

December 13, 2024

Submitted via email to comments@fdic.gov

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: Comments – RIN 3064-AG07

RE: Recordkeeping for Custodial Accounts

The Crypto Council for Innovation (“CCI”), a global alliance of industry leaders focusing on digital assets, appreciates the opportunity to provide comments on the Federal Deposit Insurance Corporation (“FDIC”) proposed rule on Recordkeeping for Custodial Accounts (“proposed rule”) dated October 2, 2024 (12 CFR Part 375, RIN 3064-AG07).

CCI members span the digital asset ecosystem and include some of the leading global companies and investors operating in the industry. CCI members share the goal of encouraging the responsible global regulation of crypto to unlock economic potential, improve lives, foster financial inclusion, protect security, and disrupt illicit activity. CCI believes that achieving these goals requires informed, evidence-based policy decisions realized through collaborative engagement between regulators and industry. It also requires recognition of the transformative potential of crypto in improving and empowering the lives of global consumers.

As an initial matter, CCI appreciates the FDIC’s efforts to strengthen protections for depositors and ensure the prompt distribution of insured funds. To that end, CCI respectfully submits the following comments and recommendations for the FDIC’s consideration.

CCI Comments & Recommendations

A. Scope adjustments to the proposed rule

CCI recognizes that the FDIC aims to provide prompt and effective access to deposit insurance in the event of an insured depository institution’s (“IDI”) failure. The FDIC’s authority, however, is limited to rules that ensure the provision of pass-through deposit insurance as outlined in its statutory mandate. Issuing rules that extend beyond this core function, such as those that seek to regulate the broader operational activities of custodial services, exceeds the scope of the FDIC’s delegated authority. We respectfully suggest that entities and IDIs that neither offer, market, nor

intend to utilize pass-through deposit insurance be excluded from these new requirements under the proposed rule. CCI believes such entities are adequately served by the existing guidance provided in 12 CFR Part 370 (“Recordkeeping for Timely Deposit Insurance Determination”), which already supports timely access to deposit insurance without imposing additional regulatory obligations on institutions that do not offer pass-through insurance.

CCI appreciates the FDIC’s commitment to maintaining robust consumer protections, especially in light of recent non-bank bankruptcies. These bankruptcies highlight the importance of adherence to existing FDIC guidance and consumer safeguards. CCI notes, however, that the core challenges in these situations stemmed from instances of misleading advertising regarding FDIC insurance coverage and subsequent failures by these particular entities to deliver accurate ownership data.

In light of these specific circumstances, we respectfully question whether implementing a broad regulatory expansion is necessary to achieve the intended policy goals. With the FDIC estimating that the proposed rule could “cost upwards of approximately \$250 million on affected IDIs and their partner non-bank entities in the first year that the proposed rule is enacted and approximately \$120 million in each subsequent year thereafter,” we encourage careful consideration of whether these costs are commensurate with the objective of ensuring the timely issuance of pass-through insurance in the rare event of an IDI failure. Additionally, the proposed rule could restrict IDIs’ ability to select depositholders, and over time consolidate fintech and payments activity in uninsured depository institutions and funds. We further urge the FDIC to consider the feasibility of proposed requirements, especially for smaller institutions and when customer funds are typically held for short periods of time in custodial accounts.

CCI recommends an alternative approach that seeks to achieve the proposed rule’s objectives while reducing administrative burdens and preserving a risk-based approach for IDI depositholding. Specifically, CCI recommends that only account holders who actively offer pass-through insurance be required to comply with the proposed rule.¹ Additionally, IDIs could collect information for these specific customers while exempting entities that do not attest to pass-through insurance from the proposed rule’s requirements. This approach would allow for uninterrupted access to underlying records to support timely insurance payments while also reducing recordkeeping burdens on IDIs, especially those working with payment providers who do not expect insurance coverage.

¹ In order to determine which account holders offer pass-through insurance, the FDIC could, for example, consider requiring IDIs to collect an attestation from their customers at account opening, explicitly indicating whether those customers intend to offer pass-through insurance, or requiring IDIs to maintain internal records documenting the number of custodial accounts designated as having pass-through insurance, periodically reporting this information to the FDIC.

