

Banking and Finance Law Daily Wrap Up, DEPOSIT INSURANCE— Associations seek extension of request for data, withdrawal of brokered deposit proposal, (Aug. 22, 2024)

Banking and Finance Law Daily Wrap Up

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The Associations sent separate comments in response to two actions by the FDIC regarding brokered deposits. The FDIC is evaluating to what extent certain types of deposits may behave differently from each other during periods of economic or financial stress.

The American Bankers Association, along with 11 industry associations, have [sent](#) the Federal Deposit Insurance Corporation two separate comment letters regarding its proposal relating to brokered deposits. The FDIC has proposed expanding the definition of “deposit broker” to capture many deposit placement arrangements that currently do not meet the criteria for enhanced scrutiny under current regulation, such as sweep deposits and those related to financial technology and cryptocurrency. The FDIC also issued a request for information (RFI) soliciting the public’s comments on deposit data that are not currently reported in the Federal Financial Institutions Examination Council’s (FFIEC) Consolidated Reports of Condition and Income (Call Report). In the first [comment letter](#), the Associations urge the FDIC to [extend](#) by 60 days its request for public input on deposit data not currently reported in call reports or other regulatory reports, including uninsured deposits. In the second [comment letter](#), the Associations requested withdrawal of the proposal to expand the definition of “deposit broker,” arguing that it would “significantly alter the agency’s brokered deposit regulatory framework and reverse existing interpretations of law, all without sufficient data or a robust rationale to support the changes.”

Proposal. In July, the Federal Deposit Insurance Corporation published a [notice of proposed rulemaking](#) on “Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions,” which would revise 12 C.F.R. Parts 303 and 337. The proposal would revise the agency’s regulations on brokered deposits, revising the definition of “deposit broker,” and would amend the analysis of the “primary purpose” exception to the “deposit broker” definition. The proposed rule would also amend the primary purpose exception (PPE) for two of the designated business relationships under the primary purpose exception, as well as make changes to the notice and application process for the primary purpose exception (see [Banking and Finance Law Daily](#), July 31, 2024).

The proposal would amend a 2020 rule that some FDIC board members believe is too narrow in scope, according to the letter. The associations said in the letter that the FDIC’s decision to move forward with the proposal was particularly concerning given the 2020 rulemaking was preceded by years of public comment and industry outreach—none of which took place with the new proposal.

Along with its proposed rule, the FDIC also issued a request for information (RFI) soliciting the public’s comments on deposit data that are not currently reported in the Federal Financial Institutions Examination Council’s (FFIEC) Consolidated Reports of Condition and Income (Call Report) or other regulatory reports, including those for uninsured deposits. The FDIC sent the comment request as it evaluates whether and to what extent certain types of deposits may behave differently from each other, particularly during periods of economic or financial stress, following the March 2023 bank failures. (see [Banking and Finance Law Daily](#), July 31, 2024).

The proposed rule would:

- simplify the definition of “deposit broker,” including by removing the “matchmaking activities” definition and replacing it with a broader definition related to deposit allocation services, and add a new factor related to fees;

- eliminate the “exclusive deposit placement arrangement” exception from the definition of “deposit broker” and clarify that even if a person has an exclusive deposit placement arrangement with one IDI, if it is placing or facilitating the placement of deposits at one or more IDIs, that person is included within the “deposit broker” definition;
- revise the interpretation of the primary purpose exception (PPE) to consider the third party’s intent in placing customer funds at a particular IDI;
- allow only IDIs, and not third parties, to file notices or applications for PPEs;
- revise the “25 percent test” designated business exception to be available only to broker-dealers and investment advisers registered with the United States Securities and Exchange Commission and only if less than 10 percent of the total assets that the broker-dealer or investment adviser has under management for its customers is placed at one or more IDIs;
- eliminate the enabling transactions designated business exception; and,
- clarify when an IDI, which has lost its agent institution status, can regain that status for purposes of the limited exception for reciprocal deposits.

2023’s high profile bank failures renewed focus on deposit insurance coverage, bank funding concentrations, and certain banks’ reliance on uninsured deposits. Banks are required to provide certain data on deposit liabilities on the Call Report, but they do not report comprehensive data on the composition of insured and uninsured deposits.

Extension requested. In their letter, the associations said that given the possibility that the data would be used to inform regulation, reporting, and supervisory expectations, the original 60-day time frame provided by the agency for comment was not sufficient. “It is essential then, that the FDIC have a robust and accurate data set from which to work, and that any additional reporting requirements be sensible and workable for banks of all sizes and their affiliates, particularly affiliated broker-dealers, and their customers,” the associations said.

Brokered Deposit proposal. The associations requested withdrawal of a proposal to expand the definition of “deposit broker,” arguing that it would “significantly alter the agency’s brokered deposit regulatory framework and reverse existing interpretations of law, all without sufficient data or a robust rationale to support the changes.”

The Associations expressed concern that expressed concern that the brokered deposits proposal would significantly alter the FDIC’s brokered deposit framework, and reverse statutory interpretations without sufficient or transparent data or robust policy rationale. According to the letter, the FDIC does not provide sufficient information or time for thorough public consideration of the complex issues raised by the proposal.

Alternatively, the associations request that the FDIC extend the public comment period, which is set to expire 60 days after publication in the *Federal Register*. The associations requested that the agency publish “sufficient data to enable interested parties to comment on an informed basis and extend the public comment period for an additional 60 days following publication of such data.” According to the letter, the data should include relevant data to inform the public of the new facts and circumstances that, in the FDIC’s view, support the changes that the FDIC is proposing. The associations also request at least 120 days following publication of the proposal in the *Federal Register*, arguing that, “because the current proposal seeks comment on many of the same provisions that were under consideration in the 2019 brokered deposits proposal, it is appropriate to allow a comparable amount of time for the public to prepare comments.”

Companies: American Bankers Association; American Fintech Council; Bank Policy Institute; Consumer Bankers Association; Financial Services Forum; Financial Technology Association; Independent Community Bankers of America; Innovative Payments Association; Institute of International Bankers; National Association of Industrial Bankers; Securities Industry and Financial Markets Association

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