IBC
International Bancshares
Corporation

October 18, 2024

Via email: Comments@fdic.gov

Federal Deposit Insurance Corporation
Attn: James P. Sheesley, Assistant Executive Secretary
550 17th Street, NW
Washington, DC 20429
Comments@fdic.gov

Re: Comments of International Bancshares Corporation on Proposed Rules Regarding Brokered Deposit Restrictions (RIN 3064-AF99).

Dear Mr. Sheesley:

The following comments are submitted by International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 166 facilities and 256 ATMs, serving 75 communities in Texas and Oklahoma through five separately state-chartered banks ("IBC Banks") ranging in size from approximately $475 million to $8.7 billion, with consolidated assets of approximately $15.5 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas. The Federal Deposit Insurance Corporation ("FDIC") is the primary federal regulator of the IBC Banks, and the Federal Reserve Board ("FRB") is the primary federal regulator of IBC.

These comments respond to the FDIC's notice of proposed amendments to its brokered deposit rules ("Notice"). These amendments would revise the definition of "deposit broker" and the requirements governing exceptions to the current iteration of the brokered deposit rule which was enacted in 2020 ("BDR"). These revisions would limit exemptions to the BDR, which would result in massive re-classification of deposits, a decrease in lending activity, and an increase in the cost of financial products and services. Small and mid-sized banks would be the most negatively affected, which is highly concerning as the current BDR has provided a way for these institutions to implement brokered deposit programs in a way to better compete with the largest banks on financial product and service availability as well as cost. IBC believes the FDIC should withdraw its proposed BDR revisions and only consider future changes after robust consideration of the factual bases that would support any changes.

IBC appreciates the opportunity to comment on these proposed revisions.

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Comments

1. The FDIC is attempting to revise a recently finalized rule that took years of stakeholder engagement and information gathering to craft without sufficient time for public input, data and a clear rationale.

IBC is concerned that the proposed revisions would significantly alter the FDIC's brokered deposit framework (a product of years of dialogue and industry input), and reverse statutory interpretations and regulator guidance without sufficient or transparent data or a robust policy rationale. This is particularly concerning given the extensive, multiyear initiative that preceded the 2020 BDR rulemaking, a process which included multiple rounds of public comment and outreach to industry, policymakers and a variety of stakeholders. The BDR was implemented as part of a years long process and dialogue between industry stakeholders and regulators. The FDIC requested input and published proposed language several different times, published multiple white papers and studies, and conducted many panels on the topic. The FDIC is now proposing to fundamentally revise the BDR at a breakneck pace and without the same time and input as the original BDR was given. While IBC does not dispute that revisions to the BDR could be welcome, it does not agree with many of the Notice's proposed revisions and certainly does not agree with the process, especially as compared with the process that the original BDR underwent.

The Notice does not address the factual underpinnings, reasoning, and public record underlying the BDR revisions made in 2020. The 2020 revisions were the culmination of an extensive process, beginning with the FDIC's adoption of an advanced notice of proposed rulemaking in 2018, which included an update of a 2011 FDIC study of core and brokered deposits. The FDIC received over 100 comments on that notice. Approximately a year later, the FDIC published a notice of proposed rulemaking, on which the FDIC received 120 comments. Approximately another year later, the FDIC published the 2020 BDR. In the preamble to the BDR, the FDIC described each of the amendments made by the revisions, responded to comments received in connection with the rulemaking and described expected effects of the revisions. The Notice 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 BDR, nor does it address the reasons for potentially changing course. For example, the Notice points to the decrease in deposits reported as brokered as a reason for reopening the BDR without explaining why these deposits would be better categorized as brokered. Rather than engaging with the rationale provided in the BDR, addressing how those factual underpinnings have changed, or citing new developments based on the effects of the BDR, the Notice merely cites to the FDIC's experience and its perception of confusion among banks. The Notice does not provide a factual rationale supporting why the FDIC disagrees with the classification of certain types of deposits as brokered or not brokered.

