

FDIC Advisory Committee on Community Banking

Supervision and Policy Updates



ADVISORY COMMITTEE
ON COMMUNITY BANKING

Notice of Proposed Rulemaking on Custodial Deposit Accounts with Transaction Features and Prompt Payment of Deposit Insurance to Depositors

Part 375: Background

On September 17, 2024, the FDIC approved the issuance of a proposal that would strengthen the recordkeeping requirements for banks that receive deposits from non-bank companies, which in turn have accepted money from consumers.

The evolution of deposit taking has created risks for consumers, including confusion regarding the applicability and availability of deposit insurance to protect their money from loss if a bank fails.

Recent events, including the bankruptcy of Synapse Technologies, Inc., have underscored the significance, scale, and impact of the risks associated with the arrangements that many banks have with third parties.

Ongoing Transformation in Delivery of Financial Products

Non-bank companies, including financial technology companies, have entered the market to offer consumers new alternatives to banking products through their apps and websites.

Increasingly, consumers are opening deposit accounts indirectly through non-bank companies to make purchases, send or receive money, and pay bills.

Often, the relationship between banks and non-bank entities relies on custodial deposit accounts maintained at a bank to hold customer funds.



Risks Associated with Custodial Accounts with Transactional Features

Deficiencies in recordkeeping may impede the FDIC's ability to make a deposit insurance determination in the event of an insured bank's failure.

Confusion and uncertainty may arise regarding whether consumer funds have actually been placed on deposit in a bank once the consumer provides funds to a non-bank.

Uncertainty may exist as to whether deposit insurance is available to protect consumers' money from loss in the event of a bank failure if accurate records are not maintained as to the owner of the funds.

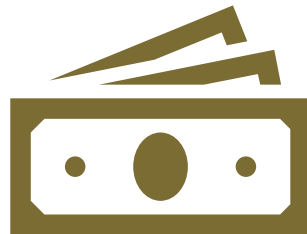


Part 375: Background – Synapse

Many consumers believed their funds would remain safe and accessible due to representations that funds were placed at FDIC-insured banks.

Bankruptcy trustee and Synapse's partner banks have had difficulty accessing and reconciling custodial account records to determine the owners of the deposited funds.

Consumers have been unable to access their funds placed at insured banks for a number of months, resulting in significant and ongoing harm.



Part 375: Proposed Rule

FDIC's rules accommodate custodial accounts through the concept of pass-through deposit insurance, which often relies on records maintained by non-banks.

While none of the banks that partnered with Synapse have failed, if a bank failure had occurred, and recordkeeping was inadequate or unreliable, the situation likely would have hindered the FDIC's ability to promptly make a deposit insurance determination.

Delays in paying deposit insurance could undermine confidence in insured deposits and the banking system.

Part 375: Proposed Rule

Proposed rule would create recordkeeping requirements that establish new guardrails and controls for banks with custodial deposit accounts with transactional features, subject to a list of defined exemptions.

Banks subject to the rule would be required to maintain records identifying the beneficial owners (i.e., consumers and businesses) of those deposits and the account balance attributable to each beneficial owner.



Part 375: Policy Objectives of the Proposed Rule

The proposal is intended to:

- promote the FDIC's ability to promptly make deposit insurance determinations in the event of a bank's failure and
- enable the FDIC to pay deposit insurance claims “as soon as possible” following the failure of a bank.

The proposal is expected to:

- benefit consumers and depositors by promoting timely access to their funds, even in the absence of a bank failure and
- strengthen compliance with anti-money laundering and countering the financing of terrorism law.

Proposed Rule: Part 375

Part 375 would:

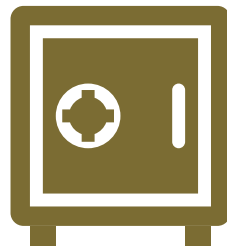
- Create new recordkeeping requirements for banks with custodial deposit accounts with transactional features, subject to a list of defined exemptions;
- Establish a new requirement for an annual validation by an independent person or entity to assess and verify that third parties are maintaining accurate and complete records consistent with the proposal's requirements;
- Require internal controls to be in place to ensure that balances of custodial deposit accounts are accurate and reconciled daily; and
- Require banks to complete an annual certification of compliance and an annual report of compliance.

