INDIANA BANKERS ASSOCIATION

June 9, 2020

Robert E. Feldman
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-AE94

Dear Mr. Feldman:

On behalf of the member banks that our organization supports in the state of Indiana, I am writing in response to the Federal Deposit Insurance Corporations's February 10, 2020, notice of proposed rulemaking ("Proposal") regarding brokered deposit restrictions. The Indiana Bankers Association welcomes the opportunity to comment on this important topic.

We agree with the goals of the Proposal articulated by the FDIC Chairman in her December 11, 2019, speech, "Brokered Deposits in the Fintech Age." Those goals are to:

- Develop a framework that encourages innovation within the industry and allows banks to serve customers the way customers want to be served;
- Take a balanced approach to interpreting Section 29 of the Federal Deposit Insurance Act (FDI Act) that tracks to the letter and spirit of the law;
- Minimize risk to the Deposit Insurance Fund ("DIF"); and
- Establish an administrative process that emphasizes consistency and efficiency by establishing an easy-to-understand, bright-line standard for determining whether an entity satisfies the statutory definition of a "deposit broker" or not and by creating an application process for implementing the primary purpose exception.

We believe the FDIC Proposal properly recognizes the substantial evolution of the banking industry since the enactment of Section 29 of the FDI Act over thirty years ago. Since then, consumer preferences and the manner of delivery of banking products and services have changed fundamentally. Today, internet search engines continue to proliferate, and the use of digital devices to deliver banking services is commonplace. The use of data to improve customer products and experiences has exploded together with the emergence of artificial intelligence, data analytic tools, and the introduction of new technologies and financial technology ("fintech") companies. Against this backdrop, banks rely upon third-party service providers to help them serve their local communities.

While we agree with the FDIC's desire to update the current brokered deposits rule to reflect today's banking practices and consumer preferences, we believe the Proposal must be revised to align with the goals of the Proposal, as articulated by the FDIC Chairman, and to recognize fully the imperative for banks' access to services offered by third-party service providers. Our letter describes our substantive concerns with the Proposal.

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CONCERNS:

If implemented as currently written, the Proposal will fail to accomplish the goals expressed by the FDIC Chairman for a modernized brokered deposit rule. Our association's primary concerns are that (1) the proposed definition of "facilitation" is too broad and will negatively impact community banks; (2) the Proposal fails to recognize the stable nature of deposits that reflect an ongoing direct relationship between an individual depositor and his or her bank; (3) the proposed primary purpose exception application process is impractical and unnecessary; and (4) the industry has relied on staff advisory opinions that have the potential to negate the portions of the rule. We discuss each of these concerns below:

- **The "Facilitation" Definition Is Too Broad and Will Negatively Impact Small Banks**

  The Proposal introduces a new "facilitating the placement of deposits" definition that delineates specific activities that the FDIC sees as representing the activities of a deposit broker. Rather than creating the bright-line standard that Chairman McWilliams identified, the new "facilitating" definition is overly broad and would inappropriately capture a wide range of industry participants who were previously unaffected by the current statute and rule. This will negatively impact community banks who rely on third-party resources to assist them in providing deposit offerings to their local communities.

  The first part of the proposed "facilitation" definition appears to restrict community banks from receiving any external information from any third party (and by extension, any interpretations based on that information) about their current customers and/or potential new customers. Specifically, this prong will inappropriately restrict insured depository institutions (IDIs) from being able to build comprehensive 360 degree profiles of their customers; limit banks from being able to send customized messages and account alerts to their accountholders and essentially put an end to a bank's ability to expand its customer relationships by offering additional products, services and capabilities. In a world of always-on-marketing, customized messages, consumer convenience and instant digital device access to information, we do not believe that it is the FDIC's intention to prohibit the exchange of information that make these capabilities possible, and we recommend removing this restriction altogether from the proposed "facilitation" definition.

  The third part of the proposed "facilitation" definition would impede banks from using advisory and consulting services to assist them develop, deliver and improve their retail deposit offerings. As such, we believe if the Proposal is enacted as currently written, our members would no longer be able to utilize companies that provide: market research; product development; price elasticity studies; profitability assessments; non-interest income; retail optimization services; behavioral and activity insights; asset liability management advice; overdraft protection services; reward and customer loyalty programs... and the list goes on.

  Community banks rely on knowledgeable third parties to help them with these activities and yet, the language used in the Proposal would deny IDIs access to these experienced resources. Rather than providing safety and soundness protections, the proposed language would diminish safety and soundness protections by preventing community banks from utilizing industry experts and advanced analytic banking tools, models and analysis. We respectfully request that the Proposal be revised to make it clear that community banks can continue to utilize third-party service providers to assist them develop, enhance and deliver their retail deposit offerings to the communities they serve without suffering any negative regulatory repercussions.

  Finally, we are concerned that the last part of the proposed "facilitation" definition prohibits IDIs from being able to use any external resources for anything other than "administrative services." The proposed language neither describes what an "intermediary" is nor what activities such entities are engaged in. We fear the proposed language may be broadly and improperly applied to limit community banks' use of: online account opening applications; identity verification fraud detection services; search engine optimization and geolocation services; artificial intelligence and pattern identification tools; digital delivery mechanisms; automatic marketing platforms and other like services and capability that third parties provide to assist our members in promoting their institutions and to attract, engage and cultivate current and potential customers.

