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Submitted via Comments@fdic.gov

January 16, 2025

Federal Deposit Insurance Corporation
Attn: James P. Sheesley, Assistant Executive Secretary
550 17th Street, N.W.
Washington, D.C. 20429

Re: Federal Deposit Insurance Corporation, Proposed Rule, Recordkeeping for Custodial Accounts (RIN 3064-AG07)

Dear Mr. Sheesley:

The Money Services Round Table (“TMSRT”)¹ appreciates the opportunity to provide comments on the Federal Deposit Insurance Corporation (“FDIC”) Notice of Proposed Rulemaking (the “NPRM”) regarding recordkeeping for custodial deposit accounts with transactional features.² TMSRT member companies are licensed money transmitters that provide a variety of nonbank money transmission services, including stored value (prepaid) accounts, bill payments, and domestic and cross-border funds transfers.³

Overview

The NPRM would impose new recordkeeping requirements related to “custodial deposit accounts with transactional features.” The FDIC observes that custodial deposit accounts have been “a fixture of the U.S. banking system for decades” and the NPRM characterizes these types of accounts, for purposes of the proposed rule, as “a relationship where one party is responsible for opening a deposit account at an IDI *on behalf of others*, who may own the funds but often lack a direct relationship with the bank.”⁴

More specifically, the proposed definition of covered “custodial deposit accounts with transactional features” is a deposit account:

(1) Established for the benefit of beneficial owners; (2) In which the deposits of multiple beneficial owners are commingled; and (3) Through which beneficial owner(s) 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.⁵

¹ TMSRT is comprised of the leading non-bank money transmitters Dandelion Payments, Inc. (doing business as RIA Money Transfer), American Express Travel Related Services Company, Inc., Western Union Financial Services, Inc. and Western Union International Services, Inc., and MoneyGram Payment Systems, Inc.

² 89 Fed. Reg. 80135 (Oct. 2, 2024).

³ Non-bank money transmitters such as TMSRT members are licensed and supervised under state-specific money transmission licensing laws. These laws establish customer protection and safety and soundness regimes intended to protect customers and the financial system, among other policy imperatives. Licensed money transmitters are subject to robust obligations with respect to maintenance of customer funds, as well as extensive recordkeeping, reporting and customer disclosure requirements.

⁴ *Id.* at Fed. Reg. 80137.

⁵ Proposed 12 CFR 375.2



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IDIs holding deposits within the scope of the proposed rule would be required to maintain records identifying the beneficial owners of those deposits, the balance attributable to each beneficial owner, and the ownership category in which the deposited funds are held, unless certain additional requirements relating to maintaining records with a third-party are met.

Applicability of Proposed Rule to Activities of Licensed Money Transmitters

In general, a person cannot engage in money transmission activity unless licensed or otherwise exempt.⁶ Activities regulated and authorized under U.S. state money transmission licensing laws include receiving money for transmission and selling or issuing “stored value.” The NPRM and the proposed rule appear to be focused on fintech companies and “middleware providers” that are *not* themselves operating as regulated or licensed money transmitters.⁷ Rather, these businesses partner with insured depository institutions (“IDIs”) for such IDIs to establish custodial accounts in the name of the IDI for the benefit of the businesses’ customers. This structure is common because, as a general proposition, if the custodial account is titled in the name of the business instead of the bank (or the business otherwise is the legal or beneficial owner of customer funds), the business could be seen as engaging in receiving money for transmission (by virtue of legal ownership of the funds through legal title to the custodial account) and therefore subject to state money transmission licensing requirements. In other words, these types of arrangements with IDIs can provide a potential alternative path for a business to make available payments services without obtaining state money transmission licenses (provided that the arrangement is established in a manner that does not trigger state money transmission licensing requirements).

By contrast, licensed money transmitters may provide payments services or certain account-type services directly to customers pursuant to the authority under their money transmission licenses to receive money for transmission or to sell or issue stored value. State-specific definitions vary⁸ but the general concept (and a common definition) is “monetary value **representing a claim against the issuer** evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. . . .”⁹ Some state money transmission laws elaborate on the definition of “issuer.” For example, the California money transmission law defines an issuer, with respect to stored value, as “the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value.”¹⁰ Furthermore, almost all state money transmission laws require licensees to hold “permissible investments”¹¹ equal to or exceeding the licensee’s “outstanding money transmission obligations.” Outstanding obligations include stored value issued or sold by the licensee (including by an authorized delegate of the licensee) that has not been paid by the licensee.¹² As a result,

⁶ Federally insured depository institutions are generally exempt from state money transmission laws.

⁷ We note that the middleware provider identified by name in the NPRM was not licensed as a money transmitter. It is our understanding that the types of fintech companies that relied on this provider to use deposit accounts at IDIs to provide integrated banking services to customers are also generally not licensed money transmitters, and in any case were not making available the IDI’s deposit account services pursuant to their own regulatory authorizations.

⁸ In addition, some state money transmission laws use the term “prepaid access” in place of the term stored value. (The definitions of stored value or prepaid access under state money transmission laws do not necessarily align with the definition of “prepaid access” under the Bank Secrecy Act as set forth at 31 CFR 1010.100(ww)).

⁹ See, e.g., CSBS Model Money Transmission Modernization Act (“Model Act”) (emphasis added), available at: https://www.csbs.org/sites/default/files/2021-09/CSBS%20Model%20Money%20Transmission%20Modernization%20Act_09.13.21.pdf. Roughly half of the states have updated their existing money transmission laws to incorporate the Model Act since its introduction in the fall of 2021; the extent to which states have remained faithful to the Model Act in enacting new legislation has varied significantly.

