January 22, 2025

Mr. Travis Hill
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429

Dear Acting Chairman Hill,

I applaud you for establishing a new direction at the FDIC.

In addition to focusing on how the agency approaches bank supervision, merger policies, crypto, fintech, climate and capital rules, as outlined in your January 10, 2025, speech "Charting a New Course: Preliminary Thoughts on FDIC Policy Issues", I encourage you to add brokered deposits to the top of your priorities.

Please Place Withdrawing the Proposed Brokered Deposits Revisions at the Top of Your Priorities List

The brokered deposit framework, implemented in 1989 via Section 29 of the Federal Deposit Insurance Act ("FDI Act") is no longer fit for purpose.

Today's deposit landscape encompasses a broad range of deposit arrangements, many of which involve third parties that bear little resemblance to traditional deposit brokers. Thirty-six (36) years ago, most deposits came into a bank when customers walked into a local branch. However, since then, the internet, smartphones, and other innovations have revolutionized how banks interact with customers, with many types of deposit arrangements now involving intermediaries.

Prior Leadership's Proposed Revisions Complicate the Issue

The emergence of new deposit arrangements over the past the past three and one-half decades has continually put pressure on the brokered deposit framework. The proposed revisions to the 2020 Final Rule, introduced by prior FDIC leadership in July 2024, accentuates rather than relieves this pressure by dramatically expanding the deposit broker definition and by introducing additional complexity and subjectivity into the already difficult task of determining which arrangements are brokered and which are not in a fair and risk-sensitive way.

The Time Has Come to Work with Congress to Replace Section 29 of the FDI Act with an Asset Growth Restriction

The time has come for the FDIC to work with Congress to replace Section 29 of the FDI Act altogether with a simple restriction on asset growth for banks that are in financial trouble. This would be a far easier regime for the FDIC to administer, would at the very least limit the size of the FDIC's potential exposure, and would more directly address the key goal of preventing troubled banks from using insured deposit to try to grow out of their problems. A simple limitation on asset growth would also be more durable and should retain its effectiveness as the industry evolves and as banks change the way they attract deposits over time.

We respectfully submit the following language from the Asset Growth Restriction Act (S.3962 in the 2020 116th Congress and (S. 5347 in the 2022 117th Congress) authored by Senator Jerry Moran of Kansas as a model for the replacement of Section 29 of the FDI Act. I believe this language is substantially similar to what the FDIC helped Congressman Meeks develop in 2020.

117th CONGRESS
2d Session
S. 5347
December 21, 2022

IN THE SENATE OF THE UNITED STATES

Mr. Moran introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Federal Deposit Insurance Act to remove restrictions on brokered deposits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE

This Act may be cited as the Asset Growth Restriction Act of 2020.

SEC. 2. FINDINGS AND PURPOSE

(a) FINDINGS. - Congress finds that—

(1) restrictions on the acceptance of brokered deposits were enacted in 1989 in order to prevent the abuse of the deposit insurance system by troubled depository institutions

(2) since the enactment of the restrictions described in paragraph (1), technological and demographic developments have changed the way in which depository institutions seek and source deposits, and, as a result, many deposits that are classified as brokered pose little, if any, risk to the deposit insurance system; and

(3) in today's economy, the greatest risk to the deposit insurance system is asset growth by depository institutions that are less than well capitalized.

(b) PURPOSE. - The purpose of this Act is to remove the current restrictions on brokered deposits and to authorize the Federal Deposit Insurance Corporation to issue regulations that restrict asset growth by depository institutions that are less than well capitalized.

SEC. 3. ASSET GROWTH RESTRICTIONS

(a) ASSET GROWTH RESTRICTION. - Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended—

(1) in the section heading, by striking Brokered deposits and inserting Asset growth restrictions; and

(2) by striking subsections (a) through (i), and inserting the following:

(a) DEFINITIONS. - In this section, the terms average, critically undercapitalized, and well capitalized have the meanings given the terms in section 38(b).

(b) REGULATIONS REQUIRED. Not later than 18 months after enactment of the Asset Growth Restriction Act of 202X, the Corporation, in consultation with the Board of Governors of the Federal Reserve System and the Comptroller of the Currency, shall promulgate regulations imposing a restriction on average total asset growth for insured depository institutions that are less than well capitalized to maintain safety and soundness and minimize risk to the Deposit Insurance Fund.

(c) MAXIMUM LEVELS OF GROWTH. - As part of the regulations described in subsection (b), the Corporation shall—

(1) establish a framework to impose one or more maximum levels of growth in average total assets that an insured depository institution that is less than well capitalized may not exceed, and provide appropriate adjustments for growth resulting from corporate restructuring such as acquisitions or mergers; and

(2) establish a waiver process to enable the Corporation to waive the maximum level established in paragraph (1) upon application by an insured depository institution that is not critically undercapitalized, based on conditions set by the Corporation.

