



November 19, 2024

James P. Sheesley
Assistant Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429
(comments@fdic.gov)

Re: Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions RIN 3064-AF99

Dear Mr. Sheesley,

I am the CEO of CS Bank in Eureka Springs, AR. Our story began on May 4, 1912, when Bank of Eureka Springs was chartered. Our bank has survived several panics, the Great Depression, and two World Wars. In 1946, we were the only bank remaining in Eureka Springs out of the half dozen or more that started after the town's founding in 1879.

At CS Bank, we provide a level of personal customer service that is unmatched and a full array of modern banking products, services and mobile banking capabilities. We prioritize community involvement and play an active role in supporting local initiatives. We regularly contribute to local causes, schools, and nonprofit organizations, and we are involved in a variety of efforts aimed at improving the quality of life in the communities we serve.

We are proud of our long and rich history of being a locally owned and operated bank for over 100 years. Our commitment to the financial success of our clients, our history of service, sound management and committed employees has been the backbone of our bank's growth and success.

It is with growth and success that I write to express my concerns with the FDIC's proposed revisions to the brokered deposit rule. I offer the following remarks for your consideration:

One key issue is the expanded definition of a deposit broker. As proposed, the definition will combine the currently separate "placing" and "facilitating" provisions into a single framework and add a "compensation prong" to the definition. This will lead to an overly broad interpretation of what constitutes a deposit broker.

Per my reading, the proposed definition appears to prohibit any third party from receiving any compensation from any source for assisting any insured depository institution ("IDI") in any way during the institution's deposit gathering activities – otherwise, the third party will be considered to be a deposit broker.

This expansion will have significant unintended consequences.

For example, it will force me to discontinue my current customer referral program. Surely the aim of the proposed revisions cannot be to shut down popular and cost effective Refer-A-Friend programs where current customers receive nominal bonuses for referring friends, relatives and colleagues to their financial institution? Rather, I believe the FDIC's intention is to capture fees that serve as significant incentives for third parties, who own and control the depositor relationship, to place or move depositor funds at one or more insured depository institutions. Unfortunately, as currently written, the proposed language does not adequately accomplish this objective.



If implemented as currently written, my institution will have to either report more deposits as brokered and subsequently bear the increased insurance assessment; additional exam scrutiny; and management stigma that are associated with such deposits or completely reevaluate the relationships we've established with third parties to help us attract, acquire (and retain) new depositor relationships.

I respectfully remind the FDIC that we operate in a "phygital" world and community banks like mine will not survive unless we are able to partner with third parties to help us attract and retain depositors. Not only must we offer the competitive deposit products consumers want; we must also provide the technological advancements that accompany those offerings. Lacking the time, money, resources, and technical expertise that our larger competitors enjoy, smaller banks have no choice but to partner with third parties to help us create (and maintain) the digital banking platforms that make it easy for consumers to open accounts, conduct their daily banking activities, and manage their individual and family finances. Smaller institutions simply cannot compete if we cannot partner with external resources and third parties cannot provide their services and capabilities if they are prohibited from receiving commensurate compensation.

This reality is highlighted in a recent article entitled "How to Integrate Digital Delivery and Human Connections to Boost Retention" published by the Financial Brand on Monday October 28, 2022. The article states "Banks often feel like they are ping ponging between two conflicting priorities – building and scaling advanced digital delivery while struggling to retain customers whose loyalty is predicated on personal attention." Citing a global survey conducted by Salesforce, the article points out that 35% of customers switched banks within the last year and 51% of those individuals stated that the digital experience they receive was the primary motivation for changing institutions. Couple this with the fact that fintechs and our nation's large financial institutions are rapidly deploying advanced customer engagement experiences leveraging artificial intelligence while we are just beginning to understand what the technology can do, if community banks are restricted from partnering with third party experts, we will be left behind in the digital and deposit dust.

Given the "traditional service", "digital experience" and "AI" balancing acts we must perform to attract new customers and retain our current customers, restricting third parties from receiving compensation for helping us establish, acquire, curate and retain direct depositor relationships, that we own and control, within individuals who live, work and play in the communities we serve, would be counterproductive and especially damaging to small institutions like mine.

