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Financial Data and Technology Association

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James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Submitted via electronic mail to Comments@fdic.gov.

Re: Notice of Proposed Rulemaking on Recordkeeping for Custodial Accounts – Docket No. RIN 3064–AG07.

The Financial Data and Technology Association of North America ("FDATA North America") appreciates the opportunity to provide comments in response to the Federal Deposit Insurance Corporation's ("FDIC") Notice of Proposed Rulemaking ("NPRM") on recordkeeping for custodial accounts. FDATA North America agrees with the core tenet underlying the proposed rule, which would ensure that financial institutions maintain customer information and balance records pertaining to the transaction accounts end users hold with them, either directly or through an arrangement with a third party. We view the NPRM's distinction between transaction accounts, through which a customer may engage in a range of payments and money movement activities, and non-transaction accounts, which facilitate crucial financial operations and do not convey direct customer access, as a critical component of the proposed rule. However, we urge the FDIC to broaden both its example set denoting what constitutes a "custodial deposit accounts with transactional features" and its proposed exemption in the NPRM to explicitly state that non-transactional settlement accounts used to facilitate merchant acquiring servicers on behalf of a business, such as payment processing services, and other essential financial operations are not "custodial deposit accounts with transactional features" under a potential final rule. This targeted approach will, if finalized, safeguard customers' funds while preserving a longstanding, highly regulated subset of the market that ensures merchants have the ability to accept digital payments both in-store and in e-commerce. Given this subset of custodial accounts do not convey broad transactional rights to the "beneficial owner" (as defined in the NRPM) these accounts should not fall within the recordkeeping requirements of this consumer focused rulemaking.

As referenced in our recent extension request submitted jointly with several other trade associations concerning the NPRM on custodial account recordkeeping, we urge the FDIC and other prudential regulators to carefully consider the interplay among the various, recent regulatory actions pertaining to bank-fintech arrangements.[1] These actions encompass several significant initiatives, including the NPRM on recordkeeping for custodial accounts—explored further below—the request for information on bank-fintech arrangements released by the FDIC and its peer prudential regulators, the FDIC's NPRM on brokered deposits, and the FDIC's December 2023 final rule on Part 370 that, in part, included changes to representation of deposit insurance.

[1] *See* https://www.fdic.gov/federal-register-publications/bank-policy-institute-and-7-other-organizations-rin-3064-ag07.

In our response to the prudential regulators' bank-fintech arrangements RFI, we also emphasized the importance of allowing time for the CFPB's Personal Financial Data Rights Rulemaking (Section 1033 rule) to come into effect and for its market implications to be assessed before introducing additional regulatory actions.[2] With the Section 1033 rule now finalized, and with its implementation beginning on April 1, 2026, this consideration becomes even more critical. Given the sheer number of regulatory developments in 2024, it is essential to assess how these measures may interact with one another, and what impacts the implementation of each of these actions may have on financial institutions, fintechs, and customer access to critical financial services. We therefore encourage the prudential regulators to carefully and thoughtfully monitor the effects of the various actions that have already been finalized and are currently under consideration to ensure these initiatives complement each other to avoid creating barriers to customers' ability to access affordable financial services products, services, or tools.

About FDATA North America

FDATA North America and our members have for years been strong advocates for providing consumers, public benefits recipients, small business owners, investors, and other financial services marketplace end users with legally binding financial data rights. As we have seen in other jurisdictions around the world that have granted legal rights and protections to their citizens to access and share access to elements of their financial data, a customer-centric ecosystem in which the end user is in full control of their data leads to a more innovative, more competitive, and more transparent financial marketplace.

Our members' products, services, and tools underscore this reality. FDATA North America was founded in early 2018 by several financial technology firms whose technology-based products and services allow consumers and small and medium enterprises ("SMEs") to improve their financial wellbeing. As the leading trade association advocating for customer-permissioned access to financial data, FDATA North America's members include firms with a variety of different business models. Collectively, our members provide more than 100 million American consumers and SMEs access to vital financial services and products, either on their own or through partnerships with supervised financial institutions. Regardless of their business model, each FDATA North America member's product or service shares one fundamental and foundational requisite: the ability of a customer to actively permission access to some component of their own financial data that is held by financial services providers.

Support for a Broadened Exemption for Non-Transaction Settlement Accounts

FDATA North America supports the FDIC's requirement that insured depository institutions maintain records of individual customers' account balances and transaction history for transaction accounts—accounts where customers have underlying control over to the account to authorize or direct a transfer to a third party.

[2] *See* https://mcusercontent.com/d62b8c1570b4b45285fbb8f4b/files/3a37caf3-1c06-4af4-89d0-7c769b9fff17/Final_FDATA_NA_Bank_Fintech_Partnerships_RFI_Comment_Letter.pdf.

Although, we emphasize that the proposed example provided under the NPRM for non-transactional accounts, which are often relied upon to facilitate merchant acquiring services that enable digital commerce in the United States, is not sufficient to capture the robust architecture that has been developed over the last 30-years to ensure consumers are able to pay for goods and services with digital payments and to ensure all parties involved in the transaction are appropriately paid and compensated. These accounts are fundamentally distinct from transactional accounts, as they serve only as temporary conduits to facilitate funds transfer from one party to another. Funds in these accounts are effectively always in transit to a final recipient, and the "beneficial owner" of the account has no reasonable expectation of engaging with the funds other than to withdraw them. Applying customer-level recordkeeping requirements to these intermediary accounts would thus provide no additional benefit to the beneficial owner of the account.

From an operational perspective, broadening the example of a non-transactional account to include merchant acquiring accounts and/or to include merchant acquiring servicing accounts as a prescribed exemption is critical for the preservation of the well-established and distinct operations of digital payment acceptance. Funds generally move quickly through these accounts to enable retail, loan servicing, and other important payment facilitation use cases. Conveyance of the recordkeeping requirements proposed under the NPRM to these accounts would add unnecessary administrative burdens that would risk disrupting or delaying this process and could lead to increased transaction costs. Moreover, because these accounts only hold funds briefly before disbursement to the merchant beneficial owner of the account, requiring detailed customer-specific records for these accounts would not improve customer protection or account transparency. FDATA North America urges the FDIC to reconsider the language used throughout the NPRM to define "custodial deposit accounts with transactional features" and take meaningful action, should this rule be finalized, to clarify that custodial accounts established to facilitate merchant acquiring services are clearly not captured by the underlying rule.

Conclusion

FDATA North America strongly recommends that the FDIC clarify the applicability of the final rule to custodial accounts that facilitate merchant acquiring and similar digital payment related activities. This approach strikes a necessary balance between safeguarding customer's funds and maintaining operational efficiency in the banking and fintech sectors, enabling a practical regulatory framework that accommodates innovation while prioritizing consumer security.

Additionally, as regulatory actions on brokered deposits, bank-fintech partnerships, and custodial account recordkeeping evolve, and the FDIC's final rules related to the representation of deposit insurance come into full compliance, we urge the FDIC and other prudential regulators to adopt a coordinated approach. A cohesive regulatory framework, aligned with the final Section 1033 rule, will provide clear, consistent guidance for stakeholders, end user protections, and will ensure that these actions complement each other effectively. FDATA North America remains committed to supporting policies that foster responsible growth and consumer empowerment within the financial ecosystem, and we look forward to continued collaboration with the FDIC and other regulators to shape a secure, innovative, and consumer-centric financial landscape.

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Sincerely,

[redacted]

Steven Boms
Executive Director
FDATA North America