIGE BOOK: SUMMARY OF COMMENTARY ON CURRENT ECONOMIC CONDITIONS (2021), at I-1 to I-2; see also The Indicator from Planet Money, *A Beige Revolution—Shaking Up the Beige Book*, NPR, at 03:05 (Apr. 16, 2021), <https://perma.cc/XM4F-TB65>.

⁹⁸ See Sabri Ben-Achour, *The Rise of the Regional Fed Speech*, MARKETPLACE (July 17, 2023), <https://perma.cc/28WU-EKNT> (noting that, in an effort to limit leaks and perceptions of leaks, all presidents and governors are subject to blackout periods starting two Saturdays prior to any meeting of the FOMC, and that there is a code of ethics they must follow).

⁹⁹ *Id.* (quoting Dennis Lockhart); see also *infra* Part IV.B.

¹⁰⁰ Ben-Achour, *supra* note 98.

¹⁰¹ For example, the 2024 U.S. Monetary Policy Forum included participation from the President of the Dallas Fed, the President of the San Francisco Fed, the President of the Kansas City Fed, a member of the Board of Governors, academics from leading U.S. universities, and private-sector economists. 2024 U.S. Monetary Policy Forum, UNIV. OF CHICAGO BOOTH SCH. OF BUS. (Mar. 1, 2024), <https://perma.cc/65JF-D3AP>.

FRB presidents can also provide a critical check on excessive aggregation of power in the Chair. The nature of how the Fed fulfills its roles has evolved significantly over time. While the statutory scheme governing its operations has also evolved, it has done so more intermittently, and it also often fails to address a host of legal questions about the extent of the Fed's authority and the mechanisms through which it can be exercised.¹⁰² An illustrative example is the Fed's shift toward using large-scale asset purchases as a tool of monetary policy, commonly known as quantitative easing. As then-Fed Chair Ben Bernanke recounted, the Fed first undertook large-scale purchases during the 2008 financial crisis.¹⁰³ In buying up large volumes of government mortgage-backed securities, the Fed became a "buyer of last resort," using its uncapped balance sheet to push up the price of certain assets with the aim of enhancing liquidity and spurring the mortgage market.¹⁰⁴ Nonetheless, as Chair, Bernanke authorized the Fed to venture down this road without any formal action by either the Board or FOMC.¹⁰⁵

Bernanke suggested that he had the necessary legal authority, and presumably the general counsel at the time agreed. But even Bernanke acknowledged that with the benefit of hindsight, he should have sought approval from the FOMC.¹⁰⁶ Bernanke subsequently committed not to undertake any significant changes that would affect how the Fed conducts open-market policy without approval from the FOMC.¹⁰⁷ But this course correction occurred only after Bernanke heard from a number of FRB presidents, each of whom was concerned not with the substance of the Fed's new policy but with the process—or lack thereof.¹⁰⁸ Regionalism, then, also promotes a form of internal law governing Fed actions.

¹⁰² See, e.g., Menand, *supra* note 45, at 262–63 (discussing tensions related to shadow banking); Lev Menand, *The Federal Reserve and the 2020 Economic and Financial Crisis*, 26 STAN. J.L. BUS. & FIN. 295, 351–53 (2021) (discussing tensions related to the Fed's role in 2020); Conti-Brown, *supra* note 39, at 207–08 (discussing issues relating to the Fed's funding model).

¹⁰³ BEN S. BERNANKE, 21ST CENTURY MONETARY POLICY 148–50 (2022).

¹⁰⁴ *Id.* at 136.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 137–38.

¹⁰⁸ BERNANKE, *supra* note 103, at 136.

2. Research and outreach.

Two other important roles played by the FRBs are research and outreach. Research is a public good. Public subsidies are often required to produce the socially optimal type and level of research, as reflected in the widespread regime of subsidies and direct financing of research in a host of domains.¹⁰⁹ Although economic research is different in kind than efforts to explore space or produce vaccines, its quality and availability can play a pivotal role in shaping policy. Shortly after stepping down as Under Secretary of Commerce for Economic Affairs of the United States, Jed Kolko wrote an essay on the research that was, and was not so, useful to him and other government officials. He began by explaining why much academic work, no matter how rigorous, was not particularly useful. In his view, “the structure of academia just isn’t set up to produce the kind of research many policymakers need.”¹¹⁰ By contrast, he noted that “[t]he most useful research often came instead from regional Federal Reserve banks, non-partisan think-tanks, the corporate sector, and from academics who had the support, freedom, or job security to prioritize policy relevance.”¹¹¹ In other words, the FRBs are not just producing information that is useful to the Fed in making policy; they are producing policy-relevant research that can and is being used throughout the government, and presumably in academia and industry as well.

The regional banks play an important role producing research and engagement in numerous ways. First, many produce information that is specific to economic conditions in their regions, and many find ways to transmit that information back to local industry. For example, the Federal Reserve Bank of Dallas produces reports on the flow of remittances to Mexico,¹¹² in-depth research on economic “Opportunity Zones” in Texas,¹¹³ and an important quarterly survey of about two hundred oil and gas firms

¹⁰⁹ *Federal Research and Development: Funding Has Grown Since 2012 and Is Concentrated Within a Few Agencies*, U.S. GOV'T ACCOUNTABILITY OFF. (Dec. 15, 2022), <https://perma.cc/ERG6-9ZTG> (“In the last 10 years, the federal government has increased funding for research and development (R&D)—investing \$179.5 billion in FY 2021.”).

¹¹⁰ Jed Kolko, *The Economic Research Policymakers Actually Need*, SLOW BORING (Apr. 16, 2024), <https://perma.cc/MBP2-YQWZ>.

¹¹¹ *Id.*

¹¹² *E.g.*, Jesus Cañas & Ana Pranger, *Strong U.S. Labor Market Drives Record Remittances to Mexico*, FED. RSRV. BANK OF DALL. (Oct. 20, 2023), <https://perma.cc/78WA-YKMZ>.

¹¹³ *E.g.*, Emily Ryder Perlmeter, *Opportunity Zones in Texas: Promise and Peril*, FED. RSRV. BANK OF DALL. (Oct. 2018), <https://perma.cc/AFC5-EAWL>.

