



To: Public Comment File – Federal Deposit Insurance Corporation RIN 3064-AF99

From: Steven Key, Senior Advisor to the Acting Comptroller

Date: November 18, 2024

Subject: Meeting with Securities Industry and Financial Markets Association

On November 18, 2024, the Acting Comptroller of the Currency, in his capacity as a Member of the Federal Deposit Insurance Corporation’s (FDIC) Board of Directors, and staff from the Office of the Comptroller of the Currency (OCC) met with representatives from the Securities Industry and Financial Markets Association (collectively, “the representatives”) to discuss the FDIC’s proposed rule entitled “Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions.” The representatives shared their views on the sufficiency of data supporting the proposed rule, the proposed rule’s changes to the “primary purpose” exception to the “deposit broker” definition, the proposed application process for the primary purpose exception, and the proposed change in measure from “assets under administration” to “assets under management.” The representatives also provided recommendations.

Participants

OCC	Michael Hsu Steven Key
Securities Industry and Financial Markets Association	Kenneth E. Bentsen, Jr. Carter K. McDowell Peter Ryan Joseph L. Seidel Guowei Zhang



FDIC Brokered Deposits Proposal

PRESENTED BY

SIFMA

November 2024

Agenda

- 1 Executive Summary
- 2 Background
- 3 Changes to the 25% Test
- 4 Changes to the PPE Notice / Application Process
- 5 Changes to the Deposit Broker Definition
- 6 Process Issues with the Proposal
- 7 Recommendations

1 Executive Summary

- The FDIC's 2021 Brokered Deposits Final Rule modernized brokered deposits restrictions for IDIs. The 2021 Final Rule recognizes the role of sweep deposit services provided by broker / dealers and investments created by the exceptions for such services, e.g., the Primary Purpose Exception ("PPE"). In Q2 2021, "IDIs reported almost \$350 billion fewer brokered deposits than in the previous quarter."
- The 2024 Brokered Deposits proposal (the "Proposal") eliminates or narrows the exceptions provided by the 2021 Final Rule. The proposed changes could result in a significant fraction of the \$350 billion deposits being reclassified as brokered and impacts IDIs' capital and liquidity requirements as well.
- The Proposal provides no new data or studies supporting the proposed changes. Even the FDIC's own studies of recent bank failures do not indicate brokered deposits caused any problems at these banks. The Proposal provides no systemic cost and benefit analysis evaluating the proposal's impacts on consumers or IDIs.
- Due to both process and substantive issues with the Proposal, we recommend the FDIC withdraw the Proposal. If the Proposal is not withdrawn, we recommend the FDIC make substantial revisions to the Proposal to mitigate its substantial negative impacts for consumers and IDIs.

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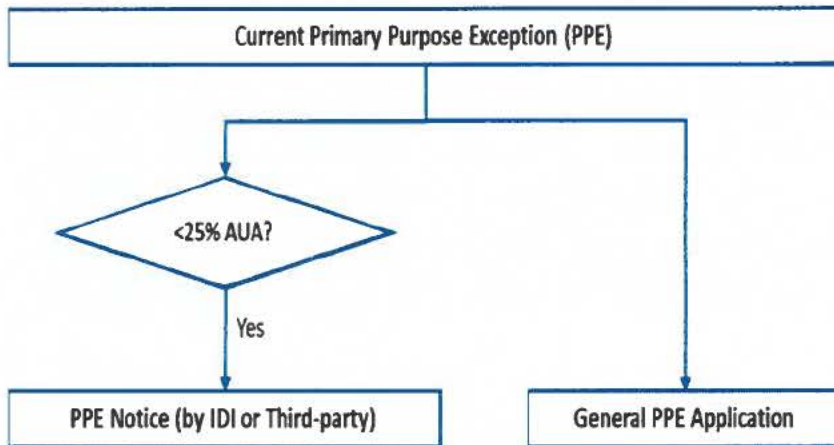
Background