  In our view, the primary flaw within the proposed "facilitation" definition is that it focuses upon the "activities of the third party" leading up to the placement of the deposit, rather than on the "direct relationship established between an

individual depositor and their selected bank" when that deposit is gathered. We believe a more effective approach would be to focus on the strength and characteristics of the direct relationship that is established between the individual depositor and his or her IDI (and the stable nature of that depositor's associated funds) rather than on an IDI's use of a third party or third-party service, provided that the third party has no contractual relationship with the individual depositor to place, manage or control the individual depositor's deposits, banking decisions or financial activities. As long as the bank owns and manages the depositor relationship, the institution should not be penalized from outsourcing activities and services that would otherwise be permissible if conducted directly by the institution.

- **The Proposal Fails to Recognize the Stable Nature of Specific Types of Deposits**

  The Proposal fails to acknowledge the stable nature of certain types of deposits – deposits that demonstrate an ongoing direct relationship has been established between individual depositors and their banks. Transaction account deposits and deposits that demonstrate an expanded relationship is in place between the bank and the depositor (*e.g.*, savings, MMAs, CDs) are stable sources of funding that do not increase safety and soundness concerns or result in additional risk to the DIF because they are associated with direct depositor relationships that have been individually gathered and are owned and controlled by the IDI. These deposits actually increase our members' franchise values, and they represent the preferred type of funding the FDIC encourages our member institutions to utilize to operate their businesses.

- **The Proposed Primary Purpose Exception Application Process Is Impractical and Unnecessary**

  Throughout her tenure at the FDIC, Chairman McWilliams has stated her desire to provide the industry with more transparency into the FDIC's decision-making processes and determinations. We applaud her efforts, but we believe the "primary purpose exception" application and determination process contained within the Proposal is inconsistent with the Chairman's transparency objective. It seems to us that if there were absolute clarity regarding the "deposit broker" definition, and if that definition were supported by objective, clearly articulated and fully understood criteria, the primary purpose exception application process would be wholly unnecessary.

  If the "deposit broker" definition is objectively clarified, IDIs and industry participants would be able to apply the regulation to their specific lines of business and alter their offerings, services and/or activities to align with the requirements of the regulation. Compliance could be achieved through proper due diligence and vendor management being conducted by the insured depository institution on all third parties that it engages with and by the longstanding process of bank examination and regulatory agency oversight.

  If the FDIC determines the primary purpose exception application process is necessary, the "primary purpose" exception criteria should be made clear and available to the public and the application process used sparingly by the FDIC to address substantially new and innovative forms of deposit-gathering activities that were not previously and publicly considered.

  In addition, requiring IDIs to: track whether a third party has applied to the FDIC; be aware of what, if any constraints, are placed by the FDIC on the third party's conduct; and report and monitor the third party's subsequent behavior and compliance is unrealistic and burdensome on the institution. At best, it will result in industry confusion, complexity and costly compliance burdens.

  Similarly, the Proposal currently suggests that the reporting requirements, including the frequency and any calculation methodology, would be specific to its written approval to each applicant. Yet, concerns about transparency and, indeed, fairness would direct that the FDIC's reporting requirements and calculation methodology be standardized and made public for all applications that are granted – in addition to the granted applications themselves.

  In short, the PPE application process would not only be cumbersome and time-consuming, it would also stifle innovation as banks, industry participants, and third-party service providers would face an extended "pending" status of at least four months before new deposit offerings and delivery services could be deployed. Our member banks already face stiff competition and need not be put at a market disadvantage because of a cumbersome and unnecessary administrative process.

- **The Industry Has Relied on Advisory Opinions**

  The FDIC recognizes within the Proposal that IDIs and third-party service providers may be operating under existing Staff Advisory Opinions. The Proposal states that that the FDIC intends to evaluate existing Advisory Opinions to identify those that are no longer relevant or applicable based on any revisions that are made to the brokered deposit regulations. The Proposal states that the FDIC "plans as part of any final rule to codify staff opinions of general applicability that continue to be relevant and applicable, and to rescind any staff opinions that are superseded or obsolete or are no longer relevant or applicable."

  It is important to note that many of the services that banks receive from third parties are provided in reliance upon Advisory Opinions previously published by the FDIC. Industry participants and banks have made significant investments, including investments in the products, platforms and services in reliance upon these Advisory Opinions and the protections they provide. Eliminating the ability of banks to continue to rely on these existing Advisory Opinions would further harm banks and industry participants as it would prevent all parties from realizing the return on the investments they have made in reliance upon these Advisory Opinions.

CONCLUSION

We support modernizing the FDIC's brokered deposit rule to reflect today's banking practices and evolving funding strategies. At the same time, we believe that if the Proposal is adopted as currently written, it will severely impact our members' ability to serve their communities.

As our members work to serve their communities throughout the challenges of the COVID-19 pandemic and social unrest, local decision-making has never been more important. Local relationships, local knowledge and local understanding of customers and communities leads to the provision of loans and credit that is essential to the financial wellness of small and rural communities in these difficult times. Our member institutions must be permanently empowered to gather the deposits they need to provide loans to the small businesses that operate in their local communities and to serve the financial needs of the citizens who live in the small towns and the rural communities that they serve.

We respectfully recommend that the FDIC revise the Proposal in accordance with the recommendations described in our letter. Incorporating our recommendations would ensure that the final rule both achieves the goals articulated by Chairman McWilliams and enables banks to continue to support their customers and communities.

Very truly yours,

Amber Van Til
President & CEO
Indiana Bankers Association