(the Dallas Fed Energy Survey).¹¹⁴ Other FRBs have been similarly innovative in compiling new and useful datasets and producing research responsive to pressing economic challenges, even at times when they are not aligned with the policies being pursued by the Board.

Second, many of the regional banks have had a history of specializing in different topics, collecting different types of data, organizing particular events, and creating dispersed centers for engagement around key issues. The St. Louis Fed, for example, has long hosted FRED, Federal Reserve Economic Data, a widely used and richly populated economic database.¹¹⁵ Kansas City hosts an important annual conference at Jackson Hole, and it is the research department and President of the Kansas City Fed, not the Fed Chair, who determine the program and the invite list.¹¹⁶ The Cleveland Fed and the Treasury Department Office of Financial Research together host an annual financial stability conference, bringing in a wide array of experts and policymakers.¹¹⁷ The Philadelphia Fed, long known for its research and role in payments systems, hosts an influential fintech conference each year.¹¹⁸

One advantage of having so many different research departments under separate leadership is that it can increase the likelihood of one of the departments stepping in when it becomes plain that there is a gap between the information policymakers need and that which is currently available. For example, when supply chain weaknesses proved to be more persistent than many had expected during the COVID-19 crisis, and those stresses became an important factor creating inflationary pressures, the New York Fed responded. It devised a Global Supply Chain Pressure Index that provides monthly insights into how supply chains are performing, often accompanied by reports of various global developments affecting their performance.¹¹⁹

¹¹⁴ *Dallas Fed Energy Survey*, FED. RSRV. BANK OF DALL., <https://perma.cc/4WMA-46JV>.

¹¹⁵ *Federal Reserve Economic Data*, FED. RSRV. BANK OF ST. LOUIS, <https://perma.cc/PMH6-A467>.

¹¹⁶ See *Jackson Hole Economic Symposium*, FED. RSRV. BANK OF KAN. CITY, <https://perma.cc/L8YK-4B5E>.

¹¹⁷ *Financial Stability Conference*, FED. RSRV. BANK OF CLEVELAND, <https://perma.cc/QML7-7L7V>.

¹¹⁸ See e.g., *Seventh Annual Fintech Conference*, FED. RSRV. BANK PHILA., <https://perma.cc/R2NJ-HDQQ>.

¹¹⁹ See *Global Supply Chain Pressure Index (GSCPI)*, FED. RSRV. BANK OF N.Y., <https://perma.cc/8JPG-9ZVB>; see also Gianluca Benigno, Julian di Giovanni, Jan J.J. Groen & Adam I. Noble, *The GSCPI: A New Barometer of Global Supply Chain*

The research departments of the FRBs have, at times, also been more willing to challenge the efficacy of the Fed's policies, something that can be difficult for anyone within the Fed and yet something that is also critical to ensuring good policy. For example, the Fed believed it was doing something valuable and innovative when it created the Term Auction Facility, the first (of many) innovative liquidity facilities the Fed established during the 2008 financial crisis.¹²⁰ Fed staff had devised the proposal based on their assessment that it would help market functioning, and this had been the rationale for its adoption.¹²¹ Yet shortly after the program was launched, John Williams, then a Senior Vice President at the San Francisco Fed (who would go on to lead both the San Francisco and New York Feds), coauthored a piece casting doubt on whether the program had a meaningful impact on liquidity.¹²² Although that conclusion was later challenged by subsequent Fed research among other sources,¹²³ it was published in a top journal and contributed to a rigorous discourse and efforts to quickly evaluate the efficacy of the Fed's efforts to devise new tools. That same year, Williams also coauthored a paper that provided support for yield curve control as a viable tool for monetary policy, despite it being a tool that the Fed has long avoided.¹²⁴

Marvin Goodfriend, as an economist at the Richmond Fed, consistently produced research that challenged other Fed decision-makers and often used his perch at the Richmond Fed to shape the thinking of its leadership. In paying tribute to Goodfriend, J. Alfred Broaddus Jr. (former head of the Richmond Fed) identified five different areas, starting with Fed transparency, that he believed Goodfriend's research influenced.¹²⁵ Don Kohn, a long-time

Pressures 3–7 (Fed. Rsrv. Bank of N.Y., Staff Rep. No. 1017, 2022) (available at <https://perma.cc/RX2C-BMYR>).

¹²⁰ See *Federal Reserve and Other Central Banks Announce Measures Designed to Address Elevated Pressures in Short-Term Funding Markets*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (Dec. 12, 2007), <https://perma.cc/DN4V-7NZZ>.

¹²¹ See *id.*

¹²² See John B. Taylor & John C. Williams, *A Black Swan in the Money Market*, 1 AM. ECON. J.: MACROECONOMICS 58, 74–79 (2009).

¹²³ See, e.g., James McAndrews, Asani Sarkar & Zhenyu Wang, *The Effect of the Term Auction Facility on the London Interbank Offered Rate* 28 (Fed. Rsrv. Bank of N.Y., Staff Rep. No. 335, 2017) (available at <https://perma.cc/F4CA-J69D>) (arguing that the “effects estimated by Taylor and Williams . . . are unreliable”).

¹²⁴ See Glenn D. Rudebusch & John C. Williams, *Forecasting Recessions: The Puzzle of the Enduring Power of the Yield Curve* 16–17 (Fed. Rsrv. Bank of S.F., Working Paper No. 2007-16, 2008) (available at <https://perma.cc/JP6Q-9ANR>).

¹²⁵ J. Alfred Broaddus, Jr., *Marvin Goodfriend at the Richmond Fed: Recollections*, in *ESSAYS IN HONOR OF MARVIN GOODFRIEND: ECONOMIST AND CENTRAL BANKER* 25, 30–37 (Robert G. King & Alexander L. Wolman eds., 2022).