(d) EXEMPTIONS AND ADDITIONAL RESTRICTIONS. - As part of the regulations described in subsection (b), the Corporation may—

(1) exempt specified classes of assets from the asset growth restriction if the Corporation, in its discretion, determines that growth in such assets does not present risks to the safety and soundness of an insured depository institution; and

(2) impose additional restrictions on insured depository institutions to prevent circumvention or evasion of this section by an insured depository institution resulting from actions taken by the insured depository institution by, or through, its affiliates.

(e) ORDERS. - The Corporation may, by order—

(1) establish a less restrictive level of growth restriction for a particular insured depository institution that is less than well capitalized, or a group of insured depository institutions that are less than well capitalized, if the Corporation finds that such a level will not pose an undue risk to the Deposit Insurance Fund; and

(2) establish a more restrictive level of growth restriction for a particular insured depository institution that is less than well capitalized, or a group of insured depository institutions that are less than well capitalized, if the Corporation finds that such a level is necessary to protect the Deposit Insurance Fund.

(f) CONFORMING REGULATIONS - The Corporation shall revise the of the Corporation, as in existence on the date of enactment of the Asset Growth Restriction Act of 202X, to ensure that they conform to the requirement of his section.

(b) RULE OF CONSTRUCTION. - An insured depository institution that is in compliance with the regulations or orders issued pursuant to section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), as amended by subsection (a) of this section, shall be deemed to be in compliance with the asset growth standard established pursuant to section 39 of that Act (12 U.S.C. 1831p–112 U.S.C. 1831p–112 U.S.C. 1831p–112 U.S.C. 1831p–112 U.S.C. 1831p–1).

(c) TECHNICAL AND CONFORMING AMENDMENT. -

Section 274(5) of the Truth in Savings Act (12 U.S.C. 4313(5)) is amended by inserting ", as that provision was in effect on the day before the date of enactment of the Asset Growth Restriction Act of 202X after "Act".

Establishing an Asset Growth Restriction Will Be Widely Supported by the Industry.

As demonstrated by the American Bankers Association's ("ABA") 2020 letter to Senator Jerry Moran after he introduced S. 3962 the Asset Growth Restriction Act of 2020, replacing Section 29 of the FDI Act with an asset growth restriction would be widely supported by the banking industry as it would accomplish the goals Congress intended to address while creating an easier framework for the FDIC to administer.

James Ballentine
Executive Vice President
Congressional Relations
And Political Affairs
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June 16, 2020

The Honorable Jerry Moran
United States Senate
Washington, D.C. 20510

Dear Senator Moran:

On behalf of the members of the American Bankers Association (ABA), I write to express our support for your legislation S. 3962, which would amend the Federal Deposit Insurance Act by replacing Section 29 with limitations on asset growth and the removal of brokered deposit restrictions. This is a much-needed measure to ensure that banks of all sizes have access to a stable and diverse funding base, and are able to innovate to meet the needs and expectations of their customers.

Section 29, enacted in 1989, has not been updated in over 30 years and no longer aligns with modern banking. Since its enactment, there have been significant statutory changes including the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994[1] and the Gramm-Leach-Bliley Act[2], which expanded bank footprints and affiliations. These changes, together with significant technological advances, have reconfigured markets, spurred new services and banking models, and led to an increase in the types of mechanisms that banks use to gather deposits.

Today, a deposit classified as brokered is labeled as such due to an outdated legal construct, rather than any enhanced risk characteristics. The result is that even well-capitalized banks are strongly discouraged from holding an otherwise stable source of funding by the prospect of higher deposit insurance assessments, adverse treatment under liquidity and capital regulations, unnecessary and increased scrutiny from bank examiners, and negative treatment by credit rating agencies and bank counterparties. Restricting asset growth at troubled institutions —instead of trying to apply a regulatory framework created in the 1980s to modern banking and technology — enhances the banking agencies' ability to identify and mitigate unsafe and unsound banking practices by allowing them to focus on a bank's entire balance sheet, rather than the presence of an arbitrary type of deposit. Moreover, it does not penalize well-capitalized banks from using modern technologies to serve their customers and engage in the business of banking. Replacing Section 29 with an asset growth restriction is a legislative solution that has been endorsed by Federal Deposit Insurance Corporation Chairwoman McWilliams as one that accomplishes the public policy goals Congress intended to address, while creating an easier framework for the FDIC to administer.[3]

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[1] P.L. 103-328, 108 STAT. 2338.
[2] P.L. 106-102, 113 STAT. 1338.
[3] *Keynote Remarks by FDIC Chairman Jelena McWilliams on "Brokered Deposits in the Fintech Age" at the Brookings Institution, Washington, D.C* https://www.fdic.gov/news/news/speeches/spdec1119.html

S. 3962 modernizes the statutory treatment of brokered deposits and would help ensure that banks have access to a stable and diverse funding base. We applaud you for introducing this legislation and urge Senators to join in your efforts to address this important issue.

