



August 21, 2024

Via Electronic Submission

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: James P. Sheesley, Assistant Executive Secretary
RIN 3064–AF99

Re: Notice of Proposed Rulemaking, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions; Request for Extension of Comment Period

Ladies and Gentlemen:

The American Bankers Association, the American Fintech Council, the Bank Policy Institute, the Consumer Bankers Association, the Financial Services Forum, the Financial Technology Association, the Independent Community Bankers of America, the Innovative Payments Association, the Institute of International Bankers, the National Association of Industrial Bankers and the Securities Industry and Financial Markets Association¹ respectfully request that the Federal Deposit Insurance Corporation withdraw the proposed rulemaking relating to the FDIC’s brokered deposit restrictions.² If the proposal is not withdrawn, we request that the FDIC extend the public comment period, which currently will expire 60 days after publication in the *Federal Register*.

We are concerned that the brokered deposits proposal would significantly alter the FDIC’s brokered deposit framework³, and reverse statutory interpretations without sufficient or transparent

¹ See Appendix.

² FDIC, Notice of Proposed Rulemaking, Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, <https://www.fdic.gov/system/files/2024-07/fr-npr-on-brokered-deposit-restrictions.pdf> (the proposal).

³ FDIC, Final Rule, Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions,

data or robust policy rationale. This is particularly concerning given the extensive, multiyear initiative that preceded the 2020 rulemaking, a process which included multiple rounds of public comment and outreach to industry, policymakers and a variety of stakeholders. With respect to the proposed changes, the FDIC does not provide sufficient information or time for thorough public consideration of the complex issues raised by the proposal. In fact, the proposal cites as support the FDIC’s 2011 study, updated in 2019, both of which were available to the FDIC when it adopted changes in 2020. As described further below, the proposal provides selected examples from “recent events” and “recent experience” but does not assess whether those examples are indicative of broader trends or how the specific proposed revisions to the brokered deposits framework would have led to different outcomes in either event.⁴ Nor does the proposal address the changes in technology and business practices since the 2020 rule was adopted, in many cases in reliance on the exceptions granted under that framework, or seriously consider how the proposed changes would affect the availability and costs of services available to customers. In the absence of data and sufficient rationale for revising the brokered deposits framework at this time, we believe the proposal should be withdrawn until the FDIC conducts additional analysis and makes it available to the public for comment.

If the proposal is not withdrawn, we request that the FDIC publish as soon as possible sufficient data to enable interested parties to comment on an informed basis and extend the public comment period for an additional 60 days following publication of such data. The data should include, at a minimum, the relevant data described below to inform the public of the new facts and circumstances that, in the FDIC’s view, support the changes that the FDIC is proposing. This would allow no fewer than 120 days following publication of the proposal in the *Federal Register*. Such an extension would conform the public comment period with the comment period provided when the FDIC last proposed changes to its brokered deposits regulations in 2019. In 2019, the FDIC initially provided a 60-day comment period and later extended the comment period by an additional 60 days to “provide additional opportunity for the public to prepare comments to address the matters raised by the NPR.”⁵ Because the current proposal seeks comment on many of the same provisions that were under consideration in the 2019 brokered deposits proposal, it is appropriate to allow a comparable amount of time for the public to prepare comments.

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The proposal would significantly revise the FDIC’s regulations relating to brokered deposit restrictions, effectively reversing necessary changes that the FDIC implemented in its 2020 brokered deposits final rule. The proposal would likely increase significantly the proportion of deposits that are categorized and treated as brokered deposits. As a result, banks, affiliates and other relevant parties would need to reassess numerous arrangements currently in place relating to deposits, potentially leading to substantial changes in those arrangements and how customers access financial services, for seemingly no significant benefits. Moreover, classification of a deposit as “brokered” imposes regulatory costs that do not align with the risks presented by different funding types. This is particularly troubling given that Section 29 was intended to restrict the weakest banks from seeking deposits by paying higher-than-market interest rates, not to discourage healthy banks from holding a diverse funding mix

86 Fed. Reg. 6742 (Jan. 22, 2021).

⁴ Proposal at 25, 32.

⁵ FDIC, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, Extension of Comment Period, 85 Fed. Reg 19706 (Apr. 8, 2020).

or meeting the needs of their customers in a modern banking environment. In light of these significant potential effects, the FDIC should consider revisions to the brokered deposits rule only after robust data and analysis have been provided to support the proposed changes and the public has been given an opportunity to thoroughly review that information and take it into account in commenting on the proposed changes.

