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January 16, 2025

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

Re: Fiserv Comment on RIN 3064-AG07, Proposed Rulemaking on Recordkeeping for Custodial Accounts

To Whom It May Concern:

Fiserv Inc. (NYSE:FI) appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking (NPRM) related to recordkeeping requirements for certain custodial accounts. Based on Fiserv's experience and offerings in the financial services market, we aim to provide constructive commentary on areas of the NPRM that we believe benefit from further clarification and refinement.

About Fiserv

Fiserv Inc. is a global leader in payments and financial technology, helping clients achieve best-in-class results through a commitment to innovation. We serve clients around the globe, including merchants, banks, credit unions, other financial institutions, and corporate clients in areas including account processing and digital banking solutions; card issuer processing and network services; payments; e-commerce; merchant acquiring and processing; and the Clover cloud-based point-of-sale ("POS") and business management platform. Some of these services rely on custodial-account based activities, and it is with that expertise in mind that Fiserv responds to the FDIC's NPRM.

Fiserv Perspective

The rapid digitization of the economy has created a market environment that is providing consumers with more access points, than ever before, to financial products and services. The rise in popularity of digitally native financial products and services, including digital wallets, embedded finance payment tools, and nonbank Regulation E accounts is facilitating consumer access and use of financial intermediaries in new, innovative models.

As the FDIC's own 2023 National Survey of Unbanked and Underbanked Households stated, nearly half of all US households used a nonbank digital wallet or prepaid card product in 2023. Further, the survey found that unbanked and underbanked communities rely on these digital wallet and prepaid products to pay bills, conduct ecommerce transactions, and save money. Often nonbank digital wallet providers or prepaid debit card providers rely on custodial deposit accounts to hold the consumer funds associated with these solutions. Custodial deposit accounts have emerged as a secure, reliable product to support the clearing and settlement of payments, as has the innovation that is taking place within digital wallets and other nonbank financial products and services.

Fiserv supports the FDIC's underlying intent of this rulemaking, which is to ensure that insured depository institutions (IDI) have clear, continuous, and real-time visibility into the underlying owner of applicable transactional subaccounts within custodial accounts and the assets held on behalf of each subaccount owner. It is clear that the FDIC has attempted to find a balanced approach to ensure proper visibility into the proposed covered custodial deposit accounts. However, based on Fiserv's unique role within the financial services industry as both an intermediary and direct participant in custodial account services, we believe there are several areas of the NPRM that the FDIC should further review to mitigate unintended consequences or regulatory confusion.

Fiserv's recommendations cover four topics: 1) exempt custodial accounts established to support payment processing and payment facilitation; 2) clarify the proposed exemption for government depositors; 3) align reconciliation frequency with industry standards; and 4) clarify when an IDI or third party is providing recordkeeping for covered custodial accounts.

1. Exemption of Custodial Accounts Established to Support Merchant Services

Fiserv offers a range of products and services that enable merchants to accept digital payments, both in-store and online through e-commerce. Payment acceptance relies on a well-established chain of entities comprised of merchants, merchant processors, card networks, and IDIs to pass transaction information that allows consumers to make electronic payment purchases anywhere at any time. Merchant processors, such as Fiserv, often use custodial deposit accounts to temporarily hold funds on behalf of merchants while the complex payment clearing and settlement processes take place. These custodial accounts have long been an integral part of the payment processing ecosystem. Further, such accounts generally do not provide merchant beneficial owners with any material control over the ability to execute a third-party payment, so they are consistent with the intent of the FDIC's exemption of account that are not "custodial deposit accounts with transactional features."

However, these merchant services custodial accounts established to facilitate the settlement of network transactions do have functionalities and requirements beyond the NPRM's proposed example of a non-transactional custodial account. Merchant services accounts, at times, are required to provide funds to more than just the "beneficial owner" or "account holder," as the NPRM's example of a non-covered product currently states. These accounts are used to pay multiple parties within the payment processing chain, including the issuing bank, the network the transaction moved across, or the underlying financial institution that supported the merchant acceptance. The movement of funds to these entities is not under the control or direction of the "beneficial owner," but rather is contingent on the underlying agreement the "beneficial owner" (in this case a merchant) has with its merchant acquirer to facilitate the merchant's acceptance and completion of digital payments.

For debit or credit transactions that occur with cards branded by payment card networks such as Visa or Mastercard, the networks impose rules on the merchants that accept the cards, merchant processors that facilitate acceptance of the cards for the merchants, and financial institutions that issue the cards used to make the purchases. As such, the networks generally exert control and oversight of funds settlement process via their network rules. As a result, Fiserv believes the FDIC should provide further clarification that merchant services accounts are not covered custodial accounts under the NPRM. This can either be accomplished by 1) expanding the example of a "custodial deposit account" that does not have "transactional features" to include accounts established and maintained to support payment processing activities for merchants, or 2) the FDIC could add to the current list of exempted custodial deposit accounts a specific exemption for accounts established and maintained to support merchant acceptance of electronic payment card transactions.

