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Paul F. Thome
President

May 7, 2019

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

RE: Brokered Deposits RIN 3064-AE94

Dear Mr. Feldman:

We appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC's) Advanced Notice of Proposed Rulemaking (ANPR) regarding the FDIC's regulatory approach to brokered deposits and to the interest rate caps applicable to banks that are less than well capitalized. Sallie Mae agrees that the regulations, interpretations and guidance on this topic must be able to take into account the many and ongoing changes in technology, business models and products that have evolved over the past thirty years and changed the banking customer relationship, including how deposit relationships are acquired. Over the years, and through the Great Recession, brokered deposits have provided a cost effective and stable source of funding for banks and particularly for branchless banks such as Sallie Mae. Perception among bankers is that there is an institutional bias against brokered deposits that has suppressed the diversification of funding sources beyond deposits made by traditional branch retail and commercial customers. We applaud the recent dialogue that has been initiated and encourage a comprehensive reassessment of the FDIC's supervisory guidance over brokered deposits and the perceived risk to the deposit insurance fund.

Sallie Mae is a Utah industrial bank and the nation's leading private student lender, providing fairly-priced loans that supplement federal student loans, grants and family savings to help students finance the rising cost of higher education. Sallie Mae operates nationally without bank branches and has over two million discrete borrowers and co-signers as customers. We originate over 400,000 new high-quality loans annually to help students achieve their goals. Sallie Mae has grown significantly since splitting from old SLM Corporation (n/k/a Navient Corporation) in 2014, but we maintained our rigorous credit philosophy, growing new production by a modest 6% per year. This resulted in a near tripling of our private student loan portfolio due to the

relatively small aggregate balance at the time of the split and the long-term nature of the pools of loans originated. During this period of growth, we constructively leveraged a number of relationships with traditional deposit brokers, vetted through a rigorous due diligence process, and these funds have remained attractively priced and stable. These brokered deposits (principally master certificates of deposit) serve as an effective tool in matching the duration and interest rate sensitivity of our assets. We also made a conscious decision to further leverage the Bank's diverse funding sources including retail deposits, strategic relationships with 529 Plans and Health Savings Accounts (HSA) – again, informed by rigorous due diligence, and on-book asset-backed securitizations (ABS). As an online-centric bank serving consumers, not businesses, we seek to prudently fund our balance sheet growth, but we are inherently limited to types of deposits – whether internet deposits, HSA and 529 fund deposits, ABS transactions, or brokered deposits – all of which the FDIC appears to judge as "volatile" based solely on dated, rebuttable anecdotes with no direct or quantifiable evidence of such volatility or risk.

A major obstacle facing banks that wish to diversify funding or utilize brokered deposits as a risk management tool is an evident and institutionalized regulatory bias against brokered deposits and the risk that any deposit acquired in conjunction with a third party in any capacity could be challenged. Enacted in 1989, Section 29 of the Federal Deposit Insurance Act (FDIA) sets restrictions on the acceptance of deposits from deposit brokers by institutions with weakened capital positions. The statute was narrowly drawn and intended by Congress to prevent troubled institutions from funding low-quality assets with easily available deposits placed by third-parties whose primary business is "placing deposits or facilitating the placement of deposits of third parties" with insured depository institutions. The statute excludes from the definition of deposit broker a number of deposit sources including specific exclusions based on the primary purpose of the agent or nominee, whether the deposit source is employee benefit plans generally as well as certain plans enumerated in the Internal Revenue Code. The FDIC has consistently cited a correlation between brokered deposits and low-quality assets as a rationale for limiting their utilization by all institutions, not just those that are troubled. Correlating brokered deposits with bank failures has resulted in consistently broad interpretations of the definition of "deposit broker" and narrow interpretations of exceptions in FDIC guidance over the years, well beyond the statutory intent. FDIC insurance assessments unfairly have penalized banks who have safely and prudently used brokered deposits as a part of their diversified funding strategy. The FDIC's ingrained view of brokered deposits (and of internet deposits) has impacted the supervisory climate and stifled or slowed adoption by banks of innovations and product offerings that are unfamiliar, complex or outside an outdated brick-and-mortar norm.

Examples of changing products and the deposit marketplace include Health Savings Accounts (HSAs) and 529 Plans which were introduced through changes in the Internal Revenue Code more than a decade after Section 29 became law with the purpose of encouraging consumers to save for medical costs and higher education, respectively. HSA custodians can be banks, insurance companies and other institutions authorized by the Internal Revenue Service (IRS).