1. The proposal would have a significant effect on banks, broker-dealers, investment advisers, third-party service providers, and customers, and would disrupt business arrangements made in reliance on the existing rules.

The proposal is likely to have significant effects on bank funding and on the products and services that are available to customers.

With respect to IDIs, the proposal recognizes that it could lead banks, including those not restricted from accepting brokered deposits, to “restructure their liabilities” and “make changes to their organizational structure.”⁶ By increasing the proportion of deposits that must be classified as brokered deposits, the proposal could also result in higher deposit insurance assessment rates for many banks. For large banks, the proposal could affect requirements to maintain additional liquid assets to offset higher outflow rates assigned to brokered deposits pursuant to their calculation of relevant regulatory ratios, including the Liquidity Coverage Ratio and Net Stable Funding Ratio⁷, as well as GSIBs’ short-term wholesale funding measure, which could impact the GSIB surcharge. In addition, if banks appear to be relying more heavily on brokered deposits than they had previously as a result of regulatory changes, there is a risk of potential adverse responses by rating agencies, depositors and investors.

The proposal also recognizes that it would affect non-bank institutions that provide services to customers and could be considered deposit brokers or lose existing primary purpose exemptions, potentially resulting in changes to these institutions’ fee and revenue structures. The proposal acknowledges that consumers who access services through affected relationships, including bank-fintech partnerships, “might experience changes in interest rates on those funds, or costs associated with placing those funds with different entities.”⁸ Therefore, the proposal could have significant effects on the availability and costs of services available to customers. As an example, the proposal could uniquely impact community banks that partner with fintech companies to offer financial products and services to traditionally underbanked communities. As another example of the scope of entities and services that may be affected by the proposal, as of March 2024, the FDIC reported 130 entities that have filed notices to rely on the enabling transactions or 25 percent tests in the existing rule.⁹ The proposal would abruptly remove these exceptions and, in turn, reduce the affordability of these products—particularly those to historically underbanked consumers—creating uncertainty for numerous customers being served today and reducing access to financial products.

⁶ Proposal at 63-64.

⁷ *Id.* at 64.

⁸ *Id.* at 69.

⁹ FDIC, Public Report of Entities Submitting Notices for a Primary Purpose Exception as of 3/15/2024 (last accessed Aug. 19, 2024), *available at* <https://www.fdic.gov/system/files/2024-06/public-report-ppes-notices.pdf>.

2. The proposal would undo recent rules that the FDIC adopted after an extended and robust fact-finding and rulemaking process.

The proposal does not address the reasoning and record underlying many of the revisions made in the 2020 brokered deposits final rule. The 2020 final rule was the culmination of an extensive process, beginning with the adoption of an advanced notice of proposed rulemaking in 2018,¹⁰ which included an update of a study that the FDIC had originally conducted in 2011 of core and brokered deposits.¹¹ The FDIC received over 100 comments on that notice.¹² Approximately a year later, the FDIC published a notice of proposed rulemaking,¹³ on which the FDIC received 120 comments.¹⁴ Approximately another year later, the FDIC published the 2020 brokered deposits final rule. In the preamble to the final rule, the FDIC described each of the amendments made by the rule, responded to comments received in connection with the rulemaking and described expected effects of the rule. The current proposal does not address the record that the FDIC developed in connection with the earlier rulemaking or the reasons that the FDIC provided in 2020 for adopting the rule, nor does it address the reasons for potentially changing course. For example, the proposal points to the decrease in the amount of deposits reported as brokered as a reason for reopening the rule without explaining why these deposits ought to be considered brokered. Rather than engaging with the rationale provided in the 2020 final rule, the proposal frequently cites to the FDIC's experience or its perception of confusion among institutions, but not why it disagrees with the classification of certain types of deposits as brokered or not brokered.¹⁵

¹⁰ FDIC, Advance Notice of Proposed Rulemaking and Request for Comment, Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, 84 Fed. Reg. 2366 (Feb. 6, 2019).

¹¹ See *id.* app. 2, 84 Fed. Reg. at 2384.

¹² See FDIC, Comments on Advance Notice of Proposed Rulemaking and Request for Comment, Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, *available at* <https://www.fdic.gov/resources/regulations/federal-register-publications/2019/2019-unsafe-and-unsound-banking-practices-3064-ae94.html>.

¹³ FDIC, Notice of Proposed Rulemaking and Request for Comment, Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, 85 Fed. Reg. 7453 (Feb. 10, 2020).