2. Technical Correction to Government Depositor Exemption

The NPRM currently exempts custodial accounts established *by* [emphasis added] a government depositor. The FDIC explains within the NPRM's discussion section that there are a range of circumstances that government entities would establish custodial accounts, including for the provisioning of government benefits. Further, the FDIC states statutory and regulatory oversight for the administration of these accounts provide necessary safeguards and controls that justify the exemption. Fiserv supports the FDIC's exemption of accounts established to administer government benefits for those reasons. With that said, Fiserv believes the current language limiting the exemption only to accounts established by a government entity itself is too narrow.

Government entities generally rely on third parties to disburse benefits, and practices among those vendors vary considerably across federal and state government agencies. To ensure that the underlying intent of the FDIC's proposed exemption is met and to avoid unnecessary and duplicative safeguarding and control requirements, Fiserv recommends the FDIC update the language used in this exemption to reflect this reality.

Specifically, Fiserv believes the exemption should read: "Accounts established on behalf of a Government depositor." In transitioning the verbiage from "by" to "on behalf of," the exemption will appropriately capture the various contracting practices and procedures used by government entities or their contracted vendors to disburse and manage government benefits. Even with this change, Fiserv believes existing statutory and regulatory requirements around the administration of these account types would provide ample recordkeeping and control over the underlying custodial accounts.

3. Align Reconciliation Frequency with Industry Standards

A requirement of the NPRM's recordkeeping is "reconciliation against the beneficial ownership records no less frequently than as of the close of business daily." Fiserv is supportive of regular, timely reconciliation for subaccounts of "custodial accounts with transactional features" to ensure IDIs, third parties, and consumers have the most relevant information available about their assets under management. However, Fiserv believes this language places an unnecessary burden on IDIs and third parties in the custodial account space.

Fiserv believes the FDIC should update the timing of this requirement to further align with industry standards and require that reconciliation take place "daily" instead of "close of business daily." This will ensure that providers have time to incorporate late night batch payment data into the reconciliation data that is shared with the IDI or third party. Without this change, providers that only send reconciliation files daily will not be able to incorporate many batched payment transactions into the reconciliation file and run the risk of delaying, by nearly a day, the timeliest information about a transactional account. This is not in the best interest of the IDI's recordkeeping or of the end consumer.

While the industry is moving to faster, and in some circumstances truly "real time" payments, there are still payment processes that do not transmit this fast. By updating the requirement to "daily," covered entities will still be required to provide timely reconciliation information but will also have the necessary flexibility to account for situations, such as merchant batched filing, when transactions do not transmit during normal business hours.

4. Internal Controls vs. Records Maintained Through a Third Party

The FDIC establishes two processes by which covered custodial accounts' records can be maintained either directly by the IDI or through a third party. While Fiserv supports the flexibility intended behind the two-model approach, the NPRM lacks the necessary clarification to establish what constitutes "internal controls" vs. "records through a third party." The NPRM states that records are maintained by a third party when "an IDI that arranges for a third party, including but not limited to any vendor, software provider, service provider, or similar entity in the business of maintaining or processing deposit transaction data, to assist…" This expansive definition set seems to position the NPRM to state that IDIs will only be constituted as providing "internal controls" when the IDI builds and maintains its own account processing (otherwise known as a core ledger) system.

For the vast majority of IDIs in the United States, the IDI employs a service provider to establish and maintain an account processing system to manage the IDI's internal ledger. These account processing systems, while established or maintained by a service provider, are an extension of the IDI and the primary recordkeeping platform for all depository activities taking place at the IDI. Fiserv believes that when an IDI maintains custodial deposit account recordkeeping on its account processing system, the IDI itself is maintaining the record.

As a result, Fiserv believes the FDIC needs to reexamine the definition sets around what constitutes custodial account recordkeeping under "internal control" and "through a third party." Fiserv recommends that the language be updated to definitively state that an IDI using a service provider that establishes and maintains the IDI's account processing system to maintain records regarding covered custodial accounts would be deemed to be maintaining those records under "internal control."

Similarly, the definition of when an IDI employs a true third party to maintain the records of covered custodial accounts should be updated to clearly exempt service providers enabling account processing systems for the IDI. Alternatively, the definition of a third party relationship could be updated to clarify that a third party relationship to maintain custodial accounts is established when an IDI specifically contracts with a third party – including a vendor, software provider, service provider, or similar entity – for the administration of this recordkeeping requirement but preserving the exemption for service providers that enable account processing systems for the IDI.

Incorporating this change in any future issuance of this rulemaking will ensure IDIs have appropriate clarification on how the covered custodial account records are being maintained without materially impacting a longstanding, and well-regulated relationship between IDIs and account processing providers.

Conclusion
Once again, Fiserv appreciates the opportunity to provide comments on the NPRM. Fiserv supports the underlying intent of this rulemaking to ensure IDIs, third parties, and consumers have timely, accurate accounting of their assets maintained under certain custodial deposit accounts. The comments provided within aim at providing substantive feedback from an industry participant with expertise in offering and administering a host of accounting and ledgering processes for both IDIs and third parties.

Fiserv believes the areas highlighted for further consideration will strengthen the NPRM while preserving the intent and impact of the FDIC's efforts. As the FDIC reviews the public comments filed and considers the next steps for this rulemaking, Fiserv welcomes the opportunity to discuss the comments included or other questions related to custodial accounts with the FDIC, should there be opportunity for additional dialogue.

Sincerely,

[redacted]

Patrick Cuff
Vice President, Government Relations
Fiserv