



March 31, 2020

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20439

Re: Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions – RIN 3064-AE94

Dear Secretary Feldman,

I am President and CEO of Incommons Bank in Mexia, Texas and I am writing in response to the proposed FDIC rule regarding brokered deposits that was published on February 10, 2020.

Incommons Bank serves the Central Texas community including small towns of less than 1,000 and cities of 500,000. For 130 years, we have been striving to be the best community bank in Central Texas by working with our communities, listening to our customers' needs and supporting them.

In order to best serve our customers, we use third party providers for core processing, managed services like IT, deposit documentation, loan processing, digital banking, website hosting, marketing and more. All these services are vital to the continuation of our business. Additionally, we are always looking for the next thing to offer our customers that will give us a competitive advantage. We are a bank that gets it done. Loans that no other bank would think about, we figure out a way to make them work. So, adding access to the bank the way customers want to access it is important and this includes technology and the third-party providers that provide that technology. The proposed FDIC rule would force us to change the way we do business.

Before I go into recommendations on how to change the rule, I'd like to give you some background on how the industry feels as well as public statements FDIC Chairman Jelena McWilliams has made in regard to technology, innovation, community banks and brokered deposits.

On June 12, 2019, Chairman McWilliams stated in a speech at the CATO Summit on Financial Regulation that "*Technology is a great equalizer. The banking industry has a history of innovating to meet consumers' needs. Technological innovation gives banks an opportunity to reach broad audiences swiftly, offer new products and services efficiently, and it promotes competition.*"

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She also said in her January 31, 2019 speech at the Florida Bankers Association Leadership Dinner that *“Both the FDIC and the banking industry need to respond to changes in consumer behavior...innovation has made financial services more available, affordable and convenient. But in many instances, our regulatory framework has made banks reluctant to innovate and develop products...”*

Chairman McWilliams has repeatedly expressed the need to update regulations to encompass new technologies and consumer preferences, but unfortunately, the way the current proposed rule is written, it does not match the Chairman’s statements. The way I read the language is that it would limit by ability to use third party providers without considering them “brokered deposits.”

My leading concerns are with the proposed “facilitating” definition that indicates that a person would meet the “facilitating the placement of deposits” definition of a “deposit broker” by engaging in one of the following activities: directly or indirectly sharing any third party information with the insured depository institution or providing assistance or is involved in setting rates, fees, terms, or conditions for the deposit account. The proposed language would restricts my bank’s ability to receive any external information from any third party about our own customers or potential customers. In addition, the proposed rule restricts banks from using consulting and/or advisory services to assist us in our retail deposit offerings.

Additionally, I find issue with the proposed rule on the process by which third parties would have to apply for a primary purpose exception from the FDIC and eliminating the current FDIC Advisory Opinions post final rule.

My objections voiced above should not be shocking because many institutions last summer stated similar apprehensions during the advance notice of proposed rulemaking and request for comments on brokered deposits. One example from Farm Bureau Bank stated *“...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.”*

With that said, my suggestions to the proposed rule are as follows:

1. Exclude from the “deposit broker” definition, any third-party service provider who enables a bank to enter into a direct relationship with an individual depositor. If such an express exclusion is not acceptable to the FDIC, then Staff could create a bright-line standard under the primary purpose exemption within the rule, to exempt such third-party service providers. My bank should not be constrained from establishing direct depositor relationships via bank-controlled products supported by third-party service providers.
2. Exempt from the “deposit broker” definition all transaction and relationship-based accounts where a bona fide independent relationship is established directly between a bank and an individual depositor. Transaction accounts and deposits associated with individuals who use multiple services (i.e. checking, savings, direct deposit, online bill pay, debit card, credit card, loan, wealth management) from my institution are stable sources of funds upon which I can safely and soundly operate my business, and do not put the deposit insurance fund at risk. These types of accounts are clearly distinguishable from other types of programmatic deposits that are of interest to the FDIC. Transaction accounts and



relationship-based accounts should be exempt from any brokered deposit treatment, as I own the depositor relationship directly.

3. Limit the definition of “facilitating the placement of deposits” so that it does not unintentionally include third-parties who provides services to banks in connection with deposit accounts that are established directly between the bank and an individual depositors. The reach of the proposed definition likely would cover many of the third-party activities that community banks rely on to offer deposit products directly to individual depositors, which are clearly distinguishable from brokering activities. The March 2 Staff Memorandum suggests that this may have been the FDIC’s intent, but unfortunately, the proposed definition is so broadly worded that it covers many of these activities.

4. My bank has invested significantly and has come to rely on prior FDIC Advisory Opinions. As such, I ask that all prior FDIC Advisory Opinions remain in effect post final rule.

Thank you,



Greg Stubbs

Chief Executive Officer
Incommons Bank