April 17, 2019

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Via https://www.fdic.gov/regulations/laws/federal

Re: RIN 3064-AE94

Mr. Feldman,

The following comments are submitted on behalf of the Independent Bankers Association of Texas ("IBAT"), a trade association representing more than 350 independent, community banks domiciled in Texas.

IBAT submits these comments in response to the advanced notice of proposed rulemaking (proposal) undertaking a comprehensive review of the regulatory approach to brokered deposits and the interest rate caps applicable to banks that are less than well capitalized.

Brokered Deposits

Brokered and high-rate deposits became a concern among bank regulators and Congress during the most recent financial crisis. The concerns arose because "...(1) Such deposits could facilitate a bank's rapid growth in risky assets without adequate controls; (2) once problems arose, a problem bank could use such deposits to fund additional risky assets to attempt to 'grow out' of its problems, a strategy that ultimately increased the losses to the deposit insurance fund when the institution failed; and (3) brokered and high-rate deposits were sometimes volatile because deposit brokers (on behalf of customers), or the customers themselves, were often drawn to high rates and were prone to leave the bank when they found a better rate or they became aware of problems at the bank."

The passage of the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA) provided relief from certain rules and regulations for community banks. The provision that stands out for deposits is that reciprocal deposits are no longer considered brokered deposits. There is a limit of 20 percent of liabilities up to $5 billion for well-capitalized banks that receive an outstanding or good rating on their most recent CRA examination. If a bank were to drop below well capitalized, that bank could continue accepting reciprocal deposits at its current level without a FDIC waiver.

Definition of "Brokered Deposits"

The term "brokered deposits" has never been clearly defined. Banks must rely on descriptions used in guidance and FAQs issued by the agency that are too numerous to mention over more than two decades. Based on the most prevalent answers in the FAQs, if there is a doubt about the deposit in question then the default answer is that it is a brokered deposit. Relying on guidance and FAQs presents inconsistency and leads to interpretations of the definition. A clear definition of "brokered deposits" is needed.

Exclusion of Well-Capitalized Banks

Section 29 is straightforward. Section 29(a) establishes the general prohibition that a bank "that is not well capitalized may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts". Well- capitalized banks should be excluded from the restrictions surrounding brokered deposits. The restrictions have a significant adverse impact on well-capitalized banks because the amount of brokered deposits can directly affect the deposit insurance assessment rate, liquidity coverage ratio requirements and contingency funding plans.

Section 29(c), "Waiver Authority", permits the FDIC to waive the general prohibition on a case-by-case basis upon application from an adequately capitalized bank if the FDIC finds that the bank's acceptance of brokered deposits does not constitute an unsafe or unsound practice. That exception should by default exclude banks that maintain PCA well-capitalized ratios. An explicit exception would not increase safety and soundness concerns based on those capital levels.

Section 29(h), "Deposit Solicitation Restricted", prohibits a bank that is undercapitalized from soliciting deposits by offering rates of interest that are significantly higher than the prevailing rates on insured deposits. Congress amended Section 29 to permit well- capitalized and well-rated banks to exclude a limited amount of reciprocal deposits from treatment as brokered deposits. A bank that is both well capitalized and well rated is not required to treat reciprocal deposits as brokered deposits up to the lesser of 20 percent of total liabilities or $5 billion.

National Deposit Interest Rate Caps

The regulations found in Section 29 of the Federal Deposit Insurance Act (FDI Act) are entitled "Brokered Deposits" and the FDIC has provided guidance that state a bank:

"…generally will be permitted to offer the *national rate* plus 75 basis points. The national rate will be defined, for deposits of similar size and maturity, as a simple average of rates paid by all insured depository institutions and branches for which data are available. For those cases in which the FDIC determines that the national rate as published on the FDIC's website does not represent the prevailing rate in a particular market, as indicated by available evidence, the depository institution will be permitted to offer the *prevailing rate* in that market plus 75 basis points."

Each week, the FDIC publishes the *Weekly National Rates & Rate Caps* report that restricts the rates a less-than-well-capitalized bank may pay on deposits, effectively limiting the ability of those banks to gather deposits.

<u>All Insured Depository Institutions</u>

The weekly national rates are determined by the simple average of rates offered by all depository institutions (except credit unions) and their branches, large and small, across the country. Herein lies a problem—of more than 5,500 bank charters, approximately one percent (55 charters) account for more than 50 percent of total U.S. branches (approximately 90,000), thereby heavily weighting the established weekly national rates to the largest charters operating in the largest metropolitan areas.