Fed official who spent years as Vice Chair at the Fed, similarly recalled regularly debating and disagreeing with Goodfriend on whether inflation targeting—now a core mechanism of promoting transparency and effectuating monetary policy—was good policy.¹²⁶ As Kohn gracefully acknowledged, Goodfriend ultimately won that debate, contributing to the Fed's adoption of an explicit 2% inflation target.¹²⁷

To be sure, there are limits to just how often the FRBs challenge the Board and Fed policies. The FRBs are still part of the Fed, and FRB researchers may perceive constraints in the questions they should ask and the answers they should publish as a result. Moreover, cognitive blinders arise not from institutional affiliation but from methodological and other shared norms. Nonetheless, as the papers identified reflect, having a number of different research hubs spread across the country and not subject to centralized control produces a richer and deeper body of research in ways that can shape policy for the better and promote accountability.

Connecting this to the analysis above, it is also quite possible that the quality of the research coming from the FRBs is enhanced by the stature and influence they derive from the role of the FRB presidents as voting members of the FOMC. The economics literature suggests that in institutional design generally, delegation has tradeoffs: delegating decision-making authority to an agent, for example, comes at a cost (less control) but also produces meaningful benefits in eliciting greater effort by the empowered party to acquire valuable information.¹²⁸ Although the FRBs derive their authority largely from Congress, not the Board, the overall design principle is similar. The positions the presidents enjoy on the FOMC changes the power dynamics within and surrounding the Federal Reserve. It allows presidents to say things that may be in tension with the views of the Fed leadership, but it also gives them an incentive to enhance their ongoing influence by coming up with valuable insights, being right about the direction the economy is moving or threats to stability, and overseeing the production of research about matters of interest to the Federal Reserve and others.

¹²⁶ Donald Kohn, *The Federal Reserve's New Monetary Policy Framework*, in ESSAYS IN HONOR OF MARVIN GOODFRIEND, *supra* note 125, at 43, 43.

¹²⁷ *See id.*

¹²⁸ Philippe Aghion & Jean Tirole, *Formal and Real Authority in Organizations*, 105 J. POL. ECON. 1, 10–11 (1997).

B. The Bad

Just as the label “good” entails normative assumptions, so too does the label “bad.” In many ways the assumptions animating this Section mirror those animating the last one. The FOMC is a good model, in our view, in that it promotes broad participation but produces a single policy. As the nation’s financial system has become increasingly interconnected, so has the value of uniformity. More generally, in celebrating the role the FRBs play in making policy, we are recognizing that they are indeed policy-makers serving important policy functions. This assumption animates our second broad concern about the ambiguous relationship between the FRBs and federal mandates designed to promote government transparency and accountability.

1. Heterogeneity that undermines consistency.

A core value of regionalism in appropriate settings is that it allows a federal policy to be customized to the needs of different areas, whether those areas are geographically, culturally, or otherwise bound. Yet not all variety is helpful. A core reason that federal law has the capacity to preempt state law is that there are some—at this point, many—issues on which national uniformity is necessary, useful, or otherwise highly beneficial.

This is apparent in monetary policy. The structure of the FOMC and supporting processes, such as the *Beige Book*, enable meaningful regional participation and voice. But there is no pretense of trying to craft regional monetary policy. Even when different parts of the nation are facing economic conditions that may merit different approaches to monetary policy, the Fed recognizes that, given the structure of modern financial markets, it is not possible to sustain different monetary policy for different regions no matter how helpful that would be for certain constituencies in the abstract.

Similar principles are at play in the question of whether an institution should have access to a master account. As a threshold matter, so far, courts that have considered the issue have held that the Fed does have discretion to deny master accounts.¹²⁹ But

¹²⁹ *Custodia Bank, Inc. v. Fed. Rsr. Bd. of Governors*, 728 F. Supp. 3d 1227, 1242–45 (D. Wyo.), *appeal docketed*, No. 24-8024 (10th Cir. *argued* Jan. 21, 2025); *TNB USA Inc. v. Fed. Rsr. Bank of N.Y.*, 2020 WL 1445806, at *9 (S.D.N.Y. Mar. 25, 2020); *PayServices Bank v. Fed. Rsr. Bank of S.F.*, 2024 WL 1347094, at *9 (D. Idaho Mar. 30, 2024), *appeal docketed*, No. 24-2355 (9th Cir. *argued* Dec. 4, 2024). Some scholars, such as Peter Conti-Brown, a legal historian who served as an expert on behalf of Custodia, have contested this conclusion. See Exhibit A, Expert Report of Peter Conti-Brown, Ph.D. ¶ 94,

the next issue—as both a legal and policy matter—is where that discretion sits. Currently, the Board has issued guidance with respect to when such access should be granted.¹³⁰ The Board undertook a robust notice-and-comment process before finalizing those guidelines, giving interested parties the opportunity to comment and responding to many of those comments in the issuance of the final guidelines.¹³¹ So far, so good—up to this point the process is both centralized and using procedures that promote transparency and engagement. It is the next step that gets tricky, for a couple of reasons. Under the current regime, according to the Fed and the courts that have considered the issue, the ultimate decision about whether to grant a master account is made not by the Board, but instead by the FRB to which the application was submitted.¹³²

This is the wrong place to vest that decision. Applying regionalism to master account decisions allows a single FRB to make final, binding decisions with national implications. Consider, for example, a rationale that the New York Fed provided in denying a master account to The Narrow Bank (TNB).¹³³ In the letter communicating the denial, the New York Fed explained its view that granting the account “would create undue risk to the stability of the U.S. financial system.”¹³⁴ The letter expounded that the stability risk arises both because “it is very plausible that deposit flight or other strains at TNB could transmit to other depository institutions with significant shares of uninsured deposits,” and because giving TNB a master account could cause a run to TNB during periods of stress, accentuating fragility elsewhere in the financial system.¹³⁵ Both concerns relate to the functioning of banks and the financial system in general, and even TNB, while disputing the risks, has not claimed that they could plausibly be contained to the district covered by the New York Fed. Although

Custodia Bank, 728 F. Supp. 3d 1227 (No. 22-CV-00125) (arguing that “the framers of the Monetary Control Act intended” to make access to the Fed’s priced services “to be open and to all depository institutions”); see also Hill, *supra* note 9, at 501–04 (criticizing the Fed’s lack of consistency and transparency evaluating novel bank applications).