B. Expanded fiduciary expectations on insured depository institutions

The proposed rule establishes an unworkable expectation that IDIs can serve a fiduciary role in the event of a disruption to an IDI custodial deposit account holder, regardless of whether the deposits are insured. This expectation imposes responsibilities on IDIs that extend beyond their traditional role, potentially requiring them to oversee account management and act in the best interest of account holders – similar to the duties required by fiduciary entities. Given that IDIs are neither structured nor resourced to serve in this capacity, the expectation is not only operationally challenging but also inconsistent with the customary scope of IDI responsibilities.

Moreover, placing this fiduciary-like burden on IDIs could lead to unintended legal and financial consequences, potentially putting the institution at risk and impacting its ability to serve other depositors effectively. To uphold the intent of the FDIC’s mission and ensure that regulatory measures are practical and sustainable, CCI recommends refining the proposed rule to clarify that IDIs are not expected to assume fiduciary obligations for custodial accounts, especially in cases where there is no insurance coverage. This refinement would preserve the integrity of IDIs’ roles while allowing them to continue providing essential services without undue burden.

Additionally, the proposed rule introduces a de facto “know your customer’s customer” requirement for IDIs managing custodial deposit accounts, thereby redefining the standard know your customer (KYC) expectations that currently exist between banks and fintechs. While the rule states an intent not to replace or supersede Bank Secrecy Act obligations, the data collection requirements would establish a substantially similar standard that would constitute a fundamental change for IDIs and create a two-tiered regulatory framework that imposes different recordkeeping obligations based on the use of custodial deposits.

For many IDIs, meeting this elevated standard would necessitate significant modifications to their compliance programs and processes, leading to increased operational costs and potential disruptions to existing customer relationships. This shift could discourage fintech partnerships, limit innovation, and ultimately reduce options available to consumers in need of diverse and accessible financial services. For example, the proposed rule could inadvertently stifle the development and adoption of innovative tools, such as sub-ledger accounting systems, which offer a more efficient and seamless method for integrating recordkeeping without requiring records to be strictly housed within the IDI or a designated third party. These tools have the potential to enhance transparency and operational efficiency by allowing IDIs and their customers to access accurate and timely information while maintaining flexibility in data storage and management. By imposing rigid requirements, the proposed rule may discourage the exploration of such forward-thinking solutions, ultimately limiting more adaptable and cost-effective recordkeeping methods.

Further, the proposed rule does not fully consider the potential data security and consumer protection risks associated with the expanded sharing of customer information across multiple entities, including second-party IDIs and third party service providers. This lack of clear guidelines on data handling and protection protocols may lead to inconsistent practices across institutions, increasing the risk of data breaches and compromising consumer privacy.

C. Inconsistency with existing law

Finally, CCI notes with concern that the proposed rule may establish a parallel standard for the access and collection of beneficial ownership information (BOI), one that could conflict with the Corporate Transparency Act (“CTA”). The CTA, passed into law in 2021, balances the need for BOI access with privacy considerations. It does so by requiring customer consent, limiting the scope and frequency of data collection, and restricting the sharing of this sensitive information to support customer due diligence. By proposing substantially similar requirements that appear to necessitate more frequent collection (*e.g.*, on an annual or more frequent basis), the proposed rule risks setting a conflicting regulatory standard that would place an undue burden on institutions, which would be compelled to implement separate, potentially redundant compliance processes for handling BOI.

This inconsistency could lead to confusion, operational inefficiencies, and unintended compliance risks, as financial institutions attempt to navigate two competing frameworks with different requirements. To uphold the intent of Congress and maintain clarity and consistency in BOI standards, we respectfully urge the FDIC to align the proposed rule with the existing CTA framework in consultation with the Department of the Treasury. This alignment would preserve consumer protections and ensure that financial institutions can meet their obligations effectively without unnecessary duplication or administrative burdens.

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CCI again appreciates the opportunity to provide these comments and for your consideration of our recommendations. We would be pleased to further engage on the comments detailed in this letter.

Respectfully submitted,



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