- Broker-dealers and asset managers often assist their clients in allocating cash to deposit accounts at one or more IDIs, including via brokerage accounts that automatically transfer, or “sweep,” customers’ uninvested cash balances into deposit accounts at IDIs.
- These sweep accounts offer a valuable funding source for IDIs and, despite short-term movement at the individual account level, sweep and wrap programs tend to result in stable aggregate amounts of deposits at IDIs.
- The 2021 Final Rule modernized the existing brokered deposits restrictions and created targeted exceptions from the definition of deposit broker for broker-dealers that provide sweep deposit services.
- The modernization was based, in part, on a rigorous study of brokered deposit risks conducted by the FDIC in 2011 and updated in 2019. The FDIC also issued an ANPR in 2019 providing an additional round of engagement with the public prior to the NPR for the 2021 Final Rule.
- We do not believe that the proposed changes to the 2021 Final Rule contained in the Proposal are justified, for both substantive and process reasons.

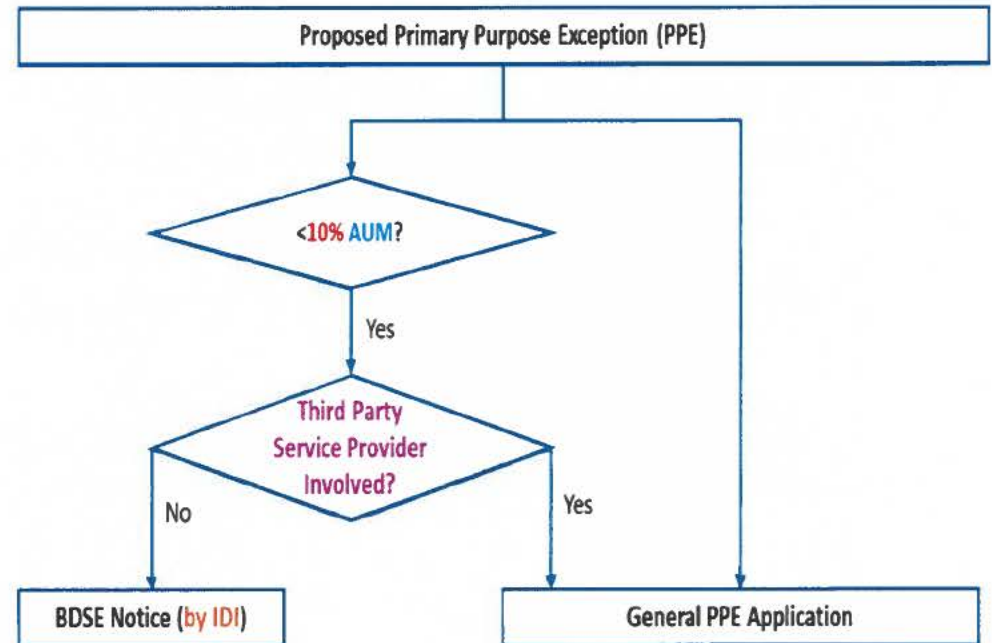
3 Changes to the 25% Test and PPE

Section 29 of the Federal Deposit Insurance Act provides that “an agent or nominee whose *primary purpose* is not the placement of funds with depository institutions” is not a deposit broker. To effectuate this statute, the FDIC brokered deposits rule provide Primary Purpose Exceptions (PPE).

PPE under the current rule:



PPE under the proposed rule:



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Changes to the 25% Test

- A 25 percent assets under administration (“AUA”) threshold for determining primary purpose is more consistent with prior interpretations of the brokered deposit statute, market behavior and safety and soundness.
- The proposed assets under management (“AUM”) measure for calculating deposit placement ratios is needlessly limiting, and the existing assets under administration measure more appropriately captures relevant activity.
 - AUM is similar to Form ADV’s definition of “regulatory assets under management” for investment advisers. An adviser **is required** to calculate regulatory AUM when it has either (a) discretionary authority over an account, or (b) an ongoing responsibility to provide investment recommendations to a client and effect the recommendations approved by the client. Neither of these activities are within the remit of a broker-dealer.
 - AUM could potentially exclude assets held in a brokerage, custodial or fiduciary capacity – narrowing the scope of **the** BDSE.
 - Most large providers of **wealth management** services in the U.S. provide both securities brokerage and investment advisory services, usually through the same agents and to the same customers. Investment advisory accounts are considered managed but not brokerage accounts. Bank sweep arrangements are used for all accounts maintained by the firm for customers. AUM would create an artificial distinction between deposits originating in different accounts.
- The elimination of the 25 percent test would result in the classification of many non-sweep relationships as “brokered” even though they do not pose the same types of risks as deposits that are currently defined as brokered deposits.