Proposal was issued on September 17, 2024.
Comment period ends on December 2, 2024.

Part 375: What Accounts Would be Covered by the Proposal?

The proposal would apply to a class of accounts defined as “custodial deposit accounts with transactional features”

- (1) the account is established for the benefit of beneficial owners;
- (2) the account holds commingled deposits of multiple beneficial owners; and
- (3) a beneficial owner may authorize or direct a transfer through the account holder from the custodial deposit account to a party other than the account holder or beneficial owner.



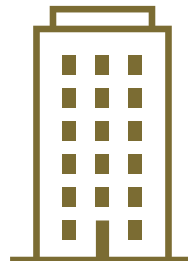
Part 375: How Would Banks Comply with the Proposal?

Banks

Banks that hold custodial accounts with transactional features would be required to maintain records of the beneficial owners of those deposits.

Non-bank Third Party

The proposed rule would permit a bank to maintain the records through a third party, provided that certain conditions are satisfied.



Part 375: What are the Proposed Requirements?

Banks that hold custodial accounts with transactional features would be required to maintain records identifying the beneficial owners of those deposits, the ownership category, and the account balance attributable to each beneficial owner.

The proposal provides a specific electronic file format with 30 fields where banks can maintain records on beneficial owners and their interest in the deposited funds.

The proposal provides that banks within the scope of the proposal must maintain internal controls to:

- maintain accurate balances of custodial accounts with transactional features;
- conduct daily reconciliations.

Part 375: Bank May Maintain Records Through a Third Party

A bank can maintain the records required under the proposal through a third party provided conditions are met. The bank would be required to:

- have direct, continuous, and unrestricted access to records maintained by the third party;
- have continuity plans in place;
- implement appropriate internal controls;
- conduct reconciliations no less frequently than as of the close of business daily;
- have a direct contractual relationship with the third party, which includes annual validations by a person independent of the third party to verify accuracy and completeness of records.



Part 375: NPR and Request for Public Comments

Through these requirements, the proposed rule aims to address the risks that can be associated with custodial deposit accounts with transactional features offered by non-banks through an arrangement with insured institutions.

If adopted, the proposal would support the FDIC's statutory requirement to pay insured depositors "as soon as possible."

Even if there is no bank failure, consumers would also benefit from timely access to their funds and clarity with respect to whether their funds are held at a bank and whether their funds are eligible for deposit insurance.



FDIC requested public comments, which are due by December 2, 2024.



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Joint Statement on Banks' Arrangements with Third Parties to Deliver Bank Deposit Products and Services

Joint Statement on Banks' Arrangements with Third Parties

Issued on July 25, 2024 (see [FIL-45-2024](#))

The joint statement discusses potential risks related to arrangements between banks and third parties to deliver bank deposit products and services to end users.

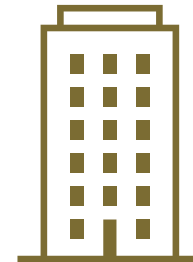
The statement also highlights examples of risk management practices implemented by banks to manage such risks.

In these arrangements, a third party (rather than the bank) typically markets, distributes, provides access, and facilitates the provision of the deposit product or service directly to the end user.