¹³⁰ See Guidelines for Evaluating Accounts and Services Requests, 87 Fed. Reg. 51,099, 51,106–10 (Aug. 22, 2022).

¹³¹ See *id.* at 51,099–51,101.

¹³² See, e.g., *Custodia Bank*, 728 F. Supp. 3d at 1244.

¹³³ Letter from Christopher D. Armstrong, Exec. Vice President & Head of Operations & Resiliency, Fed. Rsr. Bank of N.Y., to James McAndrews, Chairman & CEO, TNB USA Inc., and Gene Park, President & COO, TNB USA Inc. (Dec. 13, 2023) (available at <https://perma.cc/8YEJ-69ZR>).

¹³⁴ *Id.*

¹³⁵ *Id.*

the New York Fed may be better suited than other FRBs to assess and address such concerns, they are emblematic of the type of policy issues that require uniform resolution.

Similar issues were at play in an application by PayServices, a financial institution that had received preliminary approval for a state charter from Idaho, seeking a master account from the San Francisco Fed. Like Custodia and TNB, PayServices had an unusual business model for a bank. Its aim was to operate exclusively online and to focus “almost entirely on providing payment processing solutions to foreign import and export merchants and buyers, and foreign governments.”¹³⁶ In denying the account, the San Francisco Fed explained:

[S]ignificant risks and concerns in the areas of [Bank Secrecy Act]/[Anti-Money Laundering] and [Office of Foreign Assets Control] risk management, credit and settlement process and controls, cyber and information security risk management, enterprise risk management, strategic planning, and the limited banking and bank-specific risk management experience among management, presents undue risk to the [San Francisco] Reserve Bank.¹³⁷

It is notable that applications for membership in the Federal Reserve System are, and have always been, subject to review by the Board and not by the FRBs to which applying depository institutions would become members. Section 9 of the FRA, for example, specifies that the Board, not the FRBs, in reviewing applications, “shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this Act.”¹³⁸ This structure makes sense because, as with master accounts, these applications are best reviewed consistently across districts. Up until 1980, only member banks could open master accounts,¹³⁹ and so for most of the Fed’s history it was, in fact, the Board that was the primary gatekeeper to the Fed’s payment system.

¹³⁶ *PayServices Bank*, 2024 WL 1347094, at *3 (quoting a letter from the San Francisco Fed to PayServices explaining its decision to deny master account access).

¹³⁷ *Id.* at *4.

¹³⁸ Act of June 21, 1917, § 3, 40 Stat. 232, 233 (codified as amended at 12 U.S.C. § 322) (amending Federal Reserve Act § 9).

¹³⁹ Monetary Control Act, § 107, 94 Stat. at 140–41 (codified as amended in 12 U.S.C. § 248a) (authorizing depository institutions that are not member banks to access Fed services including depository services).

2. Gaming the APA and FOIA.

The existing regional structure has the potential to shield certain decision-making within the Fed from federal procedural protections and transparency regimes, most notably the APA and FOIA. Although the nature of many of the activities undertaken by the FRBs might justifiably sit outside these regimes, each regime has built into it mechanisms for limiting its scope when so justified. The concern here is the effort by the FRBs, at times, to use their quasi-private status as the basis for avoiding accountability under these regimes.

This is not a new concern, even if it has rarely been seen as pressing. Howard Hackley believed the FRBs may well be exempt from these statutes.¹⁴⁰ For him, this was among the considerations making the persistence of the stock structure of the FRBs a matter of public concern that merited further attention. Also relevant here is that it was only because of a FOIA request that many of the internal memoranda authored by Hackley, which were so influential internally, have finally become public.¹⁴¹

To date, federal courts have rarely faced the question of whether these statutes apply to the FRBs, and when they have had to address it, they have mostly punted by resolving cases on alternative grounds.¹⁴² But if courts face these questions squarely, there is at least a good chance that, under current law, the FRBs might escape coverage under both statutes.¹⁴³

¹⁴⁰ HACKLEY, STATUS OF THE FEDERAL RESERVE SYSTEM, *supra* note 66, at 29–37.

¹⁴¹ Nathan Tankus, *Revealed: The Seven Secret Federal Reserve Books I Won Through FOIA*, NOTES ON THE CRISIS (Feb. 6, 2024), <https://perma.cc/32XA-C6LB>.

¹⁴² See, e.g., *Banco San Juan Internacional, Inc. v. Fed. Rsrv. Bank of N.Y.*, 700 F. Supp. 3d 86, 101–02 (S.D.N.Y. 2023) (explaining that “treating the FRBNY as an agency [would] not subject the FRBNY’s decision in this case to judicial review” because it would be “committed to agency discretion by law” (quotation marks omitted) (quoting 5 U.S.C. § 701(a)(2))); *Bloomberg, L.P. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 601 F.3d 143, 149 (2d Cir. 2010) (“Because we reject the Board’s argument on a different ground, we need not decide [whether the FRBY is itself an agency under FOIA].”). *But see Lee Constr. Co. v. Fed. Rsrv. Bank of Richmond*, 558 F. Supp. 165, 179 (D. Md. 1982) (“All in all, while the issue is a close one, it would seem that a consideration of each and every one of the relevant factors tips the balance in favor of holding that the Bank is an ‘agency’ for purposes of judicial review under the APA.”).