¹⁴ See FDIC, Comments on Notice regarding Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, *available at* <https://www.fdic.gov/resources/regulations/federal-register-publications/2020/2020-unsafe-unsound-banking-practices-brokered-deposits-3064-ae94.html>.

¹⁵ In general, the proposal expresses concern that the “narrowing” of the types of deposits that are considered brokered under the 2020 brokered deposits final rule “is problematic because these deposits continue to present the same risks as before” that final rule. Proposal at 4. However, the proposal does not respond to the FDIC's views in the 2020 final rule, including that certain deposit placement arrangements would “not [be] classified as brokered deposits” because those arrangements “do not present undue funding risk.” 86 Fed. Reg. at 6761. As a specific example, the proposal would reject the 2020 final rule's provision that deposits placed through exclusive deposit placement arrangements are not generally considered brokered. In the 2020 final rule, the FDIC explained this provision by concluding that, under exclusive deposit placement arrangements, the relevant third party “is less likely to move its customer funds to other IDIs in a way that makes the deposits less stable.” *Id.* at 6745. The FDIC does not respond to this conclusion, except to assert, without explanation or support, that “FDIC staff is concerned that less than well-capitalized IDIs *may* seek [such] arrangements as their condition is deteriorating without being subject to the limitations on brokered deposits, even though the risk is the same.” Proposal at 7, 35-36. As an additional example, the proposal would require all primary purpose exception applications be submitted by IDIs, not third parties, without explaining why the FDIC now rejects the conclusion from 2020 that “information required to complete an application will be in possession of” the

This increases the difficulty for commenters to address meaningfully the rationale for the proposed changes.

3. The proposal does not provide adequate support for the changes it seeks, and more time is needed for affected parties to gather and analyze relevant information.

Notably, the proposal does not provide a factual basis for many of the changes it seeks to make. As FDIC Director Jonathan McKernan succinctly states: “This proposal does a good job of marshalling evidence of the risks posed by brokered deposits. The proposal does not, however, offer any evidence that some of the deposits that this proposal would re-classify as brokered deposits actually present the same or similar risks.”¹⁶

The proposal includes anecdotes about the flows of uninsured sweep deposits at First Republic Bank and about the failure of crypto company Voyager. But it does not provide any evidence that these anecdotes are emblematic of broader trends. It is telling that the proposal does not attempt to analyze the role that brokered deposits did—or did not—have at Silicon Valley Bank or Signature Bank. Nor does the proposal address the role of brokered deposits at the number of other banks that were reported to have large deposit outflows in March and April 2023. The FDIC’s request for information on deposits, issued concurrently with the brokered deposits proposal, acknowledges that its current data on the composition of deposits is incomplete.¹⁷ Without the requisite data and making all of the relevant data and information that the FDIC does have public, it will not be possible for interested parties to assess and provide meaningful comments on the proposal. It will also be difficult to assess whether or to what extent the changes proposed by the FDIC address the stated bases for the proposal.

4. The brokered deposits proposal overlaps with the pending deposits RFI.

The FDIC’s request for information on deposits, issued concurrently with the brokered deposits proposal, requests detailed information about deposits held by insured depository institutions.¹⁸ In particular, the FDIC requests information on deposit data not currently reported in regulatory reports, including to evaluate how different types of deposits may behave differently from each other, including during periods of stress; to assess how changes in reporting may help the FDIC in carrying out its responsibilities; to inform analysis of potential deposit insurance reforms; to improve risk sensitivity in deposit insurance pricing; and to enhance the data available to analysts and the public.

Fundamentally, with respect to brokered deposits—and other deposits the FDIC seeks to classify as brokered—this is the type of information that the FDIC should be providing as support for the changes it is now seeking to make. While the request for information does not seek the type of granular data on brokered deposit behavior that would be needed to support the type of changes now contemplated in the proposal, it underscores the lack of meaningful data and analysis provided. As one

relevant third party, not an IDI. 86 Fed. Reg. at 6757.

¹⁶ Statement by Jonathan McKernan, Director, FDIC, Board of Directors, on the Proposed Brokered Deposit Restrictions (July 30, 2024).

¹⁷ FDIC, Request for Information on Deposits, 89 Fed. Reg. 63,946 (Aug. 6, 2024) (the “Deposits RFI”). The deposits RFI states that IDIs “do not report comprehensive data on the composition of insured and uninsured deposits,” including in respect of intercompany deposits.

