



May 6, 2019

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

Submitted via comments@fdic.gov

Regarding: RIN 3064-AE94: Request for Comment on Proposed Rulemaking to Amend 12 C.F.R. Part 337 to Review Current Brokered Deposit Regulations and Interest Rate Restrictions Applicable to Banks that are Less than Well Capitalized.

Dear Mr. Feldman:

On behalf of the Community Bankers Association of Illinois (“CBAI”), and our 310 community bank members, we are writing in response to the Federal Deposit Insurance Corporation’s (“FDIC”) February 6, 2019 Advanced Notice of Proposed Rulemaking and Request for Comments (“ANPR”) regarding brokered deposit regulations and interest rate restrictions. The CBAI commented on the interest rate restrictions on April 23, 2019, and in this letter we address brokered deposit regulations.

CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high quality products. CBAI members hold more than \$70 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit www.cbai.com.

CBAI appreciates Chairwoman McWilliam's invitation to comment on this important matter and we applaud her desire to review the current regulations in light of the significant changes the financial industry has seen in technology, business models, product offerings, delivery channels, third-party service providers, financial technology companies and consumer banking behaviors that have occurred in the thirty (30) years since the deposit broker/brokered deposits regulations were originally put in place.

As shown below, community banks play a vital role in our nation's economy:

- *Access to Financial Products & Services*: 16.3 million Americans would have limited access to banking services if it were not for community banks. Nearly one in five of our nation's 3,000 counties would have no physical banking presence if it were not for community banks.
- *Access to Local Credit*: Over 900 counties across the United States rely exclusively upon community banks for extensions of local credit.
- *Business Loans*: Community banks are responsible for 52% of all small business loans and 82% of all agricultural loans.
- *Local & National Economy*: Since the 1970s, small businesses have generated 55% of all jobs and 65% of all net new jobs.

Unfortunately, according to the FDIC's records, from 2002 through Q3 2018, on average, one (1) small bank (defined as less than \$1 billion in asset size) has disappeared each business day over the past fifteen (15) years. It is also disturbing that 45% of all new checking accounts are being opened by just three (3) banks (Chase, Bank of America and Wells Fargo) whose institutions represent just 24% of all branch offices within the United States. (*Source: Wall Street Journal, March 2018*).

In addition to the continued too-big-to-fail benefit, these large banks have inherent business model advantages (i.e. scope, scale, staffing) that community banks simply do not have. Consequently, community banks must leverage their finite resources by strategically partnering with industry innovators and third party service providers to deliver innovative financial products, competitive rates, and the personalized messages to attract new consumers (and their deposits).

We understand that, as currently interpreted by the FDIC, the brokered deposit rules are making it difficult for community banks to attract new consumers and gather the transaction account deposits that are consistently the cornerstone of individual, consumer banking relationships.

Banking is not just about taking deposits and lending money; it is also about cross selling financial services to customers. In many cases, a bank's initial contact with a customer is through a deposit account relationship which provides the institution with an insight into the customer's financial needs and resources.

In order to reach out to consumers and offer them attractive deposit services in today's rapidly evolving financial services world, community banks must be empowered to work with industry innovators and third party service providers to expand their product offerings, enhance their marketing communications, deliver new digital services, and execute customer/consumer nurturing programs.

Unfortunately, we have heard that the current deposit broker rules and FDIC staff interpretations are a web of broad interpretations of scope and coverage, and narrow interpretations of exceptions that make it difficult for community banks to use external resources to help them gather deposits and build new customer relationships.

The regulatory "reach" associated with today's deposit brokering rules is broad and ill-defined which creates uncertainty. For example, per question B2 (shown below) within its June 30, 2016 (revised July 14, 2016) Identifying, Accepting and Reporting Brokered Deposits Frequently Asked Questions ("FAQ"), the FDIC stated that any action of any third party that helps an insured depository institution attract new consumers may constitute the facilitation of deposits.

"What activities qualify as 'facilitating the placement of deposits?'"

"When a third party takes any actions that connect an insured depository institution with depositors or potential depositors, the third party may be "facilitating the placement of deposits. Hence, the third party may be a deposit broker."

The ramifications of this broad interpretation are significant, particularly in light of the emergence of digital-only banks, and internet sites that help consumers shop for, evaluate and select financial products, services and providers. Community banks must be able to utilize external resources to assist them in identifying prospective consumers, delivering digital service capabilities, promoting

themselves online, participating in social media activities, and communicating with current and prospective customers - without fearing potential retroactive and negative, deposit brokering ramifications.

Furthermore, we understand that the current deposit brokering rules do not apply to credit unions (other than low income status institutions). Consequently, the limitations imposed upon community banks by the FDIC, unfairly discriminates against community banks in favor of credit unions. Credit unions, for example, can utilize shared service organizations (CUSOs), pool marketing funds (and share marketing activities) among multiple institutions to attract new members and deposits - without fear of any negative regulatory repercussions.

CBAI appreciates the difficulty of the FDIC's reevaluation task and does not attempt to recommend a comprehensive definition of brokered deposits. However, we do recognize that an inappropriately narrow definition of brokered deposits could put insured depository institutions, the deposit insurance fund, and ultimately tax payers, at risk. At the same time, an inappropriately broad definition of brokered deposits is likely to accelerate further consolidation within our country's banking system, increase the systemic implications of problems at individual banks, and potentially create even greater risks to the Deposit Insurance Fund and taxpayers.

We believe the modernization of the brokered deposit rules will be benefit from, and without creating undue risks to individual banks or to the banking system itself, identifying characteristics of deposits that the FDIC would not consider to be brokered deposits however they are acquired.

For example, the following deposits should be not considered to be brokered deposits.

- Multi-Service Relationship: All deposits (checking, savings, MMA, CDs) associated with an individual customer who has another ongoing bona fide financial services relationship with the bank should not be considered to be brokered deposits. The existence of another relationship, such as a loan, demonstrates an ongoing relationship between the individual depositor and the bank.
- Transaction Accounts: Bona fide transaction accounts (including reward-based checking accounts) should not be considered brokered deposits. These accounts are used for transaction purposes, are difficult to move, and result in a stable relationship between the depositor and the bank.

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In addition, accounts that are opened directly by an individual depositor rather than by some third parties and are held directly in the name of the beneficial owner of the funds and that are subject to the individual depositor's control are less likely to be withdrawn in times of stress. These accounts should not be considered to be brokered deposits. Also, the fact that a bank utilizes external resources to help it attract new customer relationships should not be interpreted as a third party having control over an account regardless of the form of compensation the third party receives. Customer nurturing activities (i.e. identifying, attracting, engaging, developing, retaining individual depositors) including the delivery of personalized marketing messages to individual depositors builds individual customer loyalty - the problem with brokered deposits in the past has been the absence of such individual customer loyalty.

We believe that a review of the deposit broker rules and FDIC interpretations is important step in aligning depository regulation with twenty-first century consumer expectations, modern banking practices and our industry's ever evolving marketplace realities.

Thank you for considering our thoughts and recommendations on this important matter. If you have any questions or require any additional information, please contact me at davids@cba.org or (847) 909-8341.

Sincerely,



David G. Schroeder
Senior Vice President
Federal Governmental Relations