¹⁴³ Recently, in one of the master account disputes, a district judge in Idaho concluded that the FRBs “are not an agency of the federal government for the purposes of PayServices’ claims against FRBSF.” *PayServices Bank*, 2024 WL 1347094, at *13. A district judge in New York also made similar noises while concluding that even if the FRBs were agencies under the APA, the plaintiff would not be entitled to relief. See *Banco San Juan*, 700 F. Supp. 3d at 101–02 (distinguishing *Lee Construction Co.* and *Flight International Group, Inc. v. Federal Reserve Bank of Chicago*, 583 F. Supp. 674 (N.D. Ga.), *vacated*, 597

While in constitutional cases, courts look through statutory formalities to assess organizational function,¹⁴⁴ in statutory cases, courts generally uphold formal distinctions that Congress has delineated.¹⁴⁵ As the Supreme Court explained, the statutory text “is assuredly dispositive of [a federally chartered corporation’s] status as a Government entity for purposes of matters that are within Congress’ control—for example, whether [the organization] is subject to statutes that impose obligations or confer powers upon Government entities, such as the Administrative Procedure Act.”¹⁴⁶ Accordingly, where Congress creates a formally nongovernment entity like an FRB, courts will likely respect that distinction for purposes of determining that the entity is governmental within other legislative schemes designed by Congress. As the FRBs are largely nongovernmental in their formal structure, courts may well conclude that they are not agencies within the meaning of the APA or FOIA.¹⁴⁷ To quote a Second Circuit decision from 2019, analyzing the relationship between the FRBs and the False Claims Act¹⁴⁸:

Congress has gone out of its way to formally separate the FRBs from the government. The FRBs are not part of any executive department or agency. . . . Instead, they are corporations that operate “under the supervision and control of a board of directors,” which “shall perform the duties usually appertaining to the office of directors of banking associations.”¹⁴⁹

F. Supp. 462, 678–79 (N.D. Ga. 1984), and explaining that the FRBs “are not part of any executive department or agency”).

¹⁴⁴ See, e.g., *Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 392 (1995) (concluding that, although Amtrak is formally outside of the government, it is a government agency for purposes of the First Amendment since “it is not for Congress to make the final determination of [a federal instrumentality’s] status as a Government entity for purposes of determining the constitutional rights of citizens affected by its actions”).

¹⁴⁵ See, e.g., *United States ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488, 491 (D.C. Cir. 2004) (explaining that “Amtrak’s organic statute has flatly stated that the company ‘is not a department, agency, or instrumentality of the United States Government’” (quoting 49 U.S.C. § 24301(a)(3))); *United States ex rel. Adams v. Aurora Loan Servs.*, 813 F.3d 1259, 1262 (9th Cir. 2016) (concluding that Fannie Mae is not part of the government for purposes of the False Claims Act).

¹⁴⁶ *Lebron*, 513 U.S. at 392.

¹⁴⁷ In both the APA and FOIA, the starting definition of an agency is an “authority of the Government of the United States, whether or not it is within or subject to review by another agency,” but each has distinct specified exclusions built into its respective scheme. Compare 5 U.S.C. § 551(1), with *id.* § 701(b)(1).

¹⁴⁸ 31 U.S.C. § 3729 et seq.

¹⁴⁹ *United States ex rel. Kraus v. Wells Fargo & Co.*, 943 F.3d 588, 597 (2d Cir. 2019) (citations omitted) (quoting 12 U.S.C. § 301).

In certain contexts, this administrative law lacuna exacerbates bad regionalism. Regionalism should not entail fewer procedural protections where such protections are appropriate because important public policy is being made. Take the master account example. Congress has allowed state-chartered depository institutions access to master accounts as a matter of public law. The Fed-operated payment system is widely regarded as a public platform. Although there are good reasons to allow the Fed to exercise some discretion in granting master account access given the potential risks associated with providing depository institutions with nontraditional business models such access, that discretion brings its own risks, including the possibility that it will be exercised in an arbitrary or otherwise inappropriate manner. This is why most agency actions are subject to judicial review under the APA. And there is no obvious normative reason to exempt the Fed's decisions regarding master accounts from such review and the broader set of obligations imposed by the APA.

Similarly, the public has an interest in the activities of the FRBs just as it does in organizations that are formally government agencies.¹⁵⁰ The Board is required to turn over FRB materials if they are held on behalf of the Board or prepared as part of a Board program.¹⁵¹ Congress has taken some narrow steps to address this gap in specific areas. For example, in 2022, it required the Board to “create and maintain a public, online, and searchable database that contains . . . a list of every entity that submits an access request for a reserve bank master account and services.”¹⁵² And in 2023, all twelve of the FRBs joined a statement committing to adopt policies that would bring them into compliance with FOIA by year-end, and each has subsequently adopted some such

¹⁵⁰ See *Freedom of Information Requests*, FED. RSRV. BANK OF N.Y., <https://perma.cc/LF7N-4QZZ> (explaining the FRBs' nonobligatory commitment to provide for the disclosure of certain bank records because “[t]ransparency is essential to maintaining public trust and promoting a better understanding of the Federal Reserve”).

¹⁵¹ *Bloomberg L.P. v. Bd. of Governors of Fed. Rsrv. Sys.*, 649 F. Supp. 2d 262, 274 (S.D.N.Y. 2009) (holding that “the Board improperly withheld agency records in response to a FOIA request” when it did not search *any* New York Fed records), *aff'd*, 601 F.3d 143 (2d Cir. 2010); see also *Fox News Network, LLC v. Bd. of Governors of the Fed. Rsrv. Sys.*, 601 F.3d 158, 161 (2d Cir. 2010) (“Since the Board is the ‘custodian’ of ‘Board records’ that are in the hands of the Federal Reserve Banks, such records must be searched by the Board pursuant to FOIA.” (quoting 12 C.F.R. § 261.3(a) (2024))).