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Changes to PPE Notice / Application Processes

- The proposed notice and application requirements would create significant burdens for IDIs, broker-dealers and the FDIC.
- Limiting the PPE notice procedure to relationships not involving third parties is counterproductive and unnecessary.
- The lack of a transition period following the rescission of existing PPE exceptions would lead to significant disruption, including inaccurate fluctuations in call report data (a problem the Proposal intends to address not exacerbate).

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Changes to the Deposit Broker Definition

- The revision of the “matchmaking” sub-prong of the deposit broker definition could capture many low-risk activities and does not clearly address the operational issues that motivate the change.
- The elimination of the carve out for affiliate matchmaking is not risk-based and inconsistent with past practice.
- The new independent sub-prong related to fees in the definition of deposit broker is overinclusive and inconsistent with past practice.

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Process Issues with the Proposal

- **The Proposal lacks evidence justifying its proposed changes**, including any general statistical evidence that the types of deposits it would reclassify as brokered present heightened risks.
 - The Proposal asserts that the “FDIC’s statistical analyses and other studies have found that an IDI’s use of brokered deposits in general is correlated with a higher probability of failure and higher losses to the DIF upon failure.”
 - These are the same studies that supported the 2021 Final Rule. The FDIC acknowledged that these studies did not sufficiently distinguish between deposit types and that sweep deposit relationships may be less risky.
 - The FDIC’s 2019 study concludes that “brokered deposits can be substituted for other bank liabilities without any statistically measurable effect on a bank’s failure probability.”
- **Its citations to certain recent events that are largely unconnected to its proposed changes**
 - E.g., the failure of First Republic Bank, which saw a decline in uninsured affiliated sweep deposits in the quarter leading up to its failure. But it does not assess whether this example is indicative of broader trends or how the specific proposed changes would have led to different outcomes.
 - E.g., the failure of crypto company, Voyager, which was not a deposit broker due to its exclusive relationship with a single IDI. The rule intends to restrict IDIs from accepting brokered deposits, while the Voyager case exemplifies that the funds placed at Voyager were unsafely kept because of customer confusion about FDIC insurance coverage. Note that Voyager’s former IDI partner continues to operate despite of any adverse impacts of the Voyager failure.

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Process Issues with the Proposal

- **The Proposal provides no comprehensive cost and benefit analysis:**
 - The preamble states that “[t]he proposed rule *may* affect consumers that utilize brokered deposits, deposit placement services or arrangements.” And “[t]he FDIC does not have the information necessary to estimate such changes, and therefore, discusses these effects qualitatively.”

- **The proposed changes to the PPE go beyond the statutory authority granted to the FDIC.**
 - Section 29 of FDI Act provides that “an agent or nominee whose *primary purpose* is not the placement of funds with depository institutions” is not a deposit broker.
 - The Proposal’s PPE will only apply “when an agent or nominee whose *primary purpose* in placing customer deposits at IDIs is for a substantial purpose other than to provide a deposit-placement service or the FDIC insurance.”
 - The additional qualifier “substantial purpose” creates an additional hurdle to qualifying for the PPE.

7 Recommendations

- We recommend withdrawing the Proposal due to the lack of evidence justifying the proposed revisions and failure to consider relevant factors.
- But if the Proposal is not withdrawn, the final rule should:
 - Retain the existing 25 percent test using the AUA rather than the AUM metric, which would address a number of issues with the Proposal.
 - Retain the current PPE notice and application processes, as the proposed notice and application process would be unworkable.
 - Retain the current deposit broker definition.
 - Provide a transition period of at least two years for any changes made to the existing exceptions.