With respect to the proposed revisions, the FDIC does not provide sufficient information or time for thorough public consideration of the complex issues raised by the Notice. In fact, the proposal cites as support a 2011 FDIC study, updated in 2019, both of which were available to the FDIC when it enacted the BDR in 2021. The Notice 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. Nor does the Notice address the changes in technology and business practices since the BDR was adopted. In many cases, these changes were adopted in reliance on the BDR's exemptions. As a specific example, the proposed revisions would reject the BDR's exemption for deposits placed through exclusive deposit placement arrangements. In the 2020 announcement of the BDR, the FDIC explained this exemption 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." [86 Fed. Reg. at 6745] The FDIC does not address this conclusion in the Notice 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." [Notice at 68245] As an additional example, the proposed revisions would require all primary purpose exception applications be submitted by banks (i.e. not third parties), without explaining why the FDIC now rejects its conclusion from 2020 that "information required to complete an application will be in possession of" the relevant third party, not a bank. [86 Fed. Reg. at 6757]

The Notice also fails to seriously consider how the proposed revisions would affect the availability to and costs of services for customers, and does not address or consider the ample record gathered and conclusions reached in the FDIC's 2020 BDR rulemaking. In the absence of data and a sufficient rationale for revising the BDR's framework at this time, IBC believes the Notice should be withdrawn until the FDIC conducts additional analysis and makes it available to the public for comment.

2. The proposed revisions would have significant and detrimental consequences to banks and other stakeholders that have relied on the BDR as enacted in 2020.

The proposed revisions would significantly revise the BDR, including its restrictions and exemptions, effectively reversing necessary changes that the FDIC implemented as a part of its 2020 BDR rulemaking. The proposed revisions would likely significantly increase the proportion of deposits that must be categorized and treated as brokered deposits. As a result, banks, affiliates, and other stakeholders would need to reassess myriad deposit relationships, potentially leading to substantial changes in those arrangements and how customers access financial products and services. The Notice does not provide sufficient support for these revisions, nor does it provide any objective benefits the revisions would provide.

The Notice recognizes that the proposed revisions could lead banks to "restructure their liabilities" and "make changes to their organizational structure." [Notice at 68259] By increasing the proportion of deposits that must be classified as brokered deposits, the proposed revisions could also result in higher deposit insurance assessment rates for many banks. 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.

3. Brokered deposits should no longer be considered "less sticky" or riskier than traditional deposits, and if the FDIC is intent on revising the BDR, it should do so to broaden the exemptions instead of further restricting the exemptions.

Brokered deposits have historically been considered more risky and less sticky than traditional deposits because it was believed that deposit brokers were more mercurial and mercenary than individual or direct depositors and that brokers had more flexibility and experience in moving deposits from bank to bank. While this may have been true of some brokered deposits in the past, it was not true for all brokered deposits and it certainly is not currently true for the majority of brokered deposits. For example, sister banks frequently broker deposits in order to ensure their customers get the greatest FDIC insurance benefit. These deposits are not transferred to or placed at another bank for interest rate or other financial benefit to the bank "brokers," rather these deposits are brokered for the customer's benefit. Neither the customer nor the bank broker has any interest in ending the deposit relationship and this service increases customer satisfaction, making the "brokered" deposits even more sticky and less risky than if they had not been placed at a sister bank.

Moreover, classification of a deposit as "brokered" imposes increased regulatory costs that do not align with the risks presented by different deposit 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 deposit base 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 BDR 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 revisions.

4. The FDIC fails to connect its factual premises to its proposed conclusion.

The FDIC fails to connect its limited new factual premises to its conclusion that revisions, specifically the Notice's revisions, to the BDR are necessary. In fact, as FDIC Director Jonathan McKernan has stated, "[t]his 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."[1] The Notice contains anecdotes about the flow of uninsured sweep deposits at First Republic Bank and about the failure

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

of the crypto company Voyager. But it does not provide any evidence that these anecdotes are emblematic of broader trends or that such situations would be prevented or remedied with the proposed revisions. The Notice does not even attempt to analyze the role that brokered deposits did—or did not—have in the failures of Silicon Valley Bank or Signature Bank. Nor does the proposal address the role of brokered deposits at any number of banks that were reported to have large deposit outflows in March and April 2023 during the failures of the named banks. 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. Without the requisite data and without making all of the relevant data that the FDIC does have public, it is simply not possible for stakeholders to assess and provide meaningful comments on the proposed revisions. It will also be difficult to assess whether or to what extent the proposed revisions address the purported factual basis for the proposed revisions.

