November 15, 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 President of West Union Bank, headquartered West Union, WV. We are a five branch community bank that serves the communities of West Union, Salem, Pennsboro, Harrisville, and Clarksburg, WV. We have been serving the financial needs of our region of the country since 1893 and we offer all of the modern banking services, products and capabilities our national competitors offer but we do so with a focus on customer service that they cannot match.

As a small institution I would like to offer my perspectives on some of the issues I see with the FDIC's proposed revisions to today's brokered deposit rule.

Key Concerns & Recommendations

I am concerned that the proposed rule changes may hinder our ability to attract new customers and obtain the essential funding I need to support the communities we serve.

The proposed rule dramatically expands the deposit broker definition by merging the "placing" and "facilitating" definitions into one and adding a "compensation prong." If lead literally, this change will lead to an overly broad interpretation of what constitutes a deposit broker as it will prohibit any third party from receiving any compensation, from any source, for assisting insured depository institutions attract new customers and gather additional deposits.

This broader definition will have dramatic repercussions. For example, the new rule would prevent us from running referral programs where customers receive nominal bonuses for referring friends, family and work colleagues to my institution. These are popular and low-cost marketing programs are used by many insured depository institutions to foster customer loyalty and gain new primary accountholders. I do not believe it is the FDIC's intention to prohibit individuals from recommending friend and family to our institution. I believe it is the FDIC's aim to regulate sizeable incentives that motivate third parties, who have substantial control over an individual's funds, to prevent those third parties from moving money from one bank to another in search of higher rates and larger commissions. However, the language within the proposed rule does not provide that clarity and should be clarified.

The rule also does not account for today's digital banking landscape, where consumers use smartphones and comparison websites to find financial products, services and providers. Our use of digital marketing channels (e.g. listing services, comparison websites) should not be restricted nor discouraged, as these avenues allow smaller banks like ours to compete effectively and establish direct relationships, which we own and control with individual depositors who seek community-based alternatives to nation's largest banks.

The proposed revisions seem to focus on the activities, involvement and compensation of third parties that are tangentially involved in our deposit gathering and retention activities. A better approach would be for the FDIC to acknowledge when a singularly sourced, direct depositor relationship is established between a community bank and an individual depositor – regardless of any involvement of any external party. We respectfully suggest the following:

- Exclude deposits from reward-based and transaction accounts from being classified as brokered, as long as the account is fully insured, opened by and held in the name of an individual, regularly used by that individual for payments, deposits, and other banking transactions, and only the same individual has authority to close the account or withdraw funds. These deposits provide a stable, low-cost funding source that allows us to reinvest prudently in our communities.

- We also recommend creating a specific exclusion from the deposit broker definition for third parties that assist banks in establishing direct depositor relationships, fully owned and controlled by the insured depository institution. This exclusion would apply as long as the third party has no control over the depositor's accounts or deposits, is not involved in setting account terms, does not propose or manage deposit allocations among insured depository institutions, and does not use its platform as the system of record for any depositor transactions or funds.

To address its fears regarding the risks introduced by "middleware providers" we recommend the FDIC clearly specify when certain bank-fintech partnerships are acting as deposit brokers. We suggest adding a criterion to the deposit broker definition that includes any entity that markets, distributes, provides access to, or facilitates deposit services directly to end users, where the entity—or an entity designated by it—serves as the system of record for depositor's transactions and funds instead of the insured depository institution's core processor. This would focus oversight on relevant fintech partnerships without restricting general third-party assistance.

Finally, we recommend that the FDIC work with Congress to replace Section 29 of the FDI Act with a restriction on asset growth, as proposed in the Asset Growth Restriction Act (S.3962 in the 116th Congress and S.5347 in the 117th Congress). This approach would result in a legislative solution that would better achieve the original statute's policy objectives while creating a regulatory framework that would be easier for the FDIC to administer.

We respectfully request the FDIC to revise the proposed rule to enable community banks to continue use traditional and digital channels as well as third-party service providers to help us establish and retain direct relationships with local depositors. We also urge the FDIC to recognize the stability of insured transaction and reward-based accounts as core deposits as they serve as a safe and sound source of funding that we can use to support the lending needs of our communities.

I appreciate the opportunity to share my concerns and suggestions on this important matter.

With gratitude,

[redacted]

Thomas F. Whaling
President and CEO
West Union Bank