Joint Statement on Banks' Arrangements with Third Parties

Banks may rely on one or multiple third parties to perform various functions, such as:

- Maintain deposit and transaction system of record
- Process payments
- Perform regulatory compliance
- Provide end-user facing technology applications
- Service accounts
- Perform customer service



Joint Statement – Examples of Risk

Operational and compliance risks may be heightened in arrangements with:

- Significant operations performed by a third party
- Fragmented operations
- Lack of access to records
- Third parties performing compliance functions
- Insufficient risk management for consumer protection
- Lack of contracts
- Lack of experience with new methods
- Weak audit coverage



Joint Statement – Examples of Risk

Risks related to growth:

- Misaligned incentives
- Lagging operational capabilities
- Financial risks from funding concentrations
- Inability to manage emerging liquidity risks
- Pressure on capital levels

Risk related to end user confusion and misrepresentation of deposit insurance:

- Potentially misleading statements and marketing
- Regulatory violations

Joint Statement – Examples of Risk Management Practices

Governance and third-party risk management

- Policies and procedures
- Risk assessments
- Due diligence
- Contracts and agreements
- Assessing potential risks in the absence of contracts
- Ongoing monitoring



Joint Statement – Examples of Risk Management Practices

Managing operational and compliance implications

- Policies, procedures, oversight, and controls for compliance, including AML/CFT and consumer protection
- Internal controls to mitigate risks in deposit functions
- Risk-based contingency plans

Managing growth, liquidity, and capital implications

- Concentration limits and diversification and exit strategies

Deposit insurance misrepresentations

- Appropriate policies and procedures for compliance with applicable law and regulations

Request for Information on Bank-Fintech Arrangements

Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses

The RFI was issued jointly by the FDIC, Federal Reserve, and the OCC on July 25, 2024, and was also addressed in FIL-45-2024.

It is intended to gather additional information on deposit arrangements addressed in the joint statement, as well as other types of arrangements in the areas of payments and lending.

The RFI seeks information and comment on the nature of certain bank-fintech company arrangements, as well as effective risk management practices and the implications of such arrangements.



Comment period was extended to October 30, 2024.



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FDIC Statement of Policy on Bank Merger Transactions



FDIC Statement of Policy on Bank Merger Transactions

On September 17, 2024, the FDIC Board of Directors approved the publication of a final Statement of Policy on Bank Merger Transactions (Final Statement) in the Federal Register.

The Final Statement supersedes the existing Statement of Policy 30 days after publication.



FDIC Statement of Policy on Bank Merger Transactions

The Final Statement:

- Updates, strengthens, and clarifies the FDIC's policies related to the evaluation of bank merger applications;
- Reflects legislative and other developments that have occurred since the existing Statement of Policy was last updated in 2008; and
- Reflects comments submitted in response to both the FDIC's March 2022 Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions and the March 2024 Request for Comment on a Proposed Statement of Policy on Bank Merger Transactions.



FDIC Statement of Policy on Bank Merger Transactions

The Final Statement:

- Provides a principles-based overview of the FDIC's administration of its responsibilities under the Bank Merger Act.
- Conveys expectations relative to each statutory factor, including the analytical considerations.
- Clarifies that conditions will be considered, but will not lead to a favorable finding where facts and circumstances are otherwise unfavorable.



FDIC Statement of Policy on Bank Merger Transactions

The Final Statement:

- Emphasizes the FDIC Board reserves authority to approve or deny any merger for which one or more statutory factors are not favorably resolved by staff or act on applications for which the Attorney General has not notified the FDIC that the transaction will not have a significantly adverse impact on competition.
- Indicates that the FDIC Board may release a statement regarding a withdrawn filing. Such an issuance will be in conformance with the obligation to protect confidential information.



FDIC Statement of Policy on Bank Merger Transactions

A favorable finding on financial resources is appropriate when the resulting institution presents less risk than the institutions on a standalone basis.

Public hearings will be conducted for mergers with a resulting institution with \$50 billion or more in total assets or when significant CRA protests are received.

Additional scrutiny will apply to the evaluation of mergers with a resulting institution with \$100 billion or more in total assets.