¹⁵² James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 5708, 136 Stat. 2395, 3419–20 (codified at 12 U.S.C. § 248c(b)(1)(B)); see also Dodd-Frank Act, § 1101, 124 Stat. at 2114–15 (codified at 12 U.S.C. § 343(3)(C)) (requiring the Board to send Congress detailed information on § 13(3) lending activities by the FRBs).

policy.¹⁵³ But, as other academic commentators have opined, the practices at the FRBs remain varied and provide less transparency than many see as optimal.¹⁵⁴ And at least some FRBs are continuing to deny FOIA requests for information produced prior to the adoption of their revised policies, shielding significant swathes of information that do not fit into any of the congressionally created FOIA exemptions from public view. Thus, although a number of FRBs maintain offices to facilitate access to information and even agree to comply with FOIA in certain cases,¹⁵⁵ the potential gap in FOIA coverage likely has kept certain information out of the public domain.¹⁵⁶

Although there are strong policy reasons to preclude judicial review of monetary policy actions, including open-market operations and discount window lending,¹⁵⁷ other FRB decisions relating to the payment system, bank services, and general operations

¹⁵³ *Statement on Transparency and Accountability at the 12 Federal Reserve Banks*, FED. RSRV. BANK OF N.Y. (Mar. 24, 2023), <https://perma.cc/69XM-DNLK>. For current FRB policies, see *Transparency and Accountability Policy*, FED. RSRV. BANK OF S.F., <https://perma.cc/Y87S-2UL9>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF N.Y., <https://perma.cc/33PL-KVXH>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF KAN. CITY, <https://perma.cc/C2PS-6J2Q>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF ST. LOUIS, <https://perma.cc/YYG3-3D55>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF MINNEAPOLIS, <https://perma.cc/36TT-G84J>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF PHILA., <https://perma.cc/9MSW-QK2L>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF BOS., <https://perma.cc/DK8T-6G6S>; *Federal Reserve Bank of Cleveland Transparency and Accountability Policy*, FED. RSRV. BANK OF CLEVELAND, <https://perma.cc/V5AW-WJE9>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF CHI., <https://perma.cc/2QTR-R8DJ>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF RICHMOND, <https://perma.cc/5ANJ-AAYG>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF ATL., <https://perma.cc/5KFX-F78U>; *Transparency and Accountability Policy*, FED. RSRV. BANK OF DALL., <https://perma.cc/QPV8-XZNH>.

¹⁵⁴ See, e.g., Julie Andersen Hill, *Transparency at Federal Reserve Banks*, MERCATUS CTR.: GEORGE MASON UNIV. 5–7 (June 2023), <https://perma.cc/RD53-9WSH>.

¹⁵⁵ The New York Fed operates such an office while explicitly disclaiming coverage. See Order Granting Defendant's Motion for Summary Judgment in Part and Denying Plaintiff's Cross-Motion, *Gelb v. Fed. Rsr. Bank of N.Y.*, 2015 WL 14072543, at *1 (S.D.N.Y. Sept. 17, 2015); see also *Sibille v. Fed. Rsr. Bank of N.Y.*, 770 F. Supp. 134, 135 (S.D.N.Y. 1991) (noting that the New York Fed did not believe that it was subject to FOIA "but nevertheless had a policy to 'comply with the spirit of FOIA'"); *Freedom of Information Requests*, FED. RSRV. BANK OF N.Y., <https://perma.cc/LF7N-4QZZ> (stating that "[t]he New York Fed is not an agency and is therefore not subject to the Freedom of Information Act (FOIA)").

¹⁵⁶ See, e.g., *Ball v. Bd. of Governors of Fed. Rsr. Sys.*, 87 F. Supp. 3d 33, 47, 58 (D.D.C. 2015) (upholding the Board's denial to produce documents held by the New York Fed on the grounds that those documents are not records of the Board).

¹⁵⁷ See *Raichle v. Fed. Rsr. Bank of N.Y.*, 34 F.2d 910, 915 (2d Cir. 1929):

It would be an unthinkable burden upon any banking system if its open market sales and discount rates were to be subject to judicial review. Indeed, the correction of discount rates by judicial decree seems almost grotesque, when we remember that conditions in the money market often change from hour to hour,

(such as internal employment decisions, budgeting, etc.) should likely be subject to public disclosure and transparency. Waste, for example, in the day-to-day business of the FRBs costs the taxpayers just as directly as waste in the day-to-day business of any government agency (because the taxpayer is the residual claimant on FRB earnings). Similarly, corruption and capture within an FRB are of public concern in precisely the same manner (if not to a heightened degree) as corruption and capture within formally public federal organizations. And there is little reason that the schedules and activities of FRB officials should be any less a matter of public record than those of officials in Washington. In the absence of a reasoned basis for excluding an aspect of FRB activity from the ambit of federal administrative and informational protections, we think APA and FOIA provisions should apply.¹⁵⁸

IV. IMPLICATIONS FOR THE FED AND FOR REGIONALISM

Our analysis of the good and bad aspects of Fed regionalism goes beyond the implications for the Fed itself. It also affects how we think about and study regionalism more generally.

A. Enriched Regionalism

As a starting point, this Essay illustrates how integrating transsubstantive administrative law with grounded examinations of specific administrative areas can be mutually generative. The analysis here, for example, supports Owen's claim that much is to be gained from studying the internal structure of administrative agencies.¹⁵⁹ To talk of "the Fed" is to sometimes miss the point—the Board of Governors, the FRBs, and the FOMC each have distinct, if sometimes overlapping and inherently intertwined, roles to play in making and implementing policy.

and the disease would ordinarily be over long before a judicial diagnosis could be made.

¹⁵⁸ We recognize that Congress may have reason to exclude many areas of FRB activity from default APA and FOIA provisions. This would make the FRBs no different from other government bodies, however, where Congress routinely carves out exceptions from judicial review of agency action or the right to access agency information. *See, e.g.*, 5 U.S.C. § 552(b)(8) (exempting bank supervision from FOIA in the bank regulatory context); 12 U.S.C. § 3907(a)(2), (b)(2)(B) (carving out regulatory directives regarding bank capital levels from aspects of the APA); *see also* Laura E. Dolbow, *Barring Judicial Review*, 77 VAND. L. REV. 307, 323–36 (2024) (providing an overview of judicial review bars).

¹⁵⁹ Owen, *supra* note 19, at 107.

The “Fed” that is engaged in enhancing bank capital requirements is not the same “Fed” that adjusts overnight interest rates or extends emergency liquidity.

Focusing on Fed regionalism also helps to highlight the iterative, multidirectional mechanisms through which loci of power external to the Beltway inform, shape, and legitimate agency power. The FRB presidents each have a budget and a platform, even when they do not have a vote, and they have become very adept at using these tools to shape national conversations around monetary policy and other matters. Even in settings where significant power is delegated to regional offices, rarely do those offices have the sort of autonomy in their public communications that FRB presidents enjoy. The President of the Cleveland Fed, for example, can give a speech without clearing it with anyone at the Board. The media, which has more to gain from different takes than more of the same, can accentuate these tendencies, giving headlines to any FRB president who offers a distinct view.

