

May 7, 2019

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429

Re: Federal Deposit Insurance Corporation  
Comments of Farm Bureau Bank in Response to Advance Notice of Proposed Rulemaking  
and Request for Comment on December 19, 2018 [RIN 3064-AE94]

Dear Executive Secretary Feldman,

This comment letter is submitted on behalf of Farm Bureau Bank FSB (the “Bank”) in response to the Advanced Notice of Proposed Rulemaking, “Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions,” published by the Federal Deposit Insurance Corporation (“FDIC”) in the Federal Register on February 6, 2019 (the “ANPR”).<sup>1</sup> We welcome this opportunity to submit our comments.

We agree with the FDIC’s observation in the ANPR that there have been “significant changes in technology, business models, the economic environment, and products” since the brokered deposit regulations were first adopted.<sup>2</sup> We also agree that in implementing a statute it is much better to have rules adopted by regulation, following the Administrative Procedures Act in a transparent process, rather than by interpretation.<sup>3</sup> Finally, we agree that the brokered deposit statute, Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f, “Section 29”), and its related regulation at 12 C.F.R. 337.6 (the “Regulation” or “Section 337.6”) can serve an important purpose in limiting unsafe and unsound practices among depository institutions.

However, we also believe it to be clear that Congress intended Section 29 to address only those deposit arrangements that in fact raise safety and soundness concerns, and that Congress intended Section 29 be narrowly drawn and interpreted to target the most flagrant abusers. We therefore respectfully submit that the FDIC can and should amend the existing Regulation so as to focus on the Congressional policy concerns and so as not to sweep into the definition of brokered deposit those stable deposits that do not raise these policy concerns. In this comment letter we outline an approach that would exclude from the definition of brokered deposit those arrangements where the depositor interacts directly with the depository institution and establishes a broader banking relationship with the institution, which we refer to as “relationship deposits.” We also propose an alternative approach that would exclude referrals from non-profit, member based organizations that are made to a depository institution that is a member of the organization.

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<sup>1</sup> 84 Fed. Reg. 2366 (Feb. 6, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> See FDIC Trust through Transparency Initiative at <https://www.fdic.gov/transparency>.

## Farm Bureau Bank

The Bank is a federal savings bank that was formed in 1998 and currently has equity capital from 29 Farm Bureau State Federations (the “Farm Bureaus”). The Bank was formed specifically to provide services to Farm Bureau members.

Each Farm Bureau is a cooperative organization governed by, representing, and serving farm, ranch, and other rural families. The individual Farm Bureaus are non-profit organizations under Section 501(c)(5) of the Internal Revenue Code (“IRC”)<sup>4</sup> and are part of the American Farm Bureau Federation, which is an independent, non-governmental, voluntary organization governed by and representing farm and ranch families.

Each state has an independent Farm Bureau Federation, which is organized as an alliance of local, county, and state non-profit non-governmental organizations. This alliance makes cooperative services available to its members through a number of related entities (“Service Entities”). The Bank is one such Service Entity of the Farm Bureau. The Bank is a well-capitalized bank and is owned by FB Bancorp, which is a savings and loan holding company. All of the investors in FB Bancorp are Farm Bureaus and related entities. The Bank’s market as originally conceived and carried out today is made up of Farm Bureau members throughout the country.

## Section 29 History and the Narrow Congressional Intent

The FDIC states in the ANPR that brokered deposits became a concern among bank regulators and Congress before any statutory restrictions were put in place, and that this concern “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 ...; and (3) brokered deposits 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.”<sup>5</sup> These concerns can be referred to in plain terms as concerns for imprudent growth fueled by high-interest rate deposits and hot money.

We agree that these are valid concerns, and the legislative history of Section 29 shows that Congress shared these concerns. Equally important, however, Congress was very clear when enacting Section 29 that it was intended to be narrow in scope and address only these potential concerns.<sup>6</sup>

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<sup>4</sup> 12 U.S.C. § 501(c)(5). Section 501(c)(5) of the IRC exempts from taxation under the IRC “labor, agricultural, or horticultural organizations.” 12 U.S.C. § 501(g) defines the term “agricultural” to include “the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.”

