November 14, 2024

James P. Sheesley
Assistant Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429
(comments@fdic.gov)

Re: Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions RIN 3064-AF99

Dear Mr. Sheesley,

I am CEO of Lee Bank and Trust Company based in Pennington Gap, VA. Our institution was formed in 1932 when four small Lee County banks, in business as far back as the mid-1800s, merged during the Great Depression. More than ninety years later, we continue to be a strong, stable, and secure financial institution with approximately $250 million in assets and 39 employees. With our offices located in Bristol, Jonesville and Pennington Gap, we are dedicated to our founding principles of professionalism and ethics and proudly serve our communities with utmost respect.

I am writing to share my serious concerns regarding the proposed rule changes, which, if implemented as currently drafted, could place significant obstacles in the path of community banks like mine. These obstacles not only threaten our ability to reach new customers but also jeopardize the very funding we rely on to uplift the communities we proudly serve. My primary concerns center on the expansive redefinition of "deposit broker," which is, in my view, overly broad, and on the proposed restrictions on digital marketing channels that are essential to our ability to compete in today's financial services industry.

The Proposed "Deposit Broker" Definition is Exceedingly Broad.

The proposed rule takes a broad stroke by merging the existing "placing" and "facilitating" provisions and adding a new "compensation prong" to define a deposit broker. Under this new approach, any third party that receives any compensation, from any source, in exchange for aiding a bank in its deposit-gathering efforts would be swept into this classification, regardless of who actually owns and controls the depositor relationship.

This expanded scope risks pulling in relationships that, in my view, do not align with the FDIC's true intentions. For example, the expanded scope would effectively bar widely accepted marketing practices, such as customer referral programs. In these programs, satisfied customers receive a modest incentive in exchange for referring new depositors to our institution —a standard industry practice with minimal risk, far removed from the speculative behaviors the FDIC likely intends to address.

As it stands, the proposed rule offers no clear distinction between nominal referral incentives and the high-stakes practices of traditional deposit brokers who might aggressively shift funds between institutions to maximize commissions. We firmly believe the FDIC seeks to target this latter group, not community banks' modest incentive programs, and urge a more nuanced approach.

Community Banks Will Be Unduly Harmed

If this rule is enacted in its current form, the impact on institutions like mine could be devastating. A broader definition of brokered deposits would increase our reporting requirements, elevate our insurance assessments, and subject us to greater regulatory scrutiny. Additionally, a heightened brokered deposit classification carries a stigma that could erode trust and tarnish our reputation in the communities we serve.

The proposal would also force us to reevaluate our third-party relationships that help us attract, curate and retain our customer relationships. The proposed rule must be revised to align with the operational realities faced by community banks today. Unlike larger institutions, community banks like mine lack the financial and technological resources to

independently deliver cutting-edge digital and user engagement experiences. We rely on third-party partnerships to help use keep pace in an increasingly digital market. These partnerships empower us to offer the seamless digital services our customers expect and demand. Without the flexibility to work with third-party service providers, we risk being left behind in the digital dust, unable to meet the evolving needs of our customers. And without being able to receive appropriate compensation for the value-added services they provide third parties simply would not be able to continue to support us.

A recent article titled "How to Integrate Digital Delivery and Human Connections to Boost Retention," published by *The Financial Brand* on October 28, 2023, underscores this competitive challenge. The article reveals that in the past year, 35% of consumers switched banks primarily for better digital experiences. Without access to expert third-party services, the digital divide between community banks and large institutions will only grow, forcing community banks to surrender market share to institutions with far greater resources.

The restrictions proposed on third-party assistance in establishing direct depositor relationships could debilitate community institutions, especially those serving rural or underserved populations. This approach is counterproductive and punitive to small banks striving to serve their communities.

Suggestions

To mitigate these concerns, we urge the FDIC to reconsider the overly broad "compensation prong" in the proposed rule. As currently phrased, it risks misclassifying stable, core deposits as brokered, even in cases where a community bank fully owns and controls the depositor relationship.

Recognize Third Parties That Assist IDIs Establish Direct Depositor Relationships

We recommend an explicit exemption from the "deposit broker" definition for third parties that aid insured depository institutions establish singularly sourced, direct relationships with individual depositors, provided that (a) the third party has no control over depositor accounts or funds; (b) plays no role in setting account terms; (c) does not manage deposit allocations across institutions, and (d) its platform is not the system of record for any depositor transactions or funds.

Embrace Digital Realities

We also urge the FDIC to embrace the digital evolution of today's banking landscape. Modern consumers increasingly turn to digital comparison sites and mobile applications when evaluating financial services. Limiting informational activities and setting narrow compensation restrictions on digital marketing channels like listing services is restrictive. By lifting these limitations, the FDIC would allow smaller institutions to compete with fintech providers and our nation's large institutions more effectively.

Formally Recognize Stable Deposits

The proposed rule should recognize cases where community banks have formed primary financial relationships directly with individual depositors. We recommend that reward-based and transaction accounts be excluded from the brokered deposit classification, provided the account is (a) fully insured; (b) opened and held in the name of that same individual depositor; (c) regularly used by that same depositor for typical banking activities including receiving deposits and making payments and (d) is solely controlled by that same depositor, who holds exclusive authority to withdraw funds or close the account.

These accounts represent low-cost, stable funding that we responsibly reinvest in our communities and align with the FDIC's objectives of promoting safe and sound banking practices.

Address Fintech Aggregators

Finally, to address potential risks posed by "fintech aggregators" (e.g. Synapse) the FDIC could narrow the "deposit broker" classification to focus on entities directly marketing or distributing deposit services to end-users when these intermediaries—not the bank's core processor—act as the system of record for transactions and funds. This approach

would concentrate regulatory attention on high-risk partnerships without penalizing traditional third-party service providers who have no control over depositor funds.

Replace Section 29 With An Asset Growth Restriction

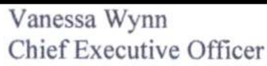
We also encourage the FDIC to consider collaborating with Congress on a more targeted regulatory framework, such as the Asset Growth Restriction Act (S.3962 and S.5347), proposed by Senator Jerry Moran. This legislative approach, supported by former FDIC leadership and current Vice Chairman Travis Hill, could achieve the Congress's original policy objectives but with greater efficiency and administrative supervision.

Final Thoughts

We earnestly request that the FDIC revise the proposed rule to enable community banks to fully engage with third parties as well as use digital marketing channels to assist us in attracting and retaining depositors. Additionally, we urge the FDIC to acknowledge that reward-based and transaction accounts—when tied to singular, direct relationships—constitute a stable source of funds as these deposits as associated with local residents who utilize our bank as their primary financial institution and as such, these relationships bolster our franchise value and fuel our lending activities.

Thank you for your consideration of these important matters.

With gratitude,



Vanessa Wynn
Chief Executive Officer