¹⁰ Cal. Fin. Code § 2003(f).

¹¹ Generally highly liquid assets such as cash in deposit accounts (which could include customer funds held in bank accounts in the licensee’s name) or obligations of the United States such as Treasury bills, notes, etc.

¹² See Model Act; see also, e.g., Cal Fin. Code § 2003(u).



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licensed money transmitters are subject to extensive recordkeeping and reporting requirements with respect to customer funds, including requirements to maintain a general ledger and records of outstanding obligations, including stored value loads (i.e., sales or issuance of stored value) and redemptions.

Taking these provisions together, a customer that holds stored value issued by a licensed money transmitter holds a claim against the licensee, and the licensee is obligated to pay the stored value upon valid instruction by the customer (as the holder of that claim) *to the licensee*.¹³ This framework holds true even if the licensee holds the funds associated with customers' money transmission transaction or stored value accounts/balances in "for benefit of" ("FBO") accounts or other custodial accounts in the name of licensee as legal acountholder for the benefit of customers. Licensees may use FBO accounts to hold customer funds in connection with the provision of money transmission (including stored value) services for a number of reasons, including (1) to affirm the separateness of such funds from the licensee's own funds in the event of a bankruptcy of the licensee or otherwise provide added protection for such funds from the licensee's creditors or (2) to enable FDIC insurance to apply to the funds on a pass-through basis in the event of the IDI's failure. In this latter case, as noted above, licensees are already subject to robust recordkeeping requirements, and supervision, under state money transmission laws. Unlike when the account holder is a non-regulated company that establishes a custodial bank account in the name of the IDI for the purpose of making available deposit account or payments services, there is no regulatory gap for the FDIC to address with respect to licensed money transmitters that establish custodial bank accounts at IDIs for their own money transmission services.

Based on our review of the NPRM, it appears that the proposed rule is *not* intended to impose new recordkeeping obligations on licensed money transmitters or the IDIs at which such licensees hold customer funds in their own accounts. That is, "the FDIC intends to apply the proposed recordkeeping requirements only to custodial deposit accounts that are established and used in a manner that allows beneficial owners to direct a transfer of funds from the account to another party . . .," i.e., arrangements in which "IDIs allow the account holder to submit payment instructions from beneficial owners to the IDI in order to make funds transfers."¹⁴ Therefore, a covered account for purposes of the recordkeeping requirements is one for which the beneficial owner(s) may authorize or direct a transfer *from the custodial account*.

A customer of a licensed money transmitter, and in particular a stored value account holder, does not authorize or direct transfers *from a custodial deposit account* but rather *from (or by) the licensed money transmitter itself*. As described above, where a licensed money transmitter issues stored value, the holder of the stored value has a claim against the licensee, and the licensee in turn has an obligation to pay the stored value as instructed by the holder. Similarly, when a licensed money transmitter provides a money transfer service, the licensee has an obligation to pay the money transfer as instructed by, and on behalf of, the customer.¹⁵ As a result, licensed money transmitters do open deposit accounts at an IDI "on behalf of others" but, rather, for their own purposes in accordance with state money transmission laws: to receive, hold and transmit funds on behalf of and at the direction of their customers.

Request for Clarification or Express Exemption for Licensed Money Transmitters

As set forth below, because of the potential uncertainty of the proposed rule's applicability to accounts established by licensed money transmitters at IDIs for the provision of money transmission services, if the FDIC moves forward with this rulemaking, TMSRT respectfully suggests that the FDIC either: (1) revise the

¹³ Similarly, a licensee is obligated to pay a money transfer on behalf of the sender to the designated recipient (subject to applicable law).

¹⁴ 89 Fed. Reg. 80135, 80141.

¹⁵ In each case, subject to applicable law.



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definition of a custodial account and/or (2) expressly exempt licensed money transmitters from coverage under the proposed rule.

Definition of custodial deposit account with transactional features

Custodial deposit account with transactional features means a deposit account:

- (1) Established **in the name of the insured depository institution** for the benefit of beneficial owners;
- (2) In which the deposits of multiple beneficial owners are commingled; and
- (3) Through which beneficial owner(s) may authorize or direct a transfer **by the insured depository institution** through the account holder from the custodial deposit account to a party other than the account holder or beneficial owner.

Exemptions

375.3(d) *Exemptions*. The following custodial deposit accounts with transactional features are exempt from the recordkeeping requirements in this section:

...

(*) Accounts established by a person operating under an appropriate money transmitting license in a state or states for the purpose of providing money transmission services in accordance with the money transmission laws of such state or states.

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TMSRT recognizes the importance of protecting customer funds and ensuring that payments-related services are provided in a compliant manner. As discussed, with respect to licensed money transmitters that custody funds in accounts for which FDIC insurance is available on a pass-through basis, there are sufficient legal obligations already in place to ensure that the FDIC is able to identify beneficial entitlements if the licensee's IDI fails. TMSRT supports further efforts to ensure that the FDIC is able to promptly make deposit insurance determinations where there are no such regulatory obligations in place today. We believe that the suggestions offered herein are consistent with the goals of the NPRM and will ensure that licensed money transmitters can continue to offer innovative money transmission products and services to customers in a compliant manner and consistent with the requirements and corresponding protections of state money transmitter laws.

On behalf of TMSRT, we thank you for taking the time to consider these comments.

Sincerely,


Adam J. Fleisher