



Innovative Payments Association
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December 19, 2024

Submitted via E-Mail at: comments@fdic.gov

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Brokered Deposits Restrictions
[RIN 3064-AG07]

To whom it may concern:

This letter is submitted to the Federal Deposit Insurance Corporation (the “**FDIC**”) on behalf of the Innovative Payments Association (“**IPA**”),¹ in response to the proposed rule on Recordkeeping for Custodial Accounts issued by the FDIC on September 17, 2024 and published in the Federal Register on October 2, 2024 (the “**Proposed Rule**”).² We appreciate the opportunity to provide feedback to the FDIC on this important topic. If you have questions about our comments, we would be happy to discuss them further.

Brief Summary of the Proposed Rule

The Proposed Rule applies to custodial accounts held by insured depository institutions (“**IDI(s)**”) that have certain transactional features. The stated intent of the Proposed Rule is to aid the FDIC in making deposit insurance determinations as soon as possible in the event of a failure of an IDI maintaining a covered custodial account. The Proposed Rule would require covered IDIs to maintain beneficial ownership records in connection with such custodial accounts either directly or, with certain requirements, through third-party arrangements. The additional requirements to maintain records through third-party arrangement include: (i) the IDI must have direct, continuous, and unrestricted access to the records including in the event of business interruption or insolvency or bankruptcy of the third party, (ii) reconciliation of records maintained by the third party, and (iii) periodic validation of the third-party’s records by an independent third-party. The Proposed Rule would require Covered IDIs to complete an annual certification of compliance and report annually to the FDIC. Finally, the Proposed Rule would require Covered IDIs to maintain records in compliance with electronic file data format and structure requirements.

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA’s goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² 89 Fed. Reg. 80135 (Oct. 2, 2024).



Discussion

Overview and Implementation Period

Our members are generally supportive of the requirements of the Proposed Rule as applied to deposit account substitutes. We understand that the impetus for the Proposed Rule is the bankruptcy of fintech middleware provider SynapseFI, which, in conjunction with its banking partner and fintech platform customers, offered consumers access to banking products and services that operated as substitutes for traditional bank accounts. SynapseFI's bankruptcy resulted in an inability to return deposits to affected end-users, due in large part to issues with the SynapseFI ledger and, particularly, the inability to reconcile the ledger with that of SynapseFI's partner bank. Our members are supportive of appropriately tailored rules designed to ensure similar events do not recur in the future. While we believe the concerns created by the SynapseFI bankruptcy and the issues between it and its banking partner are justified, we note that the circumstances and structure of the relationship between SynapseFI and its banking partner were unique, and contrary to the standard operating procedures of the IPA's member banks. In fact, we note that fintech programs today that offer products and services that act as an alternative to traditional bank accounts already meet most of the requirements of the Proposed Rule and we would urge caution with respect to those elements of the rule that may overcorrect for an issue that appears to have been unique to a single fintech, bank partnership.

With that in mind, our members are concerned that, as written, the Proposed Rule is overly broad and pulls in products, such as gift cards, corporate and expense cards, and single-load payment devices, that do not operate as transaction account substitutes. For these reasons, we urge the FDIC to clarify the scope of the Proposed Rule to exclude products and services that are not "accounts" for purposes of the Bank Secrecy Act ("BSA") from FDIC Rules parts 370 and the proposed 375 and to clarify that the rule does not apply to non-transactional accounts such as savings and wealth management accounts. Our members are also concerned that the daily reconciliation requirement of the Proposed Rule will require significant time and investment from banks in terms of compliance preparedness and in systems expansions and technology investments. We therefore also ask that the FDIC expand the one-year implementation period of the Proposed Rule to at least two-years in any final rule. Finally, we urge the FDIC, as part of any final rulemaking, to clarify how the requirements of any final rule will work in relation to the FDIC's existing FDIC 370 certification requirements. Our members are concerned that without such clarity, banks may be subject to two sets of requirements that are similar in some respects but different in others.

Definition of Custodial Account with Transactional Features

The Proposed Rule defines "custodial deposit accounts with transactional features" as deposit accounts that meet three requirements: (i) the accounts are established for the benefit of beneficial owner(s); (ii) the accounts hold commingled deposits of multiple beneficial owners; and (iii) a beneficial owner may authorize or direct a transfer from the account to a third-party. The Proposed Rule clarifies that the intent of this definition is to cover custodial deposit accounts that give the beneficial owners the ability to direct a transfer of funds from the account to another party, such as a bill pay transaction.



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While the Proposed Rule includes several exceptions from its requirements,³ our members have expressed concern that the definition for covered accounts remains overly broad and will, for example, pull in products and services, such as gift cards, corporate and expense cards, and single-load payment device products, that we do not believe the FDIC intended to cover in its Proposed Rule. We believe the requirements of the Proposed Rule should be limited to those custodial accounts with transactional features that operate as deposit account substitutes, where providers are required by the BSA to obtain and maintain beneficial ownership information and where consumers would expect the product to function more or less as a bank account. The rule should therefore exclude any products, including prepaid products such as, but not limited to, gift cards, corporate and expense cards, and single-load payment devices, that do not create “account” relationship with the cardholder for BSA purposes.⁴ Such products, while providing consumers with some transactional capability, do not operate and are not used by consumers as substitutes for traditional deposit accounts,⁵ and providers are not required to obtain and maintain the same types of beneficial ownership information for end users. We do not believe consumers would view these more limited transaction products as the functional equivalent of a bank account. In addition, we note that gift cards are freely transferrable among consumers, and the bank or store issuing the gift card generally does not have the ability to track information about the current holder. We therefore urge the FDIC as part of its final rule, to exclude products and services not intended to act as substitutes for general transaction accounts, such as gift cards and single-load payment devices, and which are not considered “accounts” for BSA purposes.⁶ In addition to these changes, our members urge the FDIC to clarify that the rule would not apply to non-transaction accounts, such as savings accounts and wealth management accounts.

Conclusion

The IPA appreciates your consideration of our comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact me at: btate@ipa.org.

Sincerely,

³ Exemptions in the Proposed Rule include, but are not limited to, trust accounts, government accounts, broker-dealer accounts, and accounts maintained by mortgage servicers in a custodial capacity.

⁴ In particular, General-Use Prepaid Cards, Store Cards, and Gift Certificates as defined under 12 CFR Section 1005.20.

⁵ Most such products are non-reloadable and do not create the kind of formal banking relationship necessary to qualify as an “account” for BSA purposes. *See* 31 CFR § 1020.100; Interagency to Issuing Banks on Applying Customer Identification Program Requirements to Holders of Prepaid Cards, March 21, 2016, available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160321a1.pdf>.

⁶ Should the FDIC apply the requirements of the Proposed Rule to products and services that do not operate as deposit account substitutes, we would urge the FDIC to modify its formatting and structure requirements to allow for providers to use null values for purposes of identifying data on any products that are not considered accounts for BSA/AML purposes.



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