Further, there are numerous markets in which community banks face fierce competition from credit unions, and in some cases, those credit unions have a dominate market share and are **the** primary competition. It is also concerning and counterintuitive that the large and growing "online" banks are consistently offering rates significantly above market and are becoming more formidable competition for local deposits. The methodology for the market comparison for "all insured depository institutions" is problematic and inaccurate on several levels.

Data Which is Available

A final challenge is that the FDIC's weekly national rates are based on "offered rates" (data which is available) and banks often use special rates that differ significantly from offered rates. It is not unusual for a bank to promote higher CD or other interest-bearing account rates, which are often significantly higher than offered rates, to compete in their respective markets. It is common practice for a 13-month CD offering to exceed that offered on a one-year CD by 100 basis points or more and other examples abound. An offered rates comparison for all insured depository institutions appears to have little correlation to the reality of the marketplace for deposit rates on a variety of products.

For example, from the FDIC rate cap information for the week of March 11, 2019, a non-jumbo 12-month CD has a national rate of .66 percent and a rate cap of 1.41 percent. Most community banks across Texas would be unsuccessful in attracting or retaining CDs at the rate cap level. A quick search on the Internet that same day using "CD Rates in Texas" found online Ally Bank paying 2.75 percent for a 12-month CD—nearly double what was allowed according to the FDIC's *Weekly National Rates & Rate Caps* report for that time period.

Another significantly difficult area to assess is the "value" of cash rewards for opening a new account and non-interest accommodations/incentives for customers maintaining certain balances or meeting account activity thresholds (e.g., "club accounts" and other accommodations that offer above-market interest rates, free treasury management, personal banker/financial planner, discounts on bank services, exclusive access to special events, credit monitoring, etc.). These "perks" clearly convey value but are not included in any calculation of rates, as their value is virtually impossible to calculate/interpolate.

Further, savings and money market account rates are broken out separately in the determination of weekly national rates. Banks tend to focus on one or the other, and they frequently offer incentives for new accounts or account holders. We believe this skews the calculations significantly and would recommend these two very similar categories be combined.

In rural areas, loan demand remains strong. Many community banks serve as the economic engines for their communities, yet the opportunities for deposit growth have lagged. Population growth has stalled or in some cases declined significantly, and increased competition from online offerings (banks, insurance companies, investment brokers, credit unions and fintechs) from around the world have made raising deposits locally a challenge. Community banks have funded their balance sheet with a mix of core deposits, internet deposits, reciprocal deposits and brokered deposits. Restricting brokered deposits leaves rate as the primary determining factor in addressing funding needs and imposing an inaccurate and in some cases nonsensical rate cap could exacerbate a problem situation and have unintended consequences.

Conclusion and Recommendations

It is clearly in the best interests of most banks that seriously attempt to follow the rules and run a safe and sound operation to have the "bad actors" weeded out of the system. An imminently failing bank offering substantially higher-than-market rates to attract deposits is obviously a scenario no one would condone. With that said, we believe the FDIC should seriously reconsider the efficacy of the national interest rate cap and ultimately, Congress should significantly change the statutory framework. Abuses can and should be handled on a case-by-case basis. That is a significant responsibility of the bank regulators, and they do and should have the tools to accomplish that objective.

Short of that optimal solution, we recommend the consideration of several significant changes to the calculation of the national deposit rate cap. These include:

- A "one bank, one entry" calculation would be much more reflective of the realities of the marketplace.
- Consider including "date ranges" rather than "standard" CD terms. For example, for a 30-day CD, use 1-45 days; instead of a one-year CD, use 200 – 400 days, etc.;
- Include credit union rates in the calculation;
- Combine savings and money market account rates; and
- Develop a matrix to incorporate "non-interest accommodation" for non-traditional, and in many cases, non-interest deposit incentives.

Further, the regulatory approach in which a bank is labeled "less than well capitalized" when subject to a regulatory order with a capital maintenance provision (which is pretty much every order) is troubling and inappropriate. These situations should be handled on a case-by-case basis. If a bank meets the "well-capitalized" threshold, it should not be penalized for shortcomings in other areas nor further impacted by limitations on deposit gathering when under a public order.

Finally, we are advised that community banks are subject to criticism for an overreliance on interest-bearing deposits. It appears these banks are being treated differently from the plethora of online banks that rely on well-above-market-rate deposits to fund their operations. At least one of these banks was owned by the taxpayers for some time during the last economic crisis and to the best of our knowledge, it was never under a formal order. Community banking is subject to disparate treatment in this area vis-à-vis the major players in the online banking space, and this unfortunate situation should be reviewed and addressed.

As always, thank you for consideration of our comments and concerns. We are happy to discuss further or provide additional information.

Sincerely,

[redacted]

Christopher L. Williston, CAE
President and CEO