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April 6, 2009

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

RE: RIN 3064-AD41—Interest Rate Restrictions on Institutions That Are Less Than Well-Capitalized

Dear Mr. Feldman:

This comment is being submitted on behalf of BancVue, a software development company that provides products and services to community banks and credit unions throughout the country (*i.e.,* REWARDChecking®). BancVue is concerned that current, and proposed changes to, 12 C.F.R. § 337.6 implementing Section 29 of the Federal Deposit Insurance Act on brokered deposits may prevent local community insured depository institutions that have become less than well-capitalized due to the unprecedented economic conditions from paying rates of interest on certain core deposit balances of limited amount. These balances do not present a risk to the safety and soundness of the insured depository institutions and, in fact, provide these institutions with an important source of funding, and an important tool, that has remained stable even during the current economic stress, for competing with large national competitors.

Section 29 limits the acceptance of brokered deposits by insured depository institutions that are not well-capitalized. The Federal Deposit Insurance Corporation ("FDIC") can waive this limitation, but if it does, the rates paid cannot significantly exceed the rates paid for deposits of similar maturity in the institution's normal market area for deposits from that market area or national rates for deposits from outside of the institution's normal market area. The term deposit broker, which triggers the coverage of Section 29, does not apply to the depository institution itself unless the depository institution is offering rates of interest that are significantly higher than the prevailing rates in the insured depository institution's normal market area. Thus, Section 29 indirectly limits the rates that any depository institution that is not well-capitalized can pay on deposits. Section 29 also empowers the FDIC to adopt additional restrictions on the acceptance of brokered deposits as the FDIC deems appropriate.

Historically, FDIC regulations implementing Section 29 have defined national rates with reference to similar maturity Treasury obligations, but the FDIC has not explicitly defined rates in an institution's normal market area. Rather, the FDIC has provided that the rate offered cannot exceed the average effective yield on insured deposits of comparable maturity in the relevant market by more than 75 basis points.

In RIN 3064-AD41, the FDIC has proposed to revise how normal market area rates are computed so that a new national rate is presumed to apply unless the FDIC determines that a different rate applies. In the Federal Register notice announcing the proposed change, the FDIC noted that based on data as of January 4, 2009, the national rate for non-maturity products would be 1.35%. The significance of this rate cap is increasing as the troubled economy results in an increasing number of historically sound and conservative insured depository institutions finding themselves less than well-capitalized and, at least temporarily, unable to access additional capital in the private markets at reasonable rates.

REWARDChecking

BancVue is concerned as to how the new, and existing, rate caps might be applied to multi-rate NOW accounts that have been used increasingly by local banks to compete with large national banking organizations. For example, REWARDChecking is a free consumer checking account that was first launched in April of 2000 by a community bank, in an effort by the bank to compete with larger interstate national banks. Since that time, REWARDChecking has been offered by numerous banks, savings associations and credit unions across the country, giving account holders a high-rate, free checking account that is also profitable for the financial institution. REWARDChecking offers a high interest rate subject to specified criteria based on the use of the account established by the account-holding financial institution. If the customer meets the criteria during a particular period, the customer qualifies for and receives a "bonus" or "reward" interest rate (in some cases, even in today's environment, as high as 6%).

REWARDChecking Accounts are Not High-Cost Accounts

The criteria for earning the "reward" interest rate have included any or all of the following (or other criteria established by the financial institution): online bill payment, direct deposit/direct debit, electronic statements, minimum number of debit card transactions per cycle; and providing the financial institution with a valid e-mail address. These criteria either result in reduced overhead costs (*e.g.*, electronic statement versus paper, mailed statement), lower risk (*e.g.*, direct deposit) or provided additional income (*e.g.*, interchange from debit card usage) for the bank and enabled the bank to pay a relatively high "reward" rate of interest. These criteria also result in REWARDChecking accounts being even more stable and reliable sources of funds than conventionally priced checking accounts.

For example, by requiring an increased number of transactions (note—no requirements are set on the minimum purchase price of those transactions), there is an increase in the normal debit card activity from 8 to 20 swipes.

Account	Average Swipes	Revenue Per Swipe	Revenue per Account
Free Checking	8	.31	$2.48
RC	20	.31	$6.20

Based on the multiple years of data from BancVue, the average debit card transaction is worth 31 cents. The table above shows that there is a 150% increase in the average REWARDChecking account interchange revenue versus the average free checking account interchange revenue. Similarly, by requiring e-statements, banks are able to reduce their monthly costs per account from an average of $2.15 per account to $.10 per account. Moreover, ACH, bill pay, and Internet banking all contribute to the longevity of the accounts reducing account acquisition costs.

The following example illustrates how the combination of lower rates and additional income reduce the costs of funds to an insured depository institution offering REWARDChecking:

> A 5.01% APY would be based on a 4.90% annual percentage rate. If this rate is applied to balances up to $25,000, the combination of the amount limitation and depositors who do not meet the reward criteria in a particular month typically will lead to a cost of funds of about 3.92%. Non-interest income from the account, including interchange and NSF fees that are not available for fixed maturity CDs, would further reduce the cost of funds to about 1.26%. In addition, the savings on account administration costs by requiring online statements would further reduce the effective cost of funds, particularly for lower balance accounts.