<sup>5</sup> 84 Fed. Reg. 2366 (Feb. 6, 2019).

<sup>6</sup> *Insured Brokered Deposits and Federal Depository Institutions: Hearing before the Subcomm. on General Oversight and Investigations of the H. Comm. on Banking, Finance and Urban Affairs*, 101st Cong., 1st Sess., 9–10 (May 17, 1989) (the “May 17, 1989 Hearing”) (statement of Hon. Frank H. Murkowski, U.S. Senator from the State of Alaska). See also, below.

The brokered deposit amendment to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”) was authored by Senator Frank H. Murkowski (R-AK).<sup>7</sup> During a Hearing on the amendment before the Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance and Urban Affairs, Senator Murkowski explained the goal and purpose of the amendment:

“The goal of this provision is to prevent the flagrant abuse of the deposit insurance system by troubled institutions that take excessive risks and leave the taxpayers to suffer the consequences. By preventing troubled institutions from using brokered deposits – unless permitted to do so by the FDIC – we accomplish this goal and create accountability on the part of the FDIC.”<sup>8</sup>

. . . In summary, this amendment is designed to rein in the abuses of brokered deposits by troubled institutions and to create accountability on the part of Federal regulators. This is a not a blanket prohibition on the use of brokered deposits, but a narrowly drawn provision that specifically targets the most flagrant abusers. A provision intended to protect the taxpayers of this country.”<sup>9</sup>

With respect to troubled banks paying above-market rates for brokered deposits to fuel rapid and risky growth, members of Congress also had this to say:

“It is often argued that these brokered funds have been used by troubled institutions for imprudent growth and excessive risk-taking. Critics also claim such funds increase the costs to other institutions by creating an interest rate bidding war for deposits and that brokered funds are an abuse of deposit insurance.”<sup>10</sup>

“Unsound institutions have financed their unrealistic growth by offering above market interest rates on CDs and marketing them nationwide through the use of a broker.”<sup>11</sup>

The following conversation between Congressman Hoagland and Senator Murkowski during the brokered deposit Hearings also reflects the Congressional concern that certain banks were paying above market interest rates for brokered deposits and that this attracted rate shoppers:

Congressman Hoagland: “As I understand the brokered deposit, the security firm somewhere will gather up funds the customers have placed with it and it will shop around the country for a higher interest rate, right?”

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<sup>7</sup> *Id.* at 4 (opening statement of Hon. Carroll Hubbard, Chairman, Subcomm. on General Oversight and Investigations, H. Comm. on Banking, Finance and Urban Affairs).

<sup>8</sup> *Id.* at 7 (statement of Hon. Frank H. Murkowski, U.S. Senator from the State of Alaska) (emphasis added); *see also id.* at 71 (written statement of Sen. Frank H. Murkowski, U.S. Senator from the State of Alaska). The purpose of this hearing was to update the record on brokered deposits following a prior hearing by the House General Oversight Subcommittee during the 99<sup>th</sup> Congress on July 16, 1985.

<sup>9</sup> *Id.* at 9–10 (statement of Hon. Frank H. Murkowski, U.S. Senator from the State of Alaska) (emphasis added); *see also id.* at 74 (written statement of Sen. Frank H. Murkowski, U.S. Senator from the State of Alaska).

<sup>10</sup> *Id.* at 1 (opening statement of Hon. Carroll Hubbard, Chairman, Subcomm. on General Oversight and Investigation, H. Comm. on Banking, Finance and Urban Affairs).

<sup>11</sup> *Id.* at 8 ((statement of Hon. Frank H. Murkowski, U.S. Senator from the State of Alaska).

Senator Murkowski: "Correct."

Congressman Hoagland: "Then they will be able to quickly dump money into a thrift to an institution offering higher interest rates, right?"

Senator Murkowski: "Generally, this is the case. They have a network and they know thrifts that are bidding in brokered deposits. Brokers maintain contact and there is a communication network that allows an institution to get the general bid area and they will bid in the funds. Since the funds are insured, ... risk to the investor or broker is insignificant for all practical purposes because these are all under \$100,000. Very few are above that."