We urge the FDIC to either withdraw or clarify the "compensation prong." The current language is too broad and will unfairly reclassify many core deposits as brokered, even when we, the insured depository institution, own and control the depositor relationship and the individual depositor, not the third party, has full authority over the funds.

Expanding on the important role third parties play within the industry, we also believe an express exclusion from the deposit broker definition should be created for third parties who help banks establish direct depositor relationships, that the insured depository institution owns and controls, provided the third party has no control over the depositor's accounts or deposits; is not involved in negotiating the account's terms; does not propose or manage deposit allocations among IDIs; and the third party's platform does not serve as the system of record for any depositor transactions or funds.

We also believe the FDIC should fully appreciate the digital realities of today's industry. Consumers carry full-service banks in their pockets (e.g. smart phones) and routinely evaluate potential providers of financial services via comparative websites and mobile applications. The FDIC should remove its "passive activities" and "limited compensation" restrictions on digital marketing channels (e.g., listing services). These platforms provide valuable information to help consumers make informed decisions about their financial products and futures. These sites enable institutions like mine to establish direct relationships, that we own and control, with individual depositors who are digitally oriented and are looking for a community-based alternative to the national banks. Online channels help us



compete with these larger competitors in an affordable fashion and we should not be restricted from utilizing these services to promote our institution and attract new customers and their associated deposits.

The proposed rulemaking also fails to recognize and exempt specific deposit accounts where it is clear that we, the insured depository institution, has established a primary financial institution relationship directly with the individual depositor. We strongly encourage the FDIC to exclude deposits from reward-based and transaction accounts from being classified as brokered, provided the account is fully insured; opened by an individual; is held in the name of that same individual; is used regularly by that same individual to execute payments, deposits and banking transactions and only that same individual is authorized to close the account or withdrawal any of its funds. These deposits are a stable source of low-cost funding that we can prudently reinvest in our communities.

To address its concerns regarding “intermediaries” or “middleware providers” the FDIC should also specifically identify when certain bank – fintech partnerships are overtly acting as deposit brokers. We believe the FDIC should add an additional prong to the deposit broker definition that captures any person who markets, distributes and provides access to or facilitates the provision of deposit services directly to end users where the person or a designated entity of the person, rather than the insured depository institution’s core processor, maintains and serves as the system of record for the depositor’s transactions and deposit funds.

Lastly, we believe the most effective path the FDIC could pursue is to collaborate with Congress and replace Section 29 of the FDI Act with a restriction on asset growth. This legislative solution has been endorsed by as suggested by former and current members of the FDIC leadership team and effectively and efficiently achieve the public policy objectives intended by the original statute. Language found within the Asset Growth Restriction Act (S.3962 in the 2020 116th Congress and (S. 5347 in the 2022 117th Congress) authored by Senator Jerry Moran of Kansas could serve as a model for the replacement of Section 29 of the FDI Act.

In summary, we urge the FDIC to revise the proposed rule so community banks can continue utilize traditional and digital marketing channels to establish singularly source, direct depositor relationships, that we own and control, with individuals who live, work, play and worship within the communities we serve. Revise the proposed rule to ensure we can continue to collaborate with third parties and industry expertise to help us attract, develop and retain our customers and their deposits. And we encourage the FDIC to formally acknowledge the stable nature of transaction and reward-based deposit accounts when those accounts are fully insured and clearly opened by and utilized by individual who established a primary financial institution relationship with an insured depository institution and who maintains full control over the accounts funds and uses the account on a regular basis to conduct their everyday banking activities. These are “core” deposits, and they advance the interest of the FDIC and provide use with a safe, sound and profitable foundation upon which we can operate our business and reinvest in our communities.

Thank you for enabling me to share my perspectives and recommendations. I hope the FDIC will take my suggestions to heart and incorporate them in the final rule.

With appreciation,

A black rectangular box redacting the signature of Charlie Cross.

Charlie Cross
Chief Executive Officer