Sincerely,

James C. Ballentine

cc: Members of the United States Senate

The Agency's Current Proposed Revisions to the Brokered Deposit Rule Will Harm Community Banks

Kasasa, Ltd. ("Kasasa") is a third-party service provider whose mission is to help community financial institutions compete with financial technology ("fintech") providers and our nation's large regional and global systemically important banks. Kasasa supports hundreds of community financial institutions across all 50 states, by providing professional banking services; digital enablement technologies; and innovative retail offerings (collectively "Services") that help insured depository institutions (IDIs) attract and retain customers; improve executional efficiencies; and reduce operational expenses.

Kasasa does not build, own, or control any depositor relationship. Kasasa does not receive or place any depositor funds with insured depository institutions. Kasasa does not have any authority to close any deposit account or move any depositor's funds. Kasasa is not involved in negotiating or setting rates, fees, terms, or conditions of any deposit account at any IDI. Kasasa does not propose or determine deposit allocations at any community financial institution. And Kasasa does not receive any compensation for any deposits that reside at an IDI.

Our Services enable IDIs to establish singularly sourced, direct relationships, that the institution owns and controls, with individual depositors who live and work within the IDI's local community. These customers utilize a wide range of banking services (e.g., direct deposit, online bill pay, debit card, online banking, loans) from their financial institution, and their associated deposits serve as a low-cost, locally sourced, stable source of funds upon which the IDI can safely, soundly and profitably operate its business. We believe independent, singularly sourced, directly established, individual depositor relationships, that are owned and controlled by the insured depository institution, advance the interests of the FDIC.

We write because we believe The FDIC's proposed revisions to the 2020 Final Rule threatens to upend the entire fabric of community banking across the nation. This regulation is not only unnecessary—it is a dangerous overreach that could destabilize the very institutions that hold our local economies together.

Community banks like are the lifeblood of small businesses, homeowners, and the communities they serve. Community banks make it possible for a local entrepreneur to start a business, for a family to buy their first home, and for our small towns to thrive. Without access to third parties that help these institutions attract new deposits, many community banks simply won't have the funding resources to meet the growing needs of their communities. This rule threatens to choke off a vital source of funding, crippling banks' ability to provide the loans and financial products that fuel the dreams of their local communities.

By reversing the rules established in 2020, the FDIC is cutting off one of the most important lifelines for small financial institutions. Limiting access to diverse source of funding will force community banks to reduce lending, raise interest rates, and restrict credit—harming the very people these institutions exist to serve. This isn't just bad policy, it's a devastating blow to the families, farmers, and small businesses who rely on community banks every single day.

The proposed rule is a blunt instrument written primarily in reaction to the 2023 bank failures and it is based on insufficient evidence. The current regulations have brought clarity and innovation to the financial system without posing the systemic risk the FDIC claims. Community banks, which thrive on deep relationships and local expertise, use brokered deposits wisely and prudently. To impose blanket restrictions based on "correlated risks" will disproportionately hurt smaller institutions while giving the massive national banks an even bigger competitive edge.

The consequences of this rule would be dire. Community banks already operate under immense regulatory pressure. Additional restrictions will force these institutions to cut back on lending to small businesses, farmers, and homeowners, choking of growth in the very areas where credit is already hardest to come by—our rural and small- town communities. Citizens across our country will face higher borrowing costs, less access to financial products, and a diminished level of personal service that only a community bank can provide.

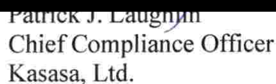
We implore the FDIC to rethink its proposal and encourage the agency to work with Congress to replace Section 29 of the FDI Act with an asset growth restriction that accomplish the public policy goals Congress intended to address while creating an easier framework for the FDIC to administer.

Community banks are the backbone of Main Street, and they rely on innovative third-party services and diverse sources of funding to serve their communities. The damage this regulation would cause far outweighs any perceived benefits. The industry needs a balanced approach that fosters responsible banking without crushing the institutions that are the heartbeat of local economies. Please, don't let these proposed revisions be the reason community banks are pushed out of the very communities that need them the most.

With Appreciation

Thank you for sharing your priorities as you begin your tenure as the Acting Chairman of the FDIC and thank you for continuing our long-standing dialogue with the FDIC on this subject.

Sincerely,



Patrick J. Laughlin
Chief Compliance Officer
Kasasa, Ltd.