5. Broadening the definition of "deposit broker" will hurt small and mid-sized banks' ability to serve their communities without preventing or addressing any of the FDIC's concerns driving the proposed revisions.

The proposed revisions would expand the definition of "deposit broker" to inappropriately include more third-party relationships whose deposits do not present an increased risk as compared to traditional deposits. This will disproportionately affect community banks that rely on strong relationships with local financial advisors, non-bank financial service providers and property management companies, small business intermediaries, and other third parties who facilitate deposits as part of holistic financial service relationships for community members. These relationships are not the same as, and do not present the same risk as, those broker relationships with large institutions. Expanding the definition of "deposit broker" to include functionally any third-party-mediated deposit would unnecessarily increase the regulatory burden on small and mid-sized banks and would fundamentally misclassify and misrepresent the stability of these deposits.

6. Removing the "single bank" exemption would hurt small and mid-sized banks' ability to maintain strong relationships with community stakeholders that provide financial services.

The proposed revisions would repeal the single bank exemption. Removing the single bank exemption would place an undue burden on small and mid-sized banks even when they do not engage in complex or high-risk deposit brokering. For a community bank that may be the sole depository institution partner for certain third parties placing deposits, these funds are often stable, long-term, and driven by local relationships rather than speculative or volatile market activities. This exception is crucial in ensuring that community banks can continue to serve our customers without being unfairly penalized, and the FDIC has provided no evidence or support for its conclusion that the exception must be repealed due to the risky and un-sticky nature of such deposits.

7. Increasing the scope of the BDR would result in many small and mid-sized institutions facing higher compliance costs and losing access to a reliable and stable source of funding which would imperil community lending.

The proposed BDR revisions would result in banks having to reclassify more deposits as brokered, which would likely force banks to reduce or terminate their acceptance of brokered deposits due to the increased costs and regulatory obligations and restrictions. The proposed revisions will increase the compliance costs and administrative burdens on banks, and will divert resources away from essential community banking services. The proposed revisions would limit banks' ability to attract and retain deposits, thus reducing their lending capacity and potentially destabilizing the local economies that these banks serve. The cost of reassessing and potentially reclassifying deposits would be disproportionately high for small and mid-sized banks and will limit the capacity to provide affordable banking services to their communities. Moreover, operating in smaller communities and more remote areas can mean limited access to robust, stable, direct customer deposits, so having access to diverse sources of stable funding can strengthen community banks. If this access is threatened, like it would be under the proposed BDR revisions, it would make community banks less competitive, driving consumers and local businesses to larger banks that do not have the same commitment to the small and rural communities that patronize them. The proposed broadening of the BDR is unduly harmful to small and mid-sized banks, and the communities they serve, because the risks associated with brokered deposits, as addressed in the Notice, are more relevant to large, complex institutions rather than community banks with straightforward, relationship-based business models.

Brokered deposits have been a critical and reliable source of funding and liquidity. Broadening the BDR would negatively impact banks' ability to meet the credit needs of their local communities, particularly in underserved or economically challenged areas where community banks play a vital role in economic development.

IBC urges the FDIC to reconsider the proposed revisions to the BDR. While IBC agrees that the increased enmeshment of banks and fintechs is cause for concern, and increased oversight of non-banks offering access to financial products and services is vital, the proposed revisions are not supported by any consideration of information that was not available in 2020 (when the current BDR was finalized) and inadvertently place undue burdens on community banks. IBC recommends that the FDIC maintain the current BDR exemptions and consider a more nuanced approach to the definition of brokered deposits that takes into account the unique role and stability of community banks.

Thank you for the opportunity to share IBCs views on these matters.

INTERNATIONAL BANCSHARES CORPORATION

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Dennis E. Nixon, President and CEO