May 18, 2020

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Via Email: comments@fdic.gov

Re: RIN 3064–AE94 Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions - Notice of Proposed Rulemaking and Request for Comment ("NPR")

Dear Chairman McWilliams:

Financial Innovation Now ("FIN") appreciates the opportunity to provide comment on the NPR and applauds the FDIC's stated intent to "modernize its brokered deposit regulations to reflect recent technological changes and innovations that have occurred."[1] FIN is an alliance of technology innovators promoting policies that empower technology to make financial services more accessible, safe and affordable.[2]

FIN believes the proposed changes to the "deposit broker" definition, if implemented, would create barriers to innovation. FIN proposes for the FDIC's consideration an alternate framework that updates the scope of the "deposit broker" definition to account for technology's impact on today's banking landscape and acknowledges the varied purposes that third party technology service providers have in collaborating with banks, which should fall outside brokered deposit regulations.

In lieu of the FDIC's proposed four categories of activities to determine whether a person or entity would meet the "facilitation" prong of the "deposit broker" definition (where we believe each such proposed category is overly expansive and would have the unintended effect of covering a vast expanse of third parties who are not facilitating the placement of deposits), FIN proposes a three-part framework to clarify who should be excluded from the "deposit broker" definition.

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[1] FDIC Notice of Proposed Rulemaking and Request for Comment ("NPR"), *Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions,* Fed. Reg. Vol. 86, No. 27, p. 7453, available at https://www.fdic.gov/news/board/2019/2019-12-12-notice-dis-b-fr.pdf.
[2] Our member companies include Amazon, Apple, Google, Intuit, PayPal, Square, and Stripe. For more information regarding FIN's policy priorities and principles, please visit https://financialinnovationnow.org

Companies that provide services to depositors over the internet should not be regarded as deposit brokers if:

1. The choice of depository institutions is that of the depositor;
2. The depositor holds the accounts directly in the depositor's name; and
3. The fees the service provider receives from depository institutions are unrelated to deposit volume or the number of deposit accounts opened by depositors.

This approach would ensure that such third parties, when providing various services to depositors, would remain passive entities vis-a-vis any deposits placed at depository institutions. The fee structure limitation in (3) above would further ensure that such third party service providers would not have any stake in facilitating the placement of deposits as their fees would be tied to a separate primary purpose.

Addressing Question 3 of the NPR, we believe that the four categories of activities falling under "facilitating the placement of deposits" are too broad; particularly the first category, encompassing any person that "directly or indirectly shares any third party information with the insured depository institution" (emphasis added). A different framework for determining who should be considered a "deposit broker" is needed. We believe the FDIC should look to its current interpretations for listing service providers, which permit listing services to serve as a communications link between depositors and insured depository institutions.[3]

The NPR's overly broad expansion of the definition of "deposit broker" subsequently requires that many exceptions should be made and specified, lest all parties that insured depository institutions ("IDIs") do any type of business with be considered a deposit broker. The NPR does propose various categories and bright-line tests under which a person or entity may qualify for an exception to the deposit broker classification, but as a comprehensive listing of exceptions to such an expansive definition would hardly be possible, the NPR ultimately defaults to requiring a case-by-case determination for all exceptions.

In both substance and process, the NPR would create a more restrictive and burdensome regulatory framework for determining which deposits should be considered brokered deposits. Requiring an individual application process for third parties whose activities have a primary purpose outside the scope of the deposit broker definition would substantially slow innovation and hinder collaborative efforts between banks and technology companies. If any such application process is ultimately instituted, FIN strongly believes that such a burdensome and costly application review should be limited to third parties that facilitate bulk movements of deposits (which have been noted by the FDIC as riskier[4] and reflect the types of brokered

[3] FDIC Study on Core and Brokered Deposits, Submitted to Congress pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, July 8, 2011, at p. 20, available at https://www.fdic.gov/regulations/reform/coredeposit-study.pdf (citing Advisory Opinion No. 04-04).
[4] Id. at 50.

deposit transactions that contributed to failures of banks and savings associations in the late 70s and 80s).

FIN's proposed three-part test, by contrast, provides a straightforward framework for applying an exception that would not require a case-by-case evaluation by the FDIC as industry participants could clearly determine whether such test applies to any third party partnership. This clarity would encourage collaboration between IDIs and third party service providers whose primary purpose is not to facilitate the placement of deposits at IDIs, but rather, for example, to improve the efficiency of the financial system or provide a broader range of financial education, management or other services to customers. Ultimately, we believe that FIN's proposed three-part test will encourage innovation in the ecosystem thereby supporting the FDIC's stated goal in this regard.

Respectfully,

[redacted]

Brian Peters
Executive Director
Financial Innovation Now