Congressman Hoagland: "I am sure people in the hearing room don't understand brokered deposits very well. I certainly don't. What happens is a security firm will gather all these funds and shop throughout the Nation for a thrift offering the highest interest rates and be in a position to dump many hundreds of thousands of dollars overnight into that thrift; is that it?"

Senator Murkowski: "That is correct."<sup>12</sup>

A May 16, 1989 Report accompanying FIRREA likewise stated, "Many failed thrifts relied on volatile funding, such as brokered deposits controlled by a few individuals, which could be quickly withdrawn, paralyzing the institution."<sup>13</sup>

These comments clearly show the Congressional concern that troubled banks might rely on high-interest rate and volatile deposits, deposits that the customer would move to another bank as soon as a better yield was available.

This Congressional concern was also reflected in the final statute as enacted in 1989, which specifically extended the definition of deposit broker to include bank employees who solicit deposits with rates of interest that are significantly higher than the prevailing rates in the bank's market area:

"Notwithstanding paragraph (2) [exclusions from the definition of deposit broker], the term 'deposit broker' includes any insured depository institution, and any employee of any insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are *significantly higher than the prevailing rates of interest* on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area."<sup>14</sup>

In 1994, Congress amended this provision to limit its applicability to depository institutions that are not well capitalized, further narrowing the scope of Section 29.<sup>15</sup>

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<sup>12</sup> *Id.* at 12–13.

<sup>13</sup> H.R. REP. NO. 101-54, pt. 1, at 300 (May 16, 1989) (underlining added).

<sup>14</sup> 12 U.S.C. § 1831f(f)(3) (1989) (emphasis added).

<sup>15</sup> See Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, § 337 (1994).

Three years earlier, in 1991, Congress amended Section 29 to prohibit an undercapitalized depository institution from soliciting deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits in such institution's normal market areas or in the market area in which such deposits would otherwise be accepted."<sup>16</sup> This provision has remained substantially unchanged since 1991.

Thus, this legislative history shows a Congressional intent to regulate deposits when obtained through a narrow class of deposit brokers with the narrow intent of addressing volatile, high-risk deposits.

Finally, Section 29 itself is narrowly crafted and shows that Congress did not intend every third party that assists a bank in any way with its deposit activities to be treated as a deposit broker. Under Section 29, a "deposit broker" is "any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties."<sup>17</sup> Section 29 also lists nine specific exclusions to the definition of deposit broker. One of those exclusions is for "an agent or nominee whose primary purpose is not the placement of funds with depository institutions."<sup>18</sup> In this way, Section 29 further distinguishes between those persons engaged in a business having a primary purpose of placing or facilitating the placement of deposits, and those persons for whom the placement or facilitation of placement of deposits is incidental to their broader activities.

Despite Congress's intent for a "narrowly drawn provision," and the narrow concerns intended to be addressed by Section 29, historically, the FDIC has routinely interpreted the statute broadly so as to characterize a very large range of arrangements as resulting in brokered deposits. These FDIC interpretations have always stigmatized and burdened depository institutions, but the negative consequences of subjecting more deposits to Section 29 than Congress intended increased significantly after the FDIC increased insurance premiums for brokered deposits, as broadly defined through FDIC interpretations.

We respectfully submit that the FDIC can address the concerns arising from brokered deposits through a focused definition of brokered deposit, and in that way interpret Section 29 as intended by Congress and in a manner that does not limit the ability of non-troubled institutions to offer their products to their intended market customers when working with third parties.

### **Proposed Relationship Deposit Amendment**

The FDIC and the other federal bank regulators recognize that deposits are more stable and present fewer liquidity concerns when the account is a transactional account or the depositor maintains multiple relationships with an institution.

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<sup>16</sup> 12 U.S.C. § 1831f(h) (1991) ("An insured depository institution that is undercapitalized, as defined in section 38, shall not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits— (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted.").

<sup>17</sup> Section 29 does not define "brokered deposit," but the Regulation, 12 C.F.R. 337.6(a)(2), defines the term as any deposit that is "obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker."

<sup>18</sup> Section 29(g)(2)(I) (the "primary purpose" exception).



