



May 7, 2019

Robert E. Feldman, Executive Secretary  
Attention: Comments / Legal ESS  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
RIN 3064-AE91

**Re: Advanced Notice of Proposed Rulemaking (ANPR) for Unsafe and Unsound Banking Practices –  
Brokered Deposits and Interest Rate Restrictions**

To Whom It May Concern:

Thank you for the opportunity to present comments on behalf of our 140 commercial, cooperative and savings banks and federal savings banks and savings and loan associations that employ more than 72,000 employees throughout the Commonwealth and New England. This Advanced Notice of Proposed Rulemaking (“ANPR”) on Brokered Deposits and the National Rate Cap is a welcome move towards modernizing a framework originally implemented in the early 1990s.

MBA member banks have extensive history in working with their prudential regulators to ensure that all deposits are appropriately classified for bank examinations and regulatory reporting. We believe that the original framework has been overly broadened throughout the last several decades to the point where potential innovation is impeded and market diversity has been suffocated. Banks that cannot innovate and maintain diversity in their funding are also unable to satisfy customer needs, essentially harming consumers.

We recognize that the ANPR is a first step modernizing the FDIC’s framework and, therefore, will restrict our comments to the broad questions posed at the end of the ANPR. We expect to provide additional comment on further draft and final rules proposals when they are issued, particularly any redefined, comprehensive definition of brokered deposits.

**Comments on Brokered Deposits General Questions**

MBA recognizes that the Congress enacted Section 29 of the Federal Deposit Insurance (FDI) Act to curtail the overuse of brokered funds by troubled institutions. Proper risk management of funding sources is a necessary and required practice for financial institutions, particularly from a safety and soundness perspective. Nevertheless, the definition of what constitutes a “deposit broker” has expanded well beyond the initial definition and, most recently, attempts to clarify through Financial Institution Letters (FILs) have left bankers with a fair amount of ambiguity. The ANPR asks for feedback relative to deposits that are currently considered brokered that should not be and vice versa. Our goal in this letter is not to provide a comprehensive definition for brokered deposits. Instead, we will highlight some high-level concerns about the types of accounts and banking relationships that trigger the classification and why this is problematic if left unchanged.

With the advent of mobile and digital technologies, community and regional banks in the United States have adapted their business models to remain competitive with the largest financial service companies in the world. The vast majority of MBA member banks offer online and mobile banking, online account opening and remote deposit capture. In the last 5 years, the emergence of fintech companies has further changed the industry landscape. As more and more banks work to partner with emerging technology providers and fintech companies (and in many instances, the most effective partnerships involve the sourcing of deposit accounts), innovation and safe growth could be hampered by the current rules governing brokered deposit relationships. MBA has member

banks that have utilized digital tools and fintech relationships to drive deposit growth. If these deposits, which come into banks as bona-fide transactional accounts, continue to be classified as brokered, then the next framework will have not adapted to the modern economy.

As you know in the late 1980s and early 1990s, banks in the Commonwealth and around the country gathered deposits almost exclusively through brick-and-mortar branches. It would make some sense then that deposits brought into the bank through a marketing agreement or third-party relationship would be of significant concern to prudential regulators. Today, however, most MBA member banks are interested in leveraging digital tools to gather deposits – consumer and business – and enhance their own customers’ banking experiences. The FDIC should focus the interpretation of “deposit broker” on persons that contract to place deposits of unaffiliated third parties with banks, and especially include those who contract with troubled insured depository institutions for the purpose of selling interest in their deposits to third parties.

The FDIC also asks whether the Call Report instructions should be altered to allow for the reporting of more granular information. MBA has serious concerns relative to the clarity of what constitutes a brokered deposit, or third party brokered deposit relationship. Nevertheless, further complicating the Call Report at a time when MBA and other state banking associations as well as the national trade associations have requested relief from additional mandatory reporting on the Call Report would be inconsistent with our long-held position for reducing the regulatory burden. Instead, our members might benefit from more accessible and frequent FAQs, or online portals for information relative to brokered deposits once the new framework has been finalized. Similar to past comments, MBA believes that assigned points of contact or online submission forms with questions relative to marketing arrangements or deposit growth could provide clarity to an ambiguous area of financial services.

Finally, we reiterate that the modernization of brokered deposit rules will most effectively mitigate risks for our member banks by identifying the characteristics of deposits that the FDIC would no longer consider to be brokered moving forward. To that end, we would advocate that marketing arrangements or fintech partnerships that result in bona-fide transactional relationships for a bank and its depositors would not result in brokered deposit classification. We believe the original intent of brokered deposit rules was to identify accounts that had high potential to runoff for troubled financial institutions or provided no franchise value to the FDIC in case of a bank failure. Over time, the definition and classification has changed to a point where bona-fide relationship accounts created through technological advancement and innovation are impeded.

### **Comments on National Rate Cap General Questions**

MBA believes that the national rate cap methodology should be updated to better reflect localized market structures as well as the national competition for business and competitive deposit rates. To that extent, the national rate cap should be set above regional market rates for deposits. Bank examiners have been clear that the national rate cap is a proxy for higher risk deposits. Healthy banks are sometimes discouraged by examiner teams from raising or holding deposits with rates higher than the national cap.

One possible solution to the methodology question could be using a median set of advance rates available through the Federal Home Loan Banks by region. The current methodology surveys all depository institutions and their branches on the interest rates they pay and then creates an average rate to which 75 basis points is added to set the cap. As evidenced by Chris Cole in a December 2018 opinion editorial to the American Banker<sup>1</sup>, “because the nation’s largest banks have nationwide branch networks with identical deposit products and prices, they tilt the scales” on this calculation. This manner of calculating the rate cap provides undue influence to nationwide banks with standardized products and services and does not consider regional market factors. The

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<sup>1</sup> <https://www.americanbanker.com/opinion/fdics-interest-rate-restrictions-need-a-rewrite>

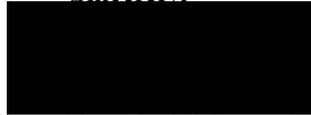
FDIC could also work with any of the consumer financial service companies (such as bankrate.com) to identify the appropriate benchmarks or composite rates needed by product (savings, CD, money market, etc).

**Conclusion**

MBA appreciates the opportunity to provide our comments on the ANPR. While we have concerns about the current clarity of brokered deposit guidelines and the utility of the national rate cap, we hope the FDIC will work to improve and modernize these frameworks as draft and final proposals are considered.

Thank you for consideration of our comments and concerns. If you have any questions or need additional information, please contact me at (617) 523-7597 or via email: [bcraigie@massbankers.org](mailto:bcraigie@massbankers.org).

Sincerely,



/Ben Craigie\

Director of Compliance and Training