



Money Service Business Association
29 Valley View Terrace
Montvale, NJ 07645-1022

Phone: 201-781-2590
Email: info@msbassociation.org

January 14, 2025

Federal Deposit Insurance Corporation
Mr. James P. Sheesley, Assistant Executive Secretary
Attention: Comments – RIN 3064 – AGO7
550 17th Street NW
Washington, DC 20429

Re: Recordkeeping for Custodial Accounts – Proposed Rulemaking

Dear Mr. Sheesley,

The Money Services Business Association (“MSBA”) greatly appreciates the opportunity to comment to the Federal Deposit Insurance Corporation (“FDIC”) on the proposed rulemaking regarding recordkeeping requirements for certain custodial accounts with transactional features (the “Proposed Rulemaking”). As discussed below, MSBA believes that the Proposed Rulemaking can be beneficial for interested parties, including banks, fintechs, money services businesses and beneficial owners (end users).

Established in 2015, the MSBA is the largest trade association focused on the non-bank money services industry. Specifically, we represent licensed money transmitters and their agents and authorized delegates, payment card issuers, and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchanges and administrators, money orders, eWallet providers and other similar money services businesses (“MSBs”) and non-MSB payments businesses that are engaged in payments. The MSBA encourages the continued innovation and development in the payments industry while promoting education and communication with federal and state regulators.¹

Our membership has a direct interest in the Proposed Rulemaking because it impacts their business model operational decisions. Oftentimes, business models involving insured depository institutions (each, an “IDI”) where custodial deposit accounts with transactional features are operated by financial service providers (“FI”). Clarity on the obligations of these entities related to recordkeeping, compliance and liability of funds held for beneficial owners, will assist the MSBA membership in determining whether and how they will participate in these models, and the risk factors for the industry.

The FDIC’s definition of a custodial deposit account with transactional features centers on three pillars: (i) that the account is established for the benefit of a beneficial owner; (ii) the account holder has comingled the funds of multiple beneficial owners; and (iii) a beneficial owner of the funds can authorize a transfer of the funds through the account holder to another beneficial owner or to a third

¹ For additional information, please see: www.msbassociation.org.



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party.

We believe there should be a clear written contract between the parties involved naming and describing who exactly is the IDI, who is the beneficial owner, and if applicable, who is a middleman/FI (such as a fintech) responsible for receiving and transmitting instructions between the IDI and the beneficial owner. This contract, in addition to clearly delineating all parties involved and their responsibilities, shall also clarify that it is the IDI who is solely and exclusively responsible to the beneficial owner for the safety and soundness of the deposits.

The Proposed Rulemaking allows for third parties to undertake the proposed recordkeeping requirements. We support this proposition and believe it is necessary given technological differences between the systems of IDIs, service providers, beneficial owners and third-party recipients of funds. The practice of allowing for third parties to undertake recordkeeping requirements is common and usual in other financial business streams, such as in the card issuing industry. In card issuing, a processor, separate from the bank and separate from the FI, maintains a ledger of account balances that is authoritative.

The Proposed Rulemaking has as its main objective to strengthen recordkeeping so that in the event of an IDI failure or similar event, the rightful beneficial owners can be paid promptly by the FDIC under the protections offered by the FDIC's governing laws. What the Proposed Rulemaking does not appear to discuss is whether the deposits belonging to the beneficial owners are protected by the creditors of the FI that is involved in the transactions in the event of the insolvency of such an FI. We believe it is essential that the FDIC make such a determination to ensure optimal protection of beneficial owner/end user funds held in custodial deposit accounts with transactional rights.

Finally, the Proposed Rulemaking should allow for a distinction to be made regarding a custodial account with transactional features used by a licensed money transmitter, where such funds are accounted for on the balance sheet of the licensed money transmitter, versus the balance sheet of an unlicensed FI. Unlicensed FIs would prefer to not have these funds on their balance sheets as it is illegal for an unlicensed FI to hold funds on behalf of a beneficial owner. In scenarios with no licensed entity involved, clarity on the rules of who is holding the funds for beneficial owners is essential.

For the above reasons, we would appreciate the opportunity to meet with you to offer our comments on the Proposed Rulemaking in further detail. Please advise the undersigned as to the earliest convenient time to schedule a meeting with some of our members to provide additional information on the above and to answer questions you may have.



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We are grateful for the opportunity to share our views with the FDIC on the Proposed Rulemaking. Thank you in advance for any consideration given to this comment letter.

Sincerely,



Kathy Tomasofsky,
Executive Director
Money Services Business Association

CC: MSBA Board of Directors