November 21, 2024

VIA ELECTRONIC DELIVERY

James P. Sheesley
Assistant Executive Secretary
Attn: Comments – RIN 3064-AF99
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Dr. Mr. Sheesley:

The Colorado Bankers Association and Texas Bankers Association write today to express our opposition to the Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions proposed rulemaking published by the Federal Deposit Insurance Corporation (FDIC or Agency) in the *Federal Register* on August 23 of this year. By way of background, the Colorado Bankers Association (CBA) represents more than 95 percent of the $225 billion in assets within the 126 banks operating in Colorado. The Texas Bankers Association (TBA) is the nation's largest state-based banking association, and our close to 400 member banks hold over $1 trillion in total deposits. Together, our associations' memberships account for more than 10% of the total number of bank charters in the country, and we believe the proposed rule will significantly impact not just bank funding, but also the products and services our members offer to their customers.

First, we are concerned that the proposed rule exceeds the Agency's authority in that its redefinition of "deposit broker" is not reflective of the Agency's statutory mandate from Congress. Specifically, 12 USC 1831(f)(g)(1)(A) defines "deposit broker" to mean, in relevant part, "any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties" However, 12 USC 1831(f)(g)(2)(I) also specifically excludes from this definition "an agent or nominee whose primary purpose is not the placement of funds with depository institutions."

Under the Agency's existing framework, a primary purpose exception to the definition of "deposit broker" applies when the primary purpose of an agent's or nominee's business relationship with its customers is not the placement of funds with depository institutions. Further, 12 CFR 303.243(b)(4) provides that a primary purpose exception may be applied for by "a third party, or an insured depository institution on behalf of a third party".

Recognizing the Congressionally approved definition of what is and what is not a "deposit broker", we are troubled by the fact that the Agency's 2024 brokered deposits proposal revises the analysis for determining when an agent or nominee meets the "deposit broker" primary purpose exception and redefines the primary purpose exception to apply when an agent or

nominee whose primary purpose in placing customer deposits at insured depository institutions (IDIs) is for a substantial purpose other than to provide a deposit-placement service or FDIC deposit insurance with respect to particular business lines. Despite lacking the statutory direction to do so, the Agency proposes, we believe, to improperly expand the statutory primary purpose exception to require consideration of the intent of both the customer-third party relationship and the third party-insured depository institution relationship.

The Agency argues in interpreting the statute in this way that it is simply restoring its approach to pre-2020 rule changes. However, the Agency's basis for doing so seems not to be based on statutory authority or demonstrated data supporting the interpretation. Rather, the Agency argues the revision is based on "long-standing staff advisory opinions and published FAQs". These have no bearing on the Agency's authority to do so, and we believe this type of mission creep is beyond what Congress intended when it adopted the primary purpose exception to the definition of "deposit broker".

Second, as noted above, the existing primary purpose exception may be applied for by "a third party, or an insured depository institution on behalf of a third party". The proposed rule eliminates the ability of a third party to apply for a primary purpose exception, leaving the onus on each depository institution to apply for each specific deposit arrangement that it has with the third party involved.

We do not believe the proposed rule's elimination of the ability of third parties to apply for a primary purpose exception is sound policy. Under the proposed rule, if a third party whose primary purpose is not the placement of funds with depository institutions has agreements with more than one institution, each insured depository institution working with that third party must apply for the primary purpose exception. Furthermore, the proposed rule's new requirement that an insured depository institution provide copies of contracts relating to the deposit placement arrangement, including all third-party contracts, to supplement its description of the deposit placement arrangement is unwarranted and will result in volumes of information reporting by insured depository institutions that the Agency and its systems are likely unprepared to receive or process.

Third, we believe the proposed rule's revocation of previously approved primary purpose exception applications likely impairs contractual arrangements our member banks have with third party providers. An insured depository institution currently approved for a primary purpose exception mid-stream in a contract with a third party to provide that service could lose its primary purpose exception because of changes made by this proposal. When contracts are broken mid-stream, there are often penalties for severing the relationship early. The rule is silent about the treatment of these arrangements.

Finally, taken as a whole, we believe the Agency's estimated potential costs of the proposed rule to insured depository institutions is inadequate. The Agency indicates affected insured depository institutions "may incur some costs" in moving away from a system implemented not yet four years ago to a new regime. As a reminder, in the proposal the Agency writes:

> "the proposed rule may lead some IDIs to restructure their liabilities. Second, the proposed rule may affect certain regulatory ratios required to be calculated by some large IDIs. Third, affected IDIs may be incentivized to make changes to their organizational structure. Fourth, affected IDIs may need to make changes to internal systems, policies, or procedures that pertain to brokered deposits. Fifth, the proposed rule is expected to affect the number of filings that IDIs send to the FDIC. Finally, the proposed rule may affect some IDIs' FDIC deposit insurance assessments."

The extensive nature of the changes proposed in this rule certainly will result in our member banks incurring more than "some costs". The Agency estimates the proposed rule would impose 503 labor hours per year associated with reporting requirements if adopted, resulting in an estimated $50,838 in total annual reporting costs associated with the proposed rule. However, we question the soundness of this estimate given the fact that time and again the Agency acknowledges that the FDIC does not have the data or information necessary to estimate the proposed rule's expected effects on impacted insured depository institutions.

For these reasons, we respectfully request that the FDIC withdraw the proposed rulemaking relating to the FDIC's brokered deposits restrictions.

Thank you in advance for your thoughtful consideration of these concerns.

Sincerely,

[redacted]

Jenifer Waller
President & CEO
Colorado Bankers Association

[redacted]

Chris Furlow
President & CEO
Texas Bankers Association