



November 19, 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

**Re: Notice of Proposed Rulemaking – Unsafe and Unsound Banking Practices:
Brokered Deposit Restrictions – RIN 3064-AF99**

Dear Mr. Sheesley:

The Community Bankers Association of Illinois (“CBAI”) which proudly represents 255 Illinois community banks, appreciates this opportunity to provide our observations and recommendations regarding the Federal Deposit Insurance Corporation’s (“FDIC” or “Agency”) Notice of Proposed Rulemaking (“Proposed Rule” or “Proposal”) concerning Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions. In this Proposed Rule, the FDIC is “inviting comment on proposed revisions to its regulations relating to the brokered deposit restrictions that apply to less than well-capitalized insured depository institutions.”

CBAI shares the goal of the FDIC to prevent the misuse of brokered deposits, but this comment letter will explain how CBAI differs with the FDIC about how to address this issue, without

CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high quality products and services. CBAI’s 255 members hold more than \$80 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit www.cbai.com.

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harming community banks. It is important to note at the outset, since the 2020 revisions to the brokered deposit rules were implemented (“2020 Rule”), the feedback we have received from our members has been favorable with no reports about it adversely impacted their ability to successfully manage their bank in a safe and sound manner and with minimal risk to the Deposit Insurance Fund (“DIF”). **CBAI urges the FDIC to withdraw the Proposed Rule, and if absolutely necessary, repropose a rule that reflects the legitimate concerns and reasonable requests of community banks.**

Happily, since the troubled times after the mortgage meltdown and the Great Financial Crisis, which tragically resulted in the failure of about 550 community banks while the too-big-to-fail banks were permitted to survive, there have been few troubled banks (e.g., there were approximately 50 – 60 banks on the FDIC’s Troubled Bank list in early 2024). Nonetheless, a brokered deposit rule that is workable, flexible, and not overly restrictive is critical for the banks that are now currently considered “troubled” and also looking forward to a future period of financial stress when more community banks may be subject to and suffer under an inappropriate brokered deposit rule.

The FDIC was acting appropriately when it changed the brokered deposit rules in 2020 and narrowed the types of deposit-related activities that are considered brokered. The 2020 Rule was implemented after a rigorous rulemaking process beginning with a notice of proposed rulemaking in 2018. In the following year (2019), the Agency proposed a rule, and in the next year (2020), the FDIC published its final rule. With regard to the current Proposed Rule, the FDIC has not engaged in a rigorous rulemaking process. This shortcoming represents a significant problem and a likely violation of the Administrative Procedures Act. There should always be a thorough and informed rulemaking process. **After the current Proposal is withdrawn, and if the FDIC should choose to repropose a revised brokered deposit rule, CBAI encourages the Agency to do so as part of a rigorous and informed rulemaking process.**

The 2020 Rule expanded the scope of the primary purpose exception to the brokered deposit definition and excluded such factors as the payment of fees. These changes were advocated for by CBAI, along with our member community banks that were tragically harmed by the unreasonable restrictions prior to the 2020 Rule. Together we advocated for and applauded these beneficial changes.

The FDIC should not have been surprised or alarmed that after the implementation of the 2020

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Rule a significant amount (estimated to be about 30%) of heretofore brokered deposits were no longer considered brokered deposits. Logically, this should have been the case because that was precisely the intention of the 2020 Rule which justifiably relaxed the previous unnecessary restrictions.

What is apparent by this rulemaking, is that some within the FDIC still have serious reservations about brokered deposits and were not entirely *on board* with the 2020 Rule, notably Chairman Gruenberg who was the lone dissenting vote against the 2020 Rule. Nonetheless, the FDIC board approved and implemented the current rule, and it has operated quite successfully, as planned and as expected. Further, we believe there are no links between the perceived flaws in the 2020 Rule and actual unsafe and unsound banking practices or actual losses to the DIF.

At least at the community bank level, CBAI is certainly not seeing these links, so there is no reason to make the proposed revisions to the 2020 Rule to reign in any abuse or create undo risk to the DIF applicable to community banks. It is the regulators' responsibility to tier or tailor regulations to the risks posed by the institutions they regulate. Therefore, if the FDIC insists on implementing the Proposed Rule, **CBAI recommends that it includes an exemption for community banks with a minimum of \$10 billion in assets.**

In the Proposal, the FDIC stated that there are challenges with entities understanding certain provisions in the 2020 Rule which are causing brokered deposits to not be reported correctly. The obvious solution to this problem is to improve the comprehension and thus the accurate reporting of brokered deposits. The FDIC must offer sufficient resources and guidance to explain the 2020 Rule so that entities can understand it and comply with the requirements. Once that has been accomplished, the regulators will be able to properly evaluate an institution's and the industry's reliance on brokered deposits and the risk to the DIF and only then then proceed with any necessary rulemaking.