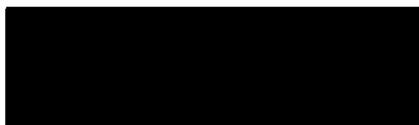
The primary purpose of HSA custodians and 529 Plan administrators (including state agencies) is the administration of the deposits in compliance with laws as well as their fiduciary relationship with their customers. In discharging their fiduciary responsibilities, administrators look for strong banks and enter into long-term relationships with them and monitor their financial stability. Similar to HSAs, 529 plans typically include the placement of customer investments into various alternatives, one of which may include an FDIC-insured option. The administrators of these programs provide a full range of services for savers, including the ability to save in a tax-benefitted program, the ability to spend for the prescribed purpose, and the ability to invest for future needs. The primary purpose of HSAs and 529 plans is clearly not the placement of deposits, and their administrators are not driven by fees associated with placing deposits, and both are stable and reliable, yet, classification of these programs as "non-brokered" has been recently challenged. No public purpose is served in stigmatizing these deposits as "brokered" when determining a bank's CAMELS ratings or assessing its insurance premiums and these close cousins of the types of programs specifically excluded from the scope of Section 29 should also be recognized as non-brokered. We encourage the FDIC to clarify its guidance to clearly recognize that deposits obtained through HSA and 529 Plans are not brokered deposits under the exception for employee benefit plans (and the primary purpose exception). Absent this clear guidance, exam teams may inconsistently treat such deposit relationships from bank to bank or even from year to year, potentially with the effect of increasing assessments by millions of dollars without any evidence that such plans represent risk to the Deposit Insurance Fund. We further recommend that the FDIC remove the Brokered Deposit Ratio component from the FDIC insurance assessment calculation for well-capitalized banks.

Many, including the FDIC, have observed that technological advances have altered the ways that banks obtain deposits. Technological advances and business model changes supported by those advances are continuing now and into the future at an ever-increasing pace. Ease, customer service, digital wallets, and mobile applications are credibly more important for forming lasting and mutually beneficial relationships with customers than brick-and-mortar branches, particularly among millennials and subsequent generations weaned on smartphones. Today, many branch bank deposits are made electronically and remotely, branchless banks interface with customers exclusively online and telephonically, and many customers interface with their banks only through third-party applications. The clear evolutionary path of consumer preference for both transactional and saving products is to take place in strictly digital interfaces based on value to the consumer not driven by proximity to brick and mortar facilities. Updated rules (including the definition of "core deposits") should be flexible enough to account for these ongoing and inevitable future changes or they are destined to be out of date before they are published. Ideally the supervisory guidance will return focus to the core risks – the true volatility and reliability of the deposits – not whether a third party may be involved.

With respect to the National Rate Cap, the methodology currently used by the FDIC to derive a national rate cap does not contemplate the modern online-centric bank structure that represents the true market value of retail deposits and lacks the flexibility to adapt to market and competition changes that have taken, and continue to take place in the modern banking environment. Artificially low deposit rates by brick and mortar banks are the reason that an increasing number of retail and business customers shop online; those that accept the rates may have other relationships with their banks that offset the loss in earnings that they receive for their deposits. Replacing the NRC with a well-known and utilized benchmark such as the Federal Home Loan Bank (FHLB) advance rate or a basket of online rates for liquid and term deposits would allow banks who fall below well-capitalized to continue to raise retail deposits at true market-based rates and enhance their liquidity. On the surface, well-capitalized banks should not be impacted by the NRC, however flawed the methodology in computing it. However, even well-capitalized banks are impacted because supervisory exam teams require banks to run scenarios as part of the liquidity stress-testing and contingency funding plan assessments that simulate the impact on the Bank's financial condition should it become subject to the NRC. Obviously, requiring draconian assumptions requiring modeling at rates substantially below market would result in a significant outflow of retail deposits. Revising the methodology to compute a national rate cap that more accurately mirrors market rates would result in a more meaningful assessment of a Bank's ability to withstand adverse scenarios and the effectiveness of its contingent funding plans.

We have enjoyed a productive and collaborative relationship over the years with the FDIC and our funding diversification has been favorably received. However, as discussed herein, we are concerned that current regulatory guidance penalizes banks without branches, runs contrary to overarching market trends and limits bank access to a deep source of competitively priced deposit and investment products available online, through program administrators, wealth managers and Fintech pioneers. Again, we appreciate the opportunity to provide our comments with respect to the FDIC's long-standing position and precedent regarding the perceived risk to the Deposit Insurance Fund of brokered deposits and the textual interpretation of "deposit broker" and its exceptions. We hope that your effort leads to true regulatory reform.

Sincerely,



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