November 21, 2024

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Comments—RIN 3064–AF99, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions

Dear Mr. Sheesley:

The American Bankers Association[1] and the undersigned state bankers' associations are writing to share our concerns about recent and further expected changes to the FDIC's brokered deposit rule. We recommend that the FDIC withdraw the Notice of Proposed Rulemaking (NPR) due to both public policy and legal concerns.

The NPR is based on an outdated understanding of brokered deposits and banking markets, reversing reforms that the FDIC made to the brokered deposit regulation in 2020.[2] The NPR is also legally flawed. Courts have established that while an agency may update regulations, it must provide a reasoned explanation for doing so, especially when industries have relied on the current rule in making business decisions. The FDIC's proposal lacks such an explanation, fails to provide new data, and overlooks the reliance interest of insured depository institutions (IDIs) that have structured deposits around the 2020 rule. Furthermore, the NPR does not meet legal standards requiring the agency to consider all relevant aspects of the issue, including regulatory costs and benefits.

If finalized, the NPR could have significant negative consequences for IDIs and the customers they serve. Congress initially enacted restrictions on brokered deposits in 1989, following the failure of certain banks and savings and loans that used brokered certificates of deposit (CDs) to support risky, and at times, fraudulent activities. These restrictions were focused on preventing less than well capitalized institutions from relying on potentially unstable funding sources. With

[1] The American Bankers Association is the voice of the nation's $23.9 trillion banking industry, which is composed of small, regional, and large banks that together employ approximately 2.1 million people, safeguard $18.8 trillion in deposits, and extend $12.5 trillion in loans.

[2] Notice of Proposed Rulemaking, 85 Fed. Reg. 86,453 (proposed Dec. 30, 2020) (to be codified at 12 C.F.R. pt. 328), https://www.fdic.gov/sites/default/files/2024-03/2020-12-15-notice-dis-a-fr.pdf.

this NPR however, the FDIC would create a de facto regulation for well capitalized institutions which Congress never intended, and perpetuate an unwarranted stigma of brokered deposits.

Over the 30 years since Section 29 was enacted to 2018 when the FDIC issued an ANPR on a new approach to defining "deposit broker," the FDIC used its authority to expand its interpretation of "deposit broker" to cover an overly broad range of banking relationships. The increasingly wide interpretation failed to, among other things, recognize the benefits of "traditional" brokered CDs, technological developments or the additional regulations that had been placed on the industry in the intervening years.

In 2020, the FDIC recognized that its approach had not kept pace with modern banking practices, technology, or the bank experience with respect to the stability of many of the deposits. After extensive public and industry input, the FDIC created a transparent framework to ensure that its interpretation aligned with the statute, supported innovation and didn't discourage banks from gathering stable deposits through modern means. The NPR seeks to reverse many of these changes, with limited data or credible justification.

For example, the NPR references the recent failures of Silicon Valley Bank and First Republic Bank as evidence. However, reviews of these failures by the FDIC itself do not implicate brokered deposits as a contributing factor. Both the FDIC's report on the failure of First Republic and the report by the FDIC's Office of Inspector General (OIG) on that failure indicate that a lack of appropriate supervisory oversight was a major contributing factor to the failure and that the failure of similar institutions caused an outflow of uninsured deposits, risk management deficiencies, and idiosyncratic business models.[3] More recent studies confirm that the failures occurring post 2021 (the effective date of the 2020 Final Rule) were not caused by brokered deposits, but rather by large uninsured deposits accompanied by concentrations in particular industries and insufficient risk management. Notably, the FDIC offers no new data to justify reversing the 2020 changes nor does it disclose how or why the comments and analysis that informed the 2020 rulemaking are now invalid.

Additionally, the FDIC's NPR appears premature, as the agency and other regulators are currently conducting broader reviews of bank-fintech arrangements and deposit stability through multiple Requests for Information (RFIs). Implementing changes before these reviews are complete risks disregarding insights from these ongoing studies.

Reversing the 2020 amendments would affect many deposit relationships built under the existing rule, causing considerable disruption. Forcing a reclassification of these deposits as "brokered" would increase deposit insurance premiums, complicate liquidity management, and potentially restrict lending in certain markets if IDIs cannot secure funds to support loans. Instead of returning to an outdated model, the FDIC should focus on reducing the stigma around brokered deposits, allowing institutions to maintain diverse, cost-effective funding sources.

[3] FDIC OIG, Material Loss Review of First Republic Bank (2023)

In summary, we urge the FDIC to withdraw the NPR. It is neither in the public interest nor consistent with applicable law. ABA would be pleased to coordinate a meeting or facilitate further industry engagement on this issue. Please contact Alison Touhey at [redacted] or Ashtyn Landen at [redacted] if you have any questions or would like to discuss these matter further.

Thank you,

American Bankers Association

Alabama Bankers Association
Alaska Bankers Association
Arizona Bankers Association
Arkansas Bankers Association
California Bankers Association
Colorado Bankers Association
Connecticut Bankers Association
DC Bankers Association
Delaware Bankers Association
Florida Bankers Association
Georgia Bankers Association
Hawaii Bankers Association
Idaho Bankers Association
Illinois Bankers Association
Indiana Bankers Association
Iowa Bankers Association
Kansas Bankers Association
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Nebraska Bankers Association
Nevada Bankers Association
New Hampshire Bankers Association
New Jersey Bankers Association
New Mexico Bankers Association
New York Bankers Association
North Carolina Bankers Association
North Dakota Bankers Association
Ohio Bankers League
Oklahoma Bankers Association
Oregon Bankers Association
Pennsylvania Bankers Association
Puerto Rico Bankers Association
Rhode Island Bankers Association
South Carolina Bankers Association
South Dakota Bankers Association
Tennessee Bankers Association
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Utah Bankers Association
Vermont Bankers Association
Virginia Bankers Association
Washington Bankers Association
West Virginia Bankers Association
Wisconsin Bankers Association
Wyoming Bankers Association