From: Mary Fowler [mailto:mfowler@pbmag.com]
Sent: Wednesday, February 27, 2019 9:50 AM
To: Comments
Subject: RE: RIN 3064-AE94

Dear Mr. Feldman,
My previous letter dated 2-18-19 contained an error and is published as comment #4. The error is in option #3. I would like to correct that error by replacing it with this one if that is possible:

February 27, 2019
To Robert E. Feldman, Executive Secretary
Attention: Comments Regarding February 6, 2019 - Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions; Comment Request (RIN 3064–AE94)

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

Dear Mr. Feldman,
I would like to thank the FDIC for being willing to consider input on the brokered deposit and rate cap rules. These rules are harming the banking industry, consumers, and the economy. In particular, the rate cap rules threaten the Deposit Insurance Fund and this could cause problems so far-reaching that the impact would be hard to exaggerate in the case of another 2008-type recession.

Part 337.6 is flawed and needs prompt action to get it corrected. I am not only concerned about my small family-owned bank, but for the FDIC Deposit Insurance Fund, and the clientele of banks like ours who are specifically targeted by this rule. If the same scenario that happened in 2008 were to happen again, we could have as many or even more failures as then, simply because the rate cap which was workable in that time has become completely unworkable today. Banks that should not fail may fail, and banks that don't fail could be crippled because of having to replenish the DIF. This can all be avoided with a very simple fix to make the rate cap relevant in today's market. By making the rate cap realistic, instead of increasing the risk to the DIF, it will lower the risk to the DIF. Leaving the rate cap as is poses significant risk to the DIF and to hundreds of banks. Surely no one wants this risk to exist when there are very simple and reasonable solutions.

This is one of those rare occasions where a lose-lose-lose situation can easily be changed to a win-win-win.

The Deposit Insurance Fund is at **risk of depletion**, when using a forward-looking approach to risk assessment. The reason for this is that many basically healthy, successful banks could be put in a situation that will be difficult to survive if/when we have another economic downturn such as happened in 2008. The **unnecessary**, widespread failure of many good banks could happen because many banks that fall out of the well-capitalized category will be put in the difficult position of trying to keep their deposits and other funding when required to do so at well-below market rates. Imagine hundreds of troubled banks being unable to replace any of their maturing deposits – not just brokered deposits but **all** deposits, since the interest rate restriction applies to retail deposits as well. I'm not sure everyone understands that fact. Deposits will be impossible to obtain because, by definition, average rates are not the same as current market rates. The FDIC would be overwhelmed with failing banks, and the DIF would suffer a devastating blow.

Even without an economic downturn, if a bank begins having a few problems, even though they are very fixable, the bank could be in a position to become subject to the rate cap. A bank whose deposit base is predominantly composed of customers who have a lot of money on deposit and who have a low demand or need for loans, may be able to hold on to its deposits at below-market rates. However, a bank whose niche is low/middle-income, and is trying to serve the needs of the low/middle income population by making loans, will not be able to maintain the funding needed to serve their niche because in order to serve that niche it's necessary to go outside of their deposit base for funding.

There are plentiful sources of funding in the market, and if we were still under the original definition of "national rate," 120% of the current yield on similar maturity U.S. Treasury obligations, there would be no problem obtaining any funds needed. But as the rule stands now, the national average rate needs to be recognized as the big mistake that it is. It's not hard to see that the current "national average rate" of .71% for a 12 month Jumbo CD just isn't anywhere near a correct market rate. With the one year US Treasury (the safest investment possible) at 2.57%, how can anyone defend the idea that the current market rate for a 12 month Jumbo CD is anywhere near .71%? **This needs to be corrected yesterday, just as the FDIC corrected it in 2009 without any legislation.** Our bank is losing 12 month CD renewals frequently, even though we are offering 2.64% APY for one year. There is a problem here, and in the event of a recession it would probably be a disaster.

Eliminating the rate cap altogether and managing problems in troubled banks individually on a case-by-case basis would seem to be more effective than general rules that don't work. This would be my top recommendation.

I've been in banking for 45 years, and have never seen a threat to the DIF this significant and yet easy to fix. If eliminating this flawed rule altogether is unacceptable, we propose the following possible solutions to this problem:

1. We believe that the next best fix would be to change the rule across the board and use the average of the top 10 current listing service CDs in each term as the benchmark for setting the rate cap. This solution is much better than the current way of figuring the rate cap, which uses meaningless data to try and approximate the market rate of interest in each term category. Should not the market rate of interest be the actual price at which money begins flowing at the margin? What rates will actually cause people to move their money from one investment to another? By taking the average of the top rates on a listing service, you would have a much more accurate representation of the actual market rate of interest.

2. Another option would be to look at the rates at FHLB for the rate cap benchmark. The cost of money for banks to borrow from FHLB should also be an accurate representation of market rates. While this isn't the best number to know what the actual market rate is for consumers, it would be much closer than the way it is figured now.

3. The third option would be the least helpful in the long term, but may be the easiest and fastest to implement. Similar to how it was changed in 2009, simply amend the interest rate restrictions under Part 337.6 to add back, as an option, the original definition of "national rate" tying it to the Treasury rate. In other words, make the rate cap the higher of 120% of Treasury plus 75 basis points or the national average rate plus 75 basis points. The rule has already been changed once, effective January 1, 2010 because the rule as written originally was preventing banks from being able to pay prevailing national rates. We don't think this is a viable long-term solution because in a market downturn, we would expect the treasury rates to go down, or for there to at least be a significant gap between the Treasury Rates and CD rates. This option would be better than nothing and would help banks that have localized problems without a systemic downturn.

4. If none of these solutions are possible, we would suggest exempting banks that are in more rural areas, or who serve a low/middle income clientele from the rule. Because of depopulation of rural areas, and because of some banks' niche clientele being lower income than the general population, we are forced to go outside of our deposit base to look for additional funding for our loans. As mentioned above, customers of banks that are serving the underserved and attempting to bank the un-banked are specifically harmed by this flawed methodology of determining rate caps. Consider the scenario where a bank serves people on the lower end of the economic spectrum and they have very little money to deposit in the bank, yet they need to borrow money. The threat of the rate cap can disparately impact these people for whom the FDIC has a mandate to serve. With the current threat of having the rate cap imposed on a bank like that, it can stifle banks from serving this demographic.

I spoke to a bank that came under the Rate Cap rule in 2010. They were able to obtain deposits through Qwickrate at that time, and stay under the rate cap. But that avenue would not work in today's market…not even close.

I don't think anyone wants a fundamentally sound bank to fail simply because an out-dated, flawed rule requires that the bank do what is impossible and unrealistic to do. How many banks have already failed just because of this flawed rule?

We all know that the economy is global now, and no market area is an island. Local rates are largely irrelevant to the cost of funds. Money is a commodity and price is determined by supply and demand.

Everyone in our industry should make every effort to see that this rule is corrected before it's too late for even one more bank.

There may be other, better fixes, but action is urgently needed.

I would be happy to discuss this at any time, especially to give more input on the impossibility of being able to obtain local deposits under the current rate cap when catering to the lower-income niche.

Thank you again for the opportunity to comment.

Mary Fowler, CEO

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Chief Executive Officer

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