The Liquidity Coverage Ratio (“LCR”) rules adopted in 2014 consider “stable retail deposits” to include retail deposits that are entirely covered by deposit insurance where “the depositor has another established relationship with a covered company, such that withdrawal of the deposit would be unlikely.”<sup>19</sup> The LCR rules define “stable retail deposit” as “a retail deposit that is entirely covered by deposit insurance” and either (1) is “held by the depositor in a transactional account” or (2) the “depositor that holds the account has another established relationship with the [FDIC-supervised institution]. . . .”<sup>20</sup> The established relationship could be another deposit account, loan, bill payment service, or any other service provided to the depositor, so long as the bank can demonstrate that the relationship would make the withdrawal of the deposit “highly unlikely during a liquidity stress event.”<sup>21</sup>

The LCR rules define a “retail deposit” as “a demand or term deposit that is placed with the [FDIC-supervised institution] by a retail customer or counterparty, other than a brokered deposit.”<sup>22</sup> Although the definition excludes “brokered deposits” as defined in Section 29, it is the FDIC’s interpretations of brokered deposit that has caused these relationship deposits to be included in the definition of brokered deposit despite their inherent and recognized stability. The FDIC rightly notes in the ANPR that “[c]ore deposits provide a bank with a stable and relatively cost effective source of funds” and that many core depositors “have long-term financial relationships with a bank that involve deposits, lending, and other financial services that generate bank profits.”<sup>23</sup>

Consistent with the concerns intended to be addressed by Section 29 and the plain language of the statute, we believe that the FDIC can and should amend Section 337.6 to exclude from the definition of “brokered deposit” those deposits that are “stable retail deposits” as defined in the Liquidity Coverage Ratio rules. Another established relationship for this purpose should include any relationship that reasonably increases the likelihood that the customer will maintain the deposit relationship with the institution, including bill payment services, automated clearinghouse (ACH) services, wire transfer services, loans, investment advisory services, and safe deposit boxes, among other products and services.

### **Proposed Amendment for Nonprofit Service Providers**

Consistent with Section 29 and Congressional intent, we also believe that the FDIC can exclude from the definition of deposit broker certain nonprofit member-based associations that provide deposit marketing services for financial institutions incidental to their other member services. Such an exemption could apply to any member-based organization, its affiliates and their respective employees when: (i) the organization has the status of a tax-exempt organization under section 501(c)(3) or 501(c)(5) of the Internal Revenue Code of 1986; (ii) the organization, its affiliates and their employees are part of a family of member services organizations of which the depository institution is also a member; and (iii) any deposits placed in the depository institution are placed directly by retail customers in their names.

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<sup>19</sup> 79 Fed. Reg. 61440, at 61480 (Oct. 10, 2014).

<sup>20</sup> *Id.* at 61528. *See also*, 12 C.F.R. § 329.3 (FDIC regulation)

<sup>21</sup> *Id.* *See also*, 12 C.F.R. § 329.3 (FDIC regulation).

<sup>22</sup> *Id.* at 61527. *See also*, 12 C.F.R. § 329.3 (FDIC regulation)

<sup>23</sup> 84 Fed. Reg. 2366, at 2384–2385 (Feb. 6, 2019).

Such an organization should not be considered to be “engaged in the business” of facilitating the placement of deposits because it clearly has a broader member-based business. The fact that the organization is formed to provide a large variety of services to its members shows that it is not engaged in the business of facilitating the placement of deposits. Moreover, its primary purpose is not to facilitate the placement of deposits.

This exclusion would allow any depository institution to establish arrangements with qualifying nonprofit organizations whose primary business activity is not to place or facilitate the placement of deposits with any depository institution, so long as the depository institution is a member of such organization. Thus, for example, a qualifying religious organization, college, or similar nonprofit organization could engage in the limited range of activities without being a deposit broker.

### **Conclusion**

We thank the FDIC for its willingness to consider amendments to Section 337.6 that address evolution of the banking industry in the years since the brokered deposit statute was adopted, and we appreciate this opportunity to provide our comments. We hope that the FDIC can agree that our proposals are consistent with Section 29 and Congressional intent and are needed to modernize the regulatory definition of brokered deposit.

Sincerely,

A large black rectangular redaction box covering the signature of William A. Hileman.

William A. Hileman  
President and Chief Executive Officer  
Farm Bureau Bank, FSB