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President and CEO
IBAT, Austin

January 10, 2025

James P. Sheesley
Assistant Executive Secretary
Attention: Comments—RIN 3064-AG07
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Re: Notice of Proposed Rulemaking; Recordkeeping for Custodial Account; 12 CFR Part 375; RIN 3064-AG07 (October 2, 2024)

Mr. Sheesley,

The following comments are provided on behalf of the Independent Bankers Association of Texas ("IBAT"), a trade association that represents the independent community banks of Texas, to the above-referenced Notice of Proposed Rulemaking from the Federal Deposit Insurance Corporation ("FDIC") entitled *Recordkeeping for Custodial Accounts* published October 2, 2024 in the Federal Register.

Summary: The Federal Deposit Insurance Corporation (FDIC) is proposing requirements that would strengthen FDIC-insured depository institutions' (IDI) recordkeeping for custodial deposit accounts with transactional features and preserve beneficial owners' and depositors' entitlement to the protections afforded by Federal deposit insurance. The proposal is intended to promote the FDIC's ability to promptly make deposit insurance determinations and, if necessary, pay deposit insurance claims "as soon as possible" in the event of the failure of an IDI holding custodial accounts with transactional features. The proposed requirements also are expected to result in depositor and consumer protection benefits, such as promoting timely access by consumers to their funds, even in the absence of the failure of an IDI. The requirements described in this document would only apply to IDIs offering custodial accounts with transactional features and that are not specifically exempted as provided in this document.

Texas community banks are not opposed to a reasonable risk-based approach to address perils for banks that hold "custodial deposit accounts with transactional features," which would be defined as a deposit account that meets three requirements: (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 account to a party other than the account holder or beneficial owner.

While the FDIC Board voted unanimously in favor of the proposal, Vice Chair Travis Hill issued a statement (excerpts below) that raised some concerns of the rule as proposed and highlighted potential areas where the rule could be revised when finalized, including a potential minimum applicability threshold, qualifications to annual certification sign-offs, and changes to the requirement for written policies and procedures.

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Still, I have a number of concerns about the proposal that I hope we will receive comments on and address in a final rule. First, I strongly believe we should consider a minimum threshold for when the requirements of the rule apply. Under the proposal, if a bank has one deposit account covered by the proposal, the bank would need to fully comply with all aspects of the rule. This seems excessive, given what could be a substantial compliance burden. The proposal estimates that between 600 and 1,100 banks could be scoped in, even though only a few dozen are heavily engaged in the type of activity at which the proposal is targeted. I encourage comments on what type of threshold we should consider – specifically, what metric and at what amount, and why. I also encourage comments on the exemptions – whether they are the correct exemptions, whether there are any additional exemptions that would be appropriate, and why.

Second, the proposal would require a certification of compliance signed by the CEO, COO, or highest ranking official. I think this requirement should either be deleted or qualified as was done in Part 370. The banking agencies already have authorities to take supervisory or enforcement action in the event of noncompliance, and the certification requirement could be interpreted to impose strict liability in the event any customer balance is found to be inaccurate at any point in time. It's hard not to be struck by the dichotomy of an agency that has senior leaders who have repeatedly expressed ignorance of longstanding workforce culture issues at the same time demanding omniscience by the heads of banks we regulate.

Third, I think we can do more to reduce the burden on institutions while still achieving the proposal's objectives. At a minimum, we should delete the requirement that banks establish and maintain written policies and procedures. While I expect banks will generally update their policies and procedures anyway, codifying it in the regulation encourages examiners to focus on a bank's documentation and policies and procedures, rather than the actual recordkeeping and reconciliation. Our Part 370 recordkeeping rule did not include a policies and procedures requirement, and the absence of such a requirement does not seem to have impacted compliance whatsoever. And as I have said in the past, and as a number of other commenters continue to point out, supervision should be more focused on core risks and less on process and documentation.

Finally, while I am voting in favor of the proposal, my view has been that we should not be issuing it now. Less than two months ago, the banking agencies released a request for information (RFI) soliciting feedback on partnerships between fintechs and banks, and asked several questions directly related to the issues in this proposal, including specific questions related to recordkeeping and reconciliations. The comment period was scheduled to end at the end of September, and was recently extended an additional month. I believe we should have waited to issue this proposal until first receiving comments from the RFI – both because the comments we receive might help inform our policymaking, and because preempting

the end of the comment period sends a message to the public that it is a waste of time to invest time and resources to provide feedback if the FDIC is going to move forward with its own predetermined policy changes anyway. But, I think we know why the current leadership does not believe there is time to go through the proper process.

We concur with Vice Chair Travis Hill – those issues should be addressed before any Final Rule is published. Texas community banks would like to see the following addressed in any Final Rule:

- Tailor the rule to target those banks that are heavily engaged in this type of activity and present the greatest risk. 'The FDIC does not have the data available to estimate the number of IDIs that currently have or would potentially have custodial deposit accounts subject to the rule.' It would seem prudent that the FDIC should develop that information and not simply base a rule for all banks based entirely on the Synapse collapse.
- Remove any certification requirement that establishes a strict liability on an individual or the bank.
- Remove the requirement to establish written policies and procedures.

We also agree that the NPR on restrictions on brokered deposits and the RFI on Deposits in general could have an impact on any Final Rule issued. That brokered deposit NPR and the RFI on deposits both potentially overlap this Proposed Rule, and it seems reasonable that the FDIC would issue a Final Rule on brokered deposits and what the purpose and findings of the RFI on deposits were before issuing a Final Rule on recordkeeping for custodial accounts.

We encourage the FDIC to do it right the first time. Thank you for your consideration of our comments.

Sincerely,

Christopher L. Williston, CAE
President and CEO
Independent Bankers Association of Texas