The FDIC has had since 2020 to address this problem and must certainly have examined every bank it regulates since then to identify any reporting problems and provide proper guidance. The question that needs to be addressed is – Why has this comprehension and reporting problem not been solved? **To the extent this task has not been accomplished, CBAI urges the FDIC to do so immediately and consider that that to be the best solution to the problem rather than promulgating new brokered deposit rules.**

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The FDIC raised the failures at Silicon Valley Bank, Signature Bank of New York and First Republic Bank as justifications for this rulemaking. The unique challenges presented by these banks, while significant, were luckily isolated incidents which were not caused by brokered deposits. The problems that led to these failures were caused by several different factors including the failure of the banking regulators (including the FDIC) to identify existential threats at these troubled banks and ensure that bank management had taken the appropriate steps to ensure these institutions' survival.

The problems experienced at these large and atypical banks are not the problems experienced by non-systemically important community banks. The smaller banks' business model is uncomplicated and easy to understand. Community bank performance is likely to reflect the economic and financial conditions and policy positions they operate in, and unfortunately, they often times suffer from problems which are not of their own creation (i.e., the mortgage meltdown, Great Financial Crisis, too-big-to-fail versus too-small-to-save, and too-big versus too-small to completely insure all of their deposits).

Particularly at these large banks, it is the regulators' responsibility to very closely monitor their rapid growth to ensure management is successfully mitigating their operational, liquidity and other risks. **CBAI urges the FDIC to not use the isolated failures of several large banks as justification to approve the misguided Proposed Rule. Doing so would be at best an incorrect interpretation of the facts, circumstances and regulators' responsibilities.**

Brokered deposits are one of several sources of liquidity for community banks. Community banks have fewer sources of liquidity than larger banks, so brokered deposits are more important to their successful operation. Included in the *liquidity stack* for community banks are Federal Home Loan Bank ("FHLB") advances. The Federal Housing Finance Agency ("FHFA") is the regulator of the FHLBs. Together, the FDIC through its brokered deposit rulemaking, and the FHFA through its Comprehensive Review initiatives that will impact continuing membership and access to advances, are having not only an individual harmful impact on the liquidity of community banks but that harmful impact will be compounded. **CBAI urges the FDIC to recognize that their rulemaking does not exist in a vacuum, and that the combined result of its and other agencies rulemaking can have an even greater significant and potentially devastating impact on community bank liquidity. CBAI also urges the FDIC to clearly communicate with and influence other agencies (i.e., the FHFA) so that their rulemaking does not inflict harm on the community banks that the FDIC is responsible for regulating for safety and soundness.**

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The Proposed Rule flies directly in the face of the objectives of the recently initiated EGRPRA review (“Review”). One aim of the Review is to identify unnecessary regulations. The Proposed Rule is unnecessary regulation because the problem with the prior brokered deposit regulation was successfully solved by the 2020 Rule. It is settled rulemaking and does not need to be revisited. Another objective of the Review is to identify outdated regulations. The prior brokered deposit rules were clearly outdated. These outdated regulations were successfully updated after a rigorous rulemaking process with the 2020 Rule. But now the FDIC is proposing a rule which has not gone through a rigorous rulemaking process, which seeks to return to outdated and unnecessary regulations, and is legally questionable. **How can this Proposed Rule possibly be considered appropriate rulemaking or conform to the necessary aims of the EGRPRA review process?**

CBAI has faulted policymakers, including regulators, for moving in one direction (either harmful or helpful) only to reverse course and move in the opposite direction. This Proposed Rule largely undoes the 2020 Rule which corrected faults with the earlier rules and is a classic example of this regulatory whipsawing *back and forth* which in itself represents an unreasonable and unnecessary regulatory burden. This is particularly the case for community banks which are least able to absorb the cost and burden of increased and inconsistent regulations.

Input from our community bankers suggests several beneficial measures that could be implemented at the FDIC’s discretion and within its authority or through formal rulemaking. While not an exhaustive list by any means, beneficial guidance would include officially recognizing the stable nature of several important sources of community bank liquidity such as rewards-based checking accounts (i.e., Kasasa) and reciprocal deposits, (i.e., Intrafi or similar companies using CDARS or ICS).

In addition, the regulatory requirement for those community banks subject to brokered deposit restrictions, and regarding the restrictions on renewals or to bring onboard additional brokered deposits, is particularly punitive and actually creates a liquidity crisis for a troubled institution that is sincerely looking to survive and recover. **CBAI strongly urges the FDIC to recognize the need to provide a safe harbor for certain beneficial sources of liquidity for community banks but to also ensure reasonable time and circumstances for troubled banks to recover.**

Unfortunately, CBAI foresees many harmful intended and unintended consequences resulting from this misguided rulemaking and strongly urges the FDIC to withdraw the

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Proposed Rule.

CBAI thanks you for this opportunity to provide our observations and recommendations regarding brokered deposit restrictions. If you have any questions or need additional information, please do not hesitate to contact me at [REDACTED] or [REDACTED]

Sincerely,

/s/

David G. Schroeder
Senior Vice President
Federal Governmental Relations