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Notice of Proposed Rulemaking on Brokered Deposits



Brokered Deposits – Background

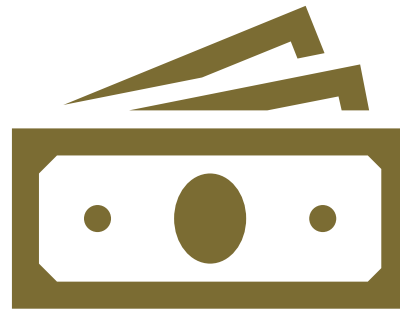
Section 29 of the Federal Deposit Insurance Act states that an insured depository institution (IDI) that is not well capitalized may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts. Section 29:

- Defines deposit broker, which includes any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions.
- Provides certain exceptions to the definition of deposit broker, such as the primary purpose exception (PPE).
- Only allows the FDIC to grant waivers to adequately capitalized IDIs.

Brokered Deposits – Background

Under Section 337.6 of the FDIC's Rules and Regulations, a brokered deposit is a “deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.”

All IDIs must report brokered deposits on Call Reports.



Brokered Deposits – NPR

On August 23, 2024, the FDIC published in the Federal Register a notice of proposed rulemaking (NPR) to amend Sections 337.6 and 303.243 of the FDIC Rules and Regulations that implement Section 29 of the FDI Act.

The FDIC is proposing to make the changes to:

- Reduce operational challenges and reporting burdens on IDIs;
- Help ensure uniform and consistent reporting of brokered deposits by IDIs; and
- Strengthen the safety and soundness of the banking system.

Comments are due by November 21, 2024.

Brokered Deposits – NPR: Summary

Among other terms and changes, the NPR would:

- Simplify the definition of “deposit broker,” including by replacing the “matchmaking activities” definition with a broader definition related to deposit allocation services and adding a new factor related to fees;
- Eliminate the “exclusive deposit placement arrangement” exception from the definition of “deposit broker”;
- Revise the interpretation of the primary purpose exception (PPE) to consider the third party's intent in placing customer funds at a particular IDI; and
- Allow only IDIs, and not third parties, to file notices or applications for PPEs.



Brokered Deposits – NPR: Summary

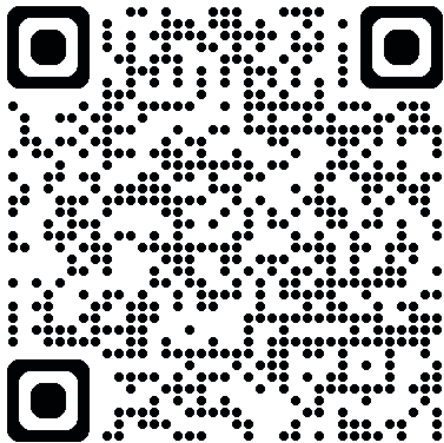
Proposed changes:

- Revise the “25 percent test” designated business exception to be available only to broker-dealers and investment advisers registered with the Securities and Exchange Commission and only if less than 10 percent of the total assets that the broker-dealer or investment adviser has under management for its customers is placed at one or more IDIs;
- Eliminate the enabling transactions designated business exception; and
- Clarify when an IDI, which has lost its agent institution status, can regain that status for purposes of the limited exception for reciprocal deposits under Section 337.6(e).

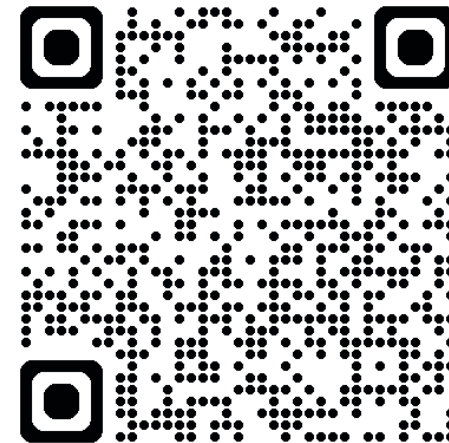


Brokered Deposits – Resources

FDIC's Banker Resource Center
Brokered Deposit Page:
<https://www.fdic.gov/banker-resource-center/brokered-deposits>



Brokered Deposit NPR:
[2024-18214.pdf](#)





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