Statement by FDIC Chairman Jelena McWilliams on the Combined Final Rule on Brokered Deposits and Interest Rate Restrictions at the FDIC Board Meeting

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When I joined the FDIC two and a half years ago, I instructed staff to undertake a holistic review of outdated regulations in order to ensure that our regulatory framework is not stifling innovation and impeding America's competitiveness. A number of FDIC regulations stem from decades-old statutes that were enacted into law at a time when few could have envisioned the speed, scope, and complexity of technological developments that are now mainstream in our financial system.

Front and center in this project were the FDIC's rules implementing Section 29 of the FDI Act on brokered deposits and interest rate caps applicable to less than well capitalized institutions. Section 29 was passed by Congress in 1989 and updated in 1991. Back then, businesses communicated through phones and fax machines, bank customers accessed banking services at physical locations, the term "brokered deposits" referred to a specific market of CDs issued by banks through brokers, and I was just another high school student in Belgrade dreaming of someday coming to America.

Since then, much has changed, in both the banking industry and the world. Customers today have many more options for accessing banking services, and banks increasingly offer services through partners and affiliates.

Meanwhile, during that time, the FDIC has not made any meaningful changes to the brokered deposits regulation. FDIC staff has undertaken a valiant effort over the years to respond to emerging questions through a long series of advisory opinions and interpretations, but the result is a fragmented, opaque legal regime that exists outside of the FDIC's public-facing regulations, understood by only a select few.

In December of 2018, the FDIC issued an advance notice of proposed rulemaking on brokered deposits and interest rate caps to begin the process of soliciting feedback. In the summer of2019, the FDIC issued a proposed rule on interest rate restrictions, and one year ago, last December, the FDIC Board approved a notice of proposed rulemaking on brokered deposits.

Today marks the culmination of this multi-year effort, as the FDIC Board votes on a combined final rule establishing a new framework for regulating brokered deposits and revising the FDIC's methodology for Section 29's interest rate restrictions.

The new framework for brokered deposits would achieve several objectives. First, the framework would create a more transparent and consistent regulatory approach by establishing bright line tests for the "facilitation" prong of the deposit broker definition and a consistent process for application of the primary purpose exception. Second, the final rule would encourage innovation in how banks offer services and products to customers by reducing obstacles to certain types of partnerships. And, it would continue to protect the Deposit Insurance Fund, by ensuring various types of funding, including the specific types of deposits Section 29 was intended to address, continue to be treated as brokered.

The final rule before us today includes several changes from the proposal issued last year. The rule provides more clarity regarding the FDIC's interpretation of what it means to be engaged in the business of facilitating the placement of deposits. It eliminates the "information sharing" prong, and establishes a new, tailored prong that targets a specific active form of matchmaking.

The rule also clarifies that a third party who has an exclusive relationship with only one bank would not be captured by the deposit broker definition. Entities who place deposits with only one bank are less likely to present the types of funding stability risks that may arise when deposit brokers place deposits at a range of banks, and these types of exclusive relationships – often seen between a fintech company and a partner bank – are not the type of arrangements that existed in the 1980s that Section 29 was intended to target.

With respect to the primary purpose exception, the rule would establish a number of categories, called "designated exceptions," that would not be subject to the proposed application process. Among these codified exceptions are a number of arrangements that historically have been the subject of staff advisory opinions. Firms would be able to continue to rely on staff advisory opinions that have not been codified through the end of 2021.

Finally, I would like to reiterate the challenges associated with implementing the brokered deposits statute. Creating a broadly applicable rule for every type of deposit arrangement involving a third party is an enormous challenge, and new products will continue to arise that challenge any framework attempting to do so. While we have tried to create a durable framework built for the year 2020 and beyond, properly assessing the risk and stability of every unique arrangement will always be difficult. Last year, I suggested that Congress consider replacing Section 29 with a restriction on asset growth, which would be predictable, simple to administer, and would relieve the FDIC of passing judgment on all types of deposit arrangements. I continue to believe that such congressional action is warranted and appropriate to address the issues that the FDIC does not have the authority to address under the current law.

The final rule also revises the methodology for applying interest rate restrictions for banks that are less than well capitalized. Under the rule, the national rate cap will generally be the higher of (1) the average rate paid on deposits, plus 75 basis points, or (2) 120 percent of U.S. Treasury rates, plus 75 basis points. This combines the FDIC's original methodology for interest rate restrictions, in effect from 1992 through 2009, and the current methodology, in effect since2010. While neither methodology proved durable on its own through a range of interest rate environments, we expect the methodology adopted by the final rule to work well under both high- or rising-rate environments and low- or falling-rate environments.

Thank you to the staff for their work on this rulemaking. I know this was a major undertaking and appreciate all the hard work. I fully recognize that both last year's brokered deposits proposal and this year's final rule were done during the holiday season, so I want to recognize the many late nights and weekends staff spent – not to mention the challenges of telework during the pandemic – to come up with a major overhaul of the long-standing framework that is practical, sensible, and a definite improvement over the existing regime. I also want to thank Acting Comptroller Brooks for his feedback and contributions to the rule, including working through the weekend to finalize the text. Thank you all.