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November 18, 2024

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-AF-99
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Via Email: Comments@fdic.gov

Re: Notice of Proposed Rulemaking; Unsafe and Unsound Banking Practices:
Brokered Deposits Restrictions; RIN 3064-AF99 (August 23, 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 Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions published August 23, 2024 in the Federal Register.

Summary: The FDIC is inviting comment on proposed revisions to its regulations relating to the brokered deposits restrictions that apply to less than well-capitalized insured depository institutions. The proposed rule would revise the "deposit broker" definition and would amend the analysis of the "primary purpose" exception to the "deposit broker" definition. The proposed rule would also amend two of the designated business relationships under the primary purpose exception and make changes to the notice and application process for the primary purpose exception. In addition, the proposed rule would clarify when an insured depository institution can regain status as an "agent institution" under the limited exception for a capped amount of reciprocal deposits.

First, and foremost, this Proposed Rule should be withdrawn until there is a confirmed chairman of the FDIC and not simply an 'acting' chairman.

Second, there is no basis for essentially a 180-degree about-face from a rule issued a mere four years ago. A whipsaw approach to regulations simply adds to the burden on community banks. The proposed revisions appear to be based upon an overreaction to bank failures that seemingly had little to do with brokered deposits.

The historical concern that these are so-called “hot” deposits are “totally divorced” from many of their characteristics as FDIC Vice Chairman Travis Hill has stated in his opposition to this Proposed Rule. Before the agency seeks to effectively overturn the 2020 Final Rule, there should be consensus on the basic facts before any conclusion, such as reversal of the prior rule, is proposed.

Third, looking back at the Final Rule adopted in 2020, it clarified what activity qualified as "deposit brokering," which had previously required banks to decipher opinion letters which often resulted in confusing or contradictory conclusions.

The 2020 Final Rule loosened the definition of a deposit broker. In particular, the 2020 Final Rule crafted exceptions for intermediaries who have an exclusive deposit arrangement with one “insured depository institution” (“IDI”) and for businesses whose "primary purpose," with respect to a particular business line, is not the placement of funds with those IDIs. The 2020 Final Rule further defined the "primary purpose exception" to include businesses where 25% or less of its total assets under administration is placed with IDIs and where 100% of deposits placed with IDIs are placed into transactional accounts that do not pay any fees, interest or other remuneration to the depositor.

This proposed rulemaking seems to be a solution in search of a problem. Rather than provide a factual data driven bases for the rule, the FDIC is making broad claims about links between brokered deposits and the related safety and soundness of the banking system (Silicon Valley Bank, First Republic Bank and Synapse.) For example, the NPRM notes that in the first quarter in which the 2020 Final Rule was in effect, IDIs reported almost \$350 billion less in brokered deposits than in the previous quarter but provides no causal relationship between that fact and the general safety and soundness of the banking system. Correlation is not causation, and relying on “correlated” data to support a Proposed Rule of this magnitude is flawed logic.

Additionally, the NPRM fails to note that in the post-2020 data after adoption of the Final Rule, IDIs were awash with non-brokered deposits due to the COVID-19 pandemic-era stimulus and notes but does not address that the dollar volume of reported brokered deposits had returned to "normal" levels by 2023. Again, what is the problem?

Deposit Broker Definition

1. Does the FDIC's proposed amendment to the "deposit broker" definition align more closely with the statutory language and purpose of section 29 of the FDI Act? Why or why not?

The proposed amendment to the “deposit broker” definition is overly broad. The Proposed Rule would designate any third party who performs any services or receives any compensation to be a “deposit broker.” That will most certainly result in fewer third-party arrangements receiving a primary purpose exception from the FDIC and will most certainly be to the detriment of both community banks that operate in rural areas and the customers they serve.

By casting an overly broad net to define a “deposit broker,” thereby making more deposits a “brokered deposit,” the Proposed Rule may actually reduce the safety and soundness of community banks by limiting funding sources. That seemed to be the point that FDIC Vice Chairman Travis Hill was making in his comments on his opposition to the Proposed Rule.

As currently crafted, this definition of “deposit broker” could impact bank customer referral programs. Clearly the agency does not believe that the deposit accounts that result from the recommendation of friends and neighbors constitute a “brokered deposit.”

Using that same logic, affinity and reward programs administered by a third-party to help attract and retain deposit accounts could also constitute a “brokered deposit.”

Reciprocal Deposits

Because of the complexity in reading and understanding this rule, there has been much debate about exactly what the impact would be on the current status of reciprocal deposits, subject to the current Reciprocal Deposits Rule. The FDIC should address clearly and conspicuously that this Proposed Rule would not alter the current Reciprocal Deposits Rule.

Return to Agent Status

This Proposed Rule would make certain changes related to reciprocal deposits as it relates to a bank’s “agent status.” Under the FDIC's Reciprocal Deposits Rule, a bank that qualifies as an “agent institution” may exclude a capped amount of reciprocal deposits – deposits received through a deposit placement network between banks – from treatment as “brokered deposits.” Although the FDIC's current Reciprocal Deposits Rule sets forth qualifying provisions to obtain “agent institution status,” the rule does not address how a bank that is no longer an “agent institution” may subsequently requalify as such or may regain that status once lost. We agree that this Proposed Rule should be addressed, and be limited to, providing a reasonable pathway for a bank to regain “agent status” once it returns to adequate levels of capital.

Impact of Technology

Technology has fundamentally changed how deposits come into banks, which means under this Proposed Rule a significant number of deposit accounts may need to be reclassified as “brokered deposits.” We want to point out, again, that the historical concern that these new methods of obtaining and retaining deposits using financial technologies results in so-called “hot” deposits is “totally divorced” from many of their characteristics, according to FDIC Vice Chairman Travis Hill. The reasonable conclusion from the actual facts is that the newly proposed definition of “brokered deposits” is grossly overblown.

In closing, we want to reiterate that this Proposed Rule, if adopted, will be to the detriment of community banks and the customers they serve, it will not improve the safety and soundness of the current banking system as it relates to community banks and will once again make community banks ‘pay for the sins’ of the largest banks.

Thank you for your consideration of our comments.

Sincerely,

A solid black rectangular redaction box covering the signature area.

Christopher L. Williston, CAE
President and CEO