PATRICK McHENRY, NC
CHAIRMAN

MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

November 25, 2024

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Unsafe and Unsound Banking Practices; Brokered Deposits Restrictions Proposed Rule

Dear Chairman Gruenberg:

We write to urge that the Federal Deposit Insurance Corporation (FDIC) withdraw its flawed July 30, 2024 partisan proposal (Proposal) to rewrite the rules governing brokered deposits.[1] The Proposal would arbitrarily and unjustifiably reverse adjustments to the treatment of brokered deposits that were finalized by the FDIC in 2020 following substantial research and analysis. Those adjustments provided much needed clarity around brokered deposits that have fostered innovation in bank deposit funding which has proven beneficial to consumers.

The July 30 Proposal cited the bankruptcy of Synapse Financial Technologies and the banking instability of last March as justifications for the undoing of the 2020 rule on brokered deposits (2020 Rulemaking). [2] These justifications are disingenuous as neither of these situations were caused by brokered deposits. In fact, Synapse is not an insured depository institution. In the Proposal, the FDIC asserts that deposits excluded from the definition of brokered deposits in the 2020 Rulemaking, "present similar risks as brokered deposits and could pose serious consequences." [3] Instead of performing analysis to substantiate this assertion, the FDIC relies on unsupported conjecture and anecdotal evidence. In fact, the only analytical evidence used to

[1] Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 89 Fed. Reg. 68244 (published Aug. 23, 2024) (hereinafter, "Proposal").
[2] Statement by Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation (FDIC), "Statement on Proposed Rule on Brokered Deposits," (Aug. 22, 2024)
[3] Proposal at 68263

justify this policy reversal is a study on core and brokered deposits conducted in 2011 and updated in 2017, to inform the 2020 rulemaking. [4]

Shockingly, the brokered deposit proposal was initiated concurrently with an FDIC Request for Information (RFI) on deposits[5] and another on bank-fintech arrangements[6]—information that would inform a properly administered new brokered deposit proposal and should be completed first to inform if there is a need for brokered deposit reform.

The Proposal also fails to address the substantially negative impact it will have on consumers and, concerningly, only pays lip service to the consumers who will be harmed, stating only that, "they might experience changes in interest rates on those funds, or costs associated with placing those funds with different entities. The FDIC does not have the information necessary to estimate such changes…."[7] The 2020 Rulemaking gave consumers more choice and control over their financial decisions by supporting fintech and bank partnerships and allowing a wide array of financial products and services to be available in the market, especially for unbanked Americans. Yet the Proposal seeks to make it more difficult and less economical for the partnerships that assist in offering these products and services to consumers.

Further the 2020 Rulemaking understood the changing landscape of consumer financial services in the U.S. and sought to enable expanded access to financial services. In the 1980s and 1990s, when the original brokered deposits regulations were written, banks communicated by phone and fax machine and customers accessed their banking services at physical branches. With the 2020 Rulemaking, the FDIC recognized that technology such as the internet had changed the financial landscape. The rule modified the brokered deposits regime to reflect the need for banks to raise deposits through modern means and the actual risk different types of deposits presented.

This Proposal will also have negative consequences for banks and everyday investors. Without justification, the Proposal would likely force banks, including ones that do not face restrictions on acceptance of brokered deposits, to significantly alter their liability structures. By increasing the share of deposits for many banks that would be classified as brokered deposits, the Proposal also promises to unnecessarily increase deposit insurance assessment rates for those banks. Furthermore, broker-dealers often use deposit sweeps to safeguard their customers' assets, which is why the 2020 Rulemaking provided tailored exemptions for broker-dealers.. This Proposal guts this risk-based approach and would make safeguarding customers' assets more expensive and less efficient with no benefit to the safety and soundness of banks or consumer protection. While the FDIC acknowledges the potential for additional costs to financial institutions in the proposal, it entirely fails to quantify or analyze these costs, let alone explain what perceived safety and soundness benefits justify these purportedly unmeasurable costs.

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[4] FDIC, Study on Core Deposits and Brokered Deposits (July 8, 2011)
[5] Request for Information on Deposits, 89 Fed. Reg. 63946 (published Aug. 6, 2024)
[6] Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses, 89 Fed. Reg. 61577 (published July 31, 2024)
[7] Proposal at 68261

Importantly, the Proposal does not address the actual risks that contribute to bank instability. The proposal aims to restrict brokered deposits for less than well-capitalized insured depository institutions (IDIs), arguing that such deposits increase an institution's risk profile. However, by focusing too heavily on the source of deposits, the proposal fails to adequately address the characteristics that determine deposit stability "in a fair and risk-sensitive way".[8] Deposit risk is not merely a function of whether deposits are brokered or non-brokered but based on other attributes as well. The gutting of the primary purpose exemption and the enabling transactions test shows a clear disregard for actual deposit stability considerations. For example, a long-term deposit such as a 10-year Certificate of Deposit (CD) is inherently stable and presents minimal liquidity risk, regardless of third-party involvement. Moreover, given the broad scope of the Proposal it would act as de facto regulation on well capitalized banks, which is beyond what Congress intended.

If finalized as proposed, this rule would impose broad, poorly crafted, and unnecessary restrictions on brokered deposits and limit the ability of banks, especially community and regional institutions, to access diverse funding sources. This could exacerbate liquidity issues rather than mitigate them, as banks may be forced to turn to more expensive or less reliable funding sources. A more effective regulatory approach from the FDIC would have considered a wider set of factors affecting bank liquidity, such as concentration risk; large, uninsured deposits; and deposit term maturity.

Finally, you announced your intent to resign nearly six months ago, and in our view, it is inappropriate and unprecedented for a resigning Chairman to attempt to force through a major and controversial rulemaking before their departure, especially one that does not have the support of the entire FDIC's board of directors. As such we recommend that the FDIC withdraw the Proposal to allow a fresh perspective to guide the agency forward rather than finalizing this controversial proposal in the final months of your tenure.

Sincerely,

[redacted]

Andy Barr
Member of Congress

[redacted]

J. French Hill
Member of Congress

[redacted]

Monica De La Cruz
Member of Congress

[redacted]

Byron Donalds
Member of Congress

[redacted]

Scott Fitzgerald
Member of Congress

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Mike Flood
Member of Congress

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Andrew R. Garbarino
Member of Congress

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Erin Houchin
Member of Congress

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Bill Huizenga
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Young Kim
Member of Congress

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Michael V. Lawler
Member of Congress

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Barry Loudermilk
Member of Congress

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Blaine Luetkemeyer
Member of Congress

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Dan Meuser
Member of Congress

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Ralph Norman
Member of Congress

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Andy Ogles
Member of Congress

[redacted]

John Rose
Member of Congress

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Bryan Steil
Member of Congress

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William Timmons
Member of Congress

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Ann Wagner
Member of Congress

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Roger Williams
Member of Congress