There are some concerns about the cacophony of voices within the Fed. With communication having become an important tool of monetary policy, the need to share the microphone creates risks. At the same time, the need for a strong message amidst such a cacophony may have played a role in the significant increase in communication and engagement by the Fed Chair over the years. Chair Jay Powell now holds a press conference after each FOMC meeting.¹⁶⁰ No post-FOMC conferences were held prior to 2011.¹⁶¹

B. Targeted Reforms of the Fed

This Section identifies several areas where reforms could reduce “bad regionalism” and expand “good regionalism” within the Federal Reserve System. These include shifting authority for policies that should be uniform from the FRBs to the Board, expressly applying procedural and transparency protections (with appropriate carve-outs), changing FOMC voting rules to improve how regional perspectives are incorporated into national policy-making, and enhancing residency requirements for FRB directors and presidents. We also believe that further work is warranted to

¹⁶⁰ See Michiel De Pooter, *Questions and Answers: The Information Content of the Post-FOMC Meeting Press Conference*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (Oct. 12, 2021), <https://perma.cc/3WW6-RGFA>.

¹⁶¹ All Things Considered, *Fed Holds First-Ever Press Conference*, NPR, at 00:12 (Apr. 27, 2011), <https://perma.cc/3CZG-MM2J>.

redesign the selection process for FRB directors¹⁶² and reconsider the balance of authority between the Board and the New York Fed on policy domains with significant national or international implications.¹⁶³

The reforms proposed below are not exhaustive. But together they represent an original package of changes that we believe would protect the Fed's distinct regionalism where it still serves important policy aims and help to mitigate the harms that may result from places where regional discretion has become a hindrance. In crafting this package, we build on existing analysis, especially the recently released, half-century-old recommendations of Howard Hackley.¹⁶⁴

¹⁶² Class A and Class B directors are selected by FRB member banks, which are investor-owned businesses that are also regulated by the Federal Reserve. Initially, one reason Congress empowered member banks to select a majority of FRB directors was to attract state-chartered banks to join the Federal Reserve System, and in so doing subject themselves to federal regulation. See HOWARD H. HACKLEY, SHOULD REQUIREMENTS WITH RESPECT TO THE SELECTION OF RESERVE BANK DIRECTORS BE CHANGED? 20 (1970) (available at <https://perma.cc/2AEK-K4AJ>). The subsequent creation of federal deposit insurance has essentially eliminated the need for this inducement, as deposit insurance has drawn nearly all state-chartered institutions within the federal regulatory perimeter. See ANDREW P. SCOTT, CONG. RSCH. SERV., R47014, AN ANALYSIS OF BANK CHARTERS AND SELECTED POLICY ISSUES 3 n.2 (2022) ("Most commercial banks are state non-member banks, regulated and supervised by the FDIC."). To retain regional representativeness, displacing the voice of district member banks in the selection of FRB boards would require developing alternative regional selection processes. One option would be to retain a role for member banks in FRB governance, while tempering their influence, by empowering the Board of Governors to approve Class A and Class B directors. Another option would be to collapse the three-class structure of FRB Boards and empower the Board of Governors to appoint all FRB directors.

¹⁶³ The New York Fed has played an outsized role in Fed policymaking since it was established over a century ago. In large part, its role reflects the underlying financial market structure. The New York region dominates nationally in both banking and securities—and has for well over a century. Many of the largest banks in the country are headquartered in New York alongside most of the largest broker dealers. See *Large Holding Companies*, FED. FIN. INST. EXAMINATION COUNCIL, <https://perma.cc/VRE2-GDFH>. Accordingly, when the Fed is looking to buy or sell financial assets, the counterparties likely to offer the best terms are in New York. Similarly, when the Fed is looking to influence monetary and credit expansion, the balance sheet constraints of the New York banks are likely to matter the most to the conditions in the Fed overall. Given the criticality of the New York market to national policy and the expanded activities of the New York Fed, it is worth examining whether adjustments should be made to how it executes some of its responsibilities. In addition to maintaining master accounts for depository institutions located in the Second Federal Reserve District, the New York Fed also maintains over 550 accounts for 200 foreign official and international entities (mostly comprised of foreign central banks). *Central Bank & International Account Services*, FED. RSRV. BANK OF N.Y., <https://perma.cc/F2Y8-R55L>.

¹⁶⁴ See Tankus, *supra* note 141.

1. Board authority for policies that should be uniform.

Policies with nationwide effect and nationwide benefits should be uniform. The Board, and not the FRBs, should have final say on such matters. For example, there is little reason to delegate determinations with respect to whether a particular financial institution should have a master account to the FRB rather than to the Board. The payment system that a master account facilitates access to is a nationwide system, and the recent denials frequently highlight the possibility that granting an account imprudently could threaten established aims of financial regulation.

Consistent, nationwide policy setting for master accounts could be accomplished most easily by Congress amending §§ 11 and 13 of the FRA to specify that the Board, not the local FRBs, should review and adjudicate applications. So changed, the provisions regarding master accounts would mirror the provisions regarding membership found in § 9. The change would allow the Board to apply the same set of criteria and staff to evaluate applications nationwide.

2. Apply appropriate procedural and transparency protections.

Regionalism need not entail gaps in good government and appropriate process and transparency. When the FRBs were meant to be true public-private hybrids, there may have been genuine questions about whether they should be subject to all of the rules that govern purely public agencies. And even today, there are matters, such as compensation, where it may make sense to continue to allow independent regional decision-making. Competitive salaries for both leadership and staff among the FRBs may help explain why they have and remain so effective.

But there are a number of dimensions along which there is no continued justification for allowing the FRBs (and thus at times, the Fed) to avoid being subject to the same rigorous standards that Congress otherwise imposes on federal agencies, subject to specific exceptions as Congress sees fit. Two of the clearest examples relate to two of the most significant statutory schemes governing agency action and transparency, the APA and FOIA.