¹⁸ *Id.*

FDIC Director explained, the deposits RFI and brokered deposits proposal address similar questions about bank liquidity risk and potential means to differentiate between the risks that different types of deposits pose.¹⁹ They also both point to the bank failures in 2023 as key events leading the FDIC to reevaluate the risks of different deposit types.²⁰ However, the FDIC has chosen to propose changes with respect to one broad category of deposits (brokered deposits and other deposits the FDIC seeks to classify as brokered) while simultaneously collecting information that could be relevant to the rulemaking. Because there has not been an opportunity for meaningful information collection and analysis to occur prior to the proposed changes, the FDIC should proactively make relevant data available as soon as possible and allow the public additional time to comment. At a minimum, the FDIC should provide enough time and make enough data available to enable the public to have an informed understanding of the proposed changes to the brokered deposits rule.

From a more practical perspective, a common set of subject matter experts at affected institutions will need to be involved to develop the information and analyses for responding to the two separate, but closely related, requests. These experts include those in deposit-taking business units, deposit operations, liquidity management, treasury, regulatory reporting and other areas. In these circumstances, it will not be feasible for banks and other interested parties to comment meaningfully on the deposits RFI and brokered deposits proposal within the provided concurrent 60-day public comment periods.

Request for release of relevant data and comment period extension

For these reasons, we request that the FDIC extend the public comment period to a date that is at least 60 days after the FDIC's public release of relevant data. The public does not have the full range of data that is available to the FDIC about the role of brokered deposits—if any—in the spring 2023 banking turmoil. It is essential that the FDIC make this data available for the public's comment. The FDIC should also make available data supporting the stated bases for the proposal. Accordingly, the relevant data would include the following:

- Brokered deposit data from First Republic, Signature and SVB, including amounts and types of brokered deposits, including uninsured amounts, at closing and at reasonable intervals before closing, and any analysis of that data.
- Information as to the amount of deposits at First Republic, Signature and SVB that were not reported as brokered but would have been reported as brokered pursuant to the proposal and/or prior to the 2020 brokered deposits final rule.
- Data on deposit flows and loss of brokered deposits, including amounts and types of brokered deposits, in the banking industry during March and April 2023 and any analysis of that data.
- Expected costs to depositors due to reclassification of the brokered deposits definition.

¹⁹ See Acting Comptroller of the Currency Michael J. Hsu, Statement at the FDIC Board Meeting (July 30, 2024), available at <https://www.occ.gov/news-issuances/news-releases/2024/nr-occ-2024-86a.pdf>.

²⁰ See Deposits RFI, 89 Fed. Reg. at 63,947; Proposal at 6-7.

- Any other data that supports the description the FDIC provides in the proposal as to the basis for the rulemaking.

We would also note that much of this information is available to the FDIC, but not to public commenters. Moreover, any attempt by industry participants to provide certain information on a collective basis would be a highly sensitive undertaking that would be complicated by confidentiality considerations and would require substantially more time than currently provided. It is therefore critical that the FDIC provide the relevant data on an aggregated basis to provide a basis for analyzing the proposed changes.

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Thank you for your consideration of this request. If you have any questions, please contact the undersigned.

Sincerely,

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Appendix

The **American Bankers Association** is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

The **American Fintech Council** is the premier trade association representing the largest financial technology (Fintech) companies and innovative BaaS banks. Our mission is to promote a transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial services and encouraging sound public policy. AFC members foster competition in consumer finance and pioneer products to better serve underserved consumer segments and geographies.

The **Bank Policy Institute** is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

The **Consumer Bankers Association** is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

The **Financial Services Forum** is an economic policy and advocacy organization whose members are the eight largest and most diversified financial institutions headquartered in the United States. The Forum promotes policies that support savings and investment, financial inclusion, deep and liquid capital markets, a competitive global marketplace, and a sound financial system.

The **Financial Technology Association** (FTA) represents industry leaders shaping the future of finance. We champion the power of technology-centered financial services and advocate for the modernization of financial regulation to support inclusion and responsible innovation.

The **Independent Community Bankers of America**[®] has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams.

The **Innovative Payments Association** is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and P2P technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of

electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership.

The **Institute of International Bankers** mission is to ensure that federal and state banking laws and regulations provide international banks operating in the United States with the same competitive opportunities as domestic banking organizations.

The **National Association of Industrial Bankers** (NAIB) is a national trade association for industrial banks. These specialized banks operate under the titles of industrial banks, industrial loan corporations (ILCs), and thrift and loan companies. ILCs are state supervised in California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah.

The **Securities Industry and Financial Markets Association** is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.