Accordingly, application of the national rate cap as proposed by the FDIC to the reward rate on REWARDChecking would prohibit the offering of REWARDChecking by insured depository institutions that are not well-capitalized even though the effective cost of funds for a REWARDChecking account would typically be below the proposed rate cap.

At the same time REWARDChecking uses a combination of a high rate of interest together with revenue generating and risk and cost reducing features to attract stable deposits. The cost to the insured depository institution is limited by a cap on the amount of funds that can receive the reward rate, *e.g.,* $25,000, and because the institution pays a reduced rate on accounts that do not meet the reward criteria in any particular month. The rates paid on these balances typically are significantly lower than the reward rate but competitive with rates on checking accounts in the institution's normal market area. Currently the average rate is 1.03%.

Retention of Customers in REWARDChecking is Strong

REWARDChecking accounts meet the Uniform Bank Performance Report definition of "Core Deposits" and are more stable than other interest checking accounts. Accordingly,

REWARDChecking accounts do not present the risk that they will be withdrawn abruptly, forcing the insured bank to seek collateralized loans from a Federal Reserve Bank or Federal Home Loan Bank for replacement funding and potentially increasing the cost to the FDIC of resolving the institution if it should fail.

BancVue has over 8,000 months of data surrounding the performance of the REWARDChecking account. A comparison of the numbers of REWARDChecking accounts opened to the number of free checking accounts opened in January 2008 through December 2008 at 212 financial institutions shows that retention of REWARDChecking accounts is much higher than retention of free checking accounts.

	REWARDChecking	Free
Total opened	191,734	154,241
Total closed	30,799	123,957

REWARDChecking accounts attracted more consumers to open accounts and there were almost five times the number of free checking accounts closed compared to the number of REWARDChecking accounts closed. The retention of REWARDChecking accounts far outweighs the retention of free checking accounts.

Ratio of Closed to Opened Accounts

The chart below displays the ratio of accounts closed to accounts opened during January 2008 through December 2008. "NR" refers to new relationships. Read as "For every 1 account that closed, *x* were opened."

	Closed	Opened
Total REWARDChecking	1	6.2
Total Free	1	1.2
Total NR REWARDChecking	1	7.8
Total NR Free	1	4.1

The opened-to-closed ratios suggest that REWARDChecking accounts as a whole stay active approximately five times longer than free checking accounts and that REWARDChecking new account relationships stay active almost twice as long as free checking accounts.

A Better Approach

For the reasons noted above, we do not believe that REWARDChecking presents the kinds of risks that were the focus of Section 29 and the FDIC rules implementing that section. We believe that the FDIC's interest in reducing the risk to insured depository institutions from high interest rate brokered deposits and depository institutions' interest in offering innovative and competitive products can be reconciled by limiting the applicability of the interest rate caps for institutions that are viewed as being deposit brokers in their own right. From a legal standpoint, we believe that this could be achieved in at least two different ways. First, the FDIC

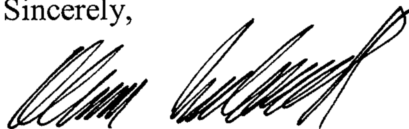
could simply determine that interest rate limitations do not apply to contingent rates that depend on the particular characteristics of account activity and are not payable as a matter of right to all account holders. In this first approach, the FDIC would be interpreting the statutory language "offering rates of interest" in section 29(g)(3) of the Federal Deposit Insurance Act.

Second, the FDIC could set a separate rate for the REWARDChecking type deposits. Currently, branded REWARDChecking is offered by approximate 600 banking institutions and another 100 offer their own version of this product. A significant number of these institutions would be well-capitalized, allowing the FDIC to establish a reference rate for those depositors earning the reward rate that would not reflect a rate offered only by troubled institutions and that would have a significant sample size. BancVue would be able to provide the FDIC with a list of its customers offering the branded BancVue REWARDChecking account and could help the FDIC identify other insured institutions offering similar accounts. This approach would allow insured depository institutions to continue to accept valid core deposits and would allow their account holders the privilege to earn a high rate of interest without having high minimum balance requirements.

In this second approach, the FDIC would be interpreting the term "deposits" as it is used in section 29(g)(3). Although we believe that the term "deposits" is already sufficiently ambiguous to allow the FDIC to determine different rates for deposits with different characteristics, we note that the use of the term "deposits" in section 29(g)(3) differs from the use of the term in section 29(c)(3) because the former does not include a reference to the maturity of the deposits while the latter does. There is no logic to this difference and the FDIC has already interpreted the term deposits in section 29(g)(3) to include both maturity and size. Therefore we believe that the FDIC is free to interpret the term deposits in section 29(g)(3) in a way as to allow it to make still other distinctions between deposit types.

If you have any questions on the views expressed in this comment please contact me, at 202-778-1614.

Sincerely,



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