Although the FRBs have voluntarily taken steps to increase their disclosure and set up “FOIA-lite” processes, the informal, nonbinding nature of these arrangements likely chills access to information and judicial review. The public has an interest in many aspects of FRB operations, and Congress should expressly protect

that interest in more circumstances rather than leaving it to FRB discretion and the Board. Accordingly, Congress should apply—with specified carve-outs—the APA and FOIA to FRB operations.

3. Promote consistent regionalism.

One strength of the Federal Reserve System is that it allows for the input of regional voices into the formulation of national policy, especially interest rate policy. However, it is difficult to justify the decision by Congress in the Banking Act of 1935¹⁶⁵ to shift somewhat arbitrarily which regions of the country vote on interest rate policy in any given year.¹⁶⁶ To better reflect the composition of the country, Congress should enfranchise all FRB presidents on the FOMC while reducing the weight of their votes in comparison to the weight of Fed Governors. In this way, governors could continue to hold seven-twelfths of the voting power on the FOMC while the five-twelfths of voting power held by the FRB presidents would be spread evenly across the country at every meeting, every year.

4. Strengthen regional nexus.

No one today would create the twelve Federal Reserve districts as they exist, which suggests that some thought should be given to redrawing the district lines to better reflect coherent and roughly economically balanced regions. Regardless of whether that happens, however, the FRBs are most likely to be robust instruments of transmitting regional concerns to the FOMC and other Fed policymakers and helping to address the distinct economic queries that may face banks and other institutions in their regions if they have firm grounding in those regions.

One way in which the FRBs foster good regionalism within the Federal Reserve System is by incorporating officials with regional ties into decision-making processes. This could relate just to the presidency of each FRB, but it could also apply to staff at lower levels. The law as it stands, however, is inconsistent and vague regarding the residency requirements that ensure these officials, in fact, have regional ties. For example, there is no statutory residency requirement for FRB presidents, who can have no relationship to the district prior to their appointment and can

¹⁶⁵ Pub. L. No. 74-305, 49 Stat. 684 (codified at 12 U.S.C. § 228).

¹⁶⁶ *Id.* § 205, 49 Stat. at 705–06.

even live outside the district during their time in office.¹⁶⁷ As regards the FRB boards, only Class C directors—those selected by the Board of Governors—are expressly required to have resided in the district (for two years) prior to their appointment.¹⁶⁸ And the statute does not even specify that the two-year requirement immediately precede appointment, permitting the Board to appoint Class C directors whose residency years were earlier in life (which it has).¹⁶⁹ Moreover, the statute does not have an explicit, ongoing residency requirement for Class C directors—or indeed for any directors. Instead, for Class C it requires only that the director selected as chairman of the board maintain “a local office . . . on the premises of the [FRB].”¹⁷⁰

The provisions governing Class A and B directors are similarly unclear. Class A directors “shall be chosen by and be representative of the stockholding banks,” and Class B directors “shall represent the public and shall be elected . . . with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.”¹⁷¹ But the statute says nothing about what it means for a director to “represent” member banks or the public (and whether that is the regional public or the national public, generally). According to Howard Hackley:

[I]t appears to be contemplated that both class A and class B directors shall be residents of the district of the Reserve Bank for which they are elected, not only at the time of their appointment but also throughout their terms of office. . . . [H]owever, there is nothing in the law that *requires* class A and class B directors to be residents of the district when they are elected or to continue as residents during their terms of office.¹⁷²

¹⁶⁷ The statute, 12 U.S.C. § 341, states only that

[t]he president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the president.

¹⁶⁸ *Id.* § 305 (“They shall have been for at least two years residents of the district for which they are appointed . . .”).

¹⁶⁹ HOWARD H. HACKLEY, RECOMMENDATIONS FOR CHANGES IN THE FEDERAL RESERVE ACT 40–41 (1969) [hereinafter HACKLEY, FEDERAL RESERVE ACT] (available at <https://perma.cc/W687-3AEC>).

¹⁷⁰ 12 U.S.C. § 305.

¹⁷¹ *Id.* § 302.

¹⁷² HACKLEY, FEDERAL RESERVE ACT, *supra* note 169, at 41 (emphasis in original).

We recommend that Congress tighten the residency requirements of directors and presidents of the FRBs. Of course, permitting anyone to serve as president of an FRB expands the pool of candidates for these positions. But it also detracts from the regional representativeness of the FOMC and weakens the ability of the FRBs to legitimate the Federal Reserve System locally. At a minimum, FRB directors and presidents ought to be required to live in the district during their time in office.¹⁷³ It also seems desirable to require FRB directors to have resided in the district for a significant period of time in the decade prior to their taking office.¹⁷⁴

CONCLUSION

This Essay explores the regionalism embedded in the country's central banking system in the form of twelve FRBs. It highlights many positive aspects of Fed regionalism. The FRBs bring local insights into national policymaking processes. They also help to legitimate national decisions by empowering regional leaders. Yet, as we readily acknowledge, the regionalism embedded into the current system sometimes has undesirable consequences. It can create the risk of fragmentation for decisions that should be uniform, including master account access. And, as reflected in the proceedings regarding master accounts and other efforts to shield internal work from public view, the Fed and FRBs have at times faced less scrutiny due to ambiguities around whether they are subject to the APA and FOIA.

By contributing to a richer understanding of regionalism at the Fed, this Essay helps to inform the regionalism literature more generally. It also allows us to provide an outline of some of the discrete changes that could help to preserve what is good and jettison what is less good in the Fed's regional design. With the role of the Fed expanding in recent years, legislators ought to consider updating its enabling legislation to achieve a better balance of regional and national decision-making.

¹⁷³ Hackley recommended such a requirement. *See id.*

¹⁷⁴ Hackley argued against such a requirement, but his only argument was that “[i]t is questionable whether there is any sound reason for requiring class C directors to have been residents of the district for two years prior to their appointment.” *Id.* The reason, of course, is that one purpose of the regional structure of the FRB system is to incorporate regional viewpoints into policymaking. Were the Board to appoint Class C directors from Washington D.C., it would defeat that purpose.