

Via Email

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

**Re: Request for comments regarding the notice of proposed rulemaking entitled “Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions” (RIN 3064-AE94)**

Dear Mr. Feldman:

EnerBank USA (“EnerBank” or “we”) greatly appreciates the opportunity to respond to the Federal Deposit Insurance Corporation’s (“FDIC”) request for comment regarding its notice of proposed rulemaking entitled “Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions” (RIN 3064-AE94) (“Proposed Rule”). We provide these comments to expand on the issues we raised in our comment letter to the FDIC’s advanced notice of proposed rulemaking on this topic issued in February 2019 (“ANPR”).

As background, EnerBank is an industrial loan company (“ILC”) founded on June 1, 2002 and headquartered in Salt Lake City, Utah. EnerBank provides unsecured home improvement loans to consumers working with strategic business partners and independent home improvement contractors throughout the United States. EnerBank’s strategic partners include manufacturers, distributors, franchisors, and major retailers of home improvement, remodeling, and energy saving products and services.

In our comment letter to the ANPR, we recommended that the FDIC, among other proposals, (1) remove the Brokered Deposit Ratio component of the deposit insurance assessment calculation; (2) consider the important role brokered Master Certificates of Deposit (“Master CDs”) play in providing a stable, low-risk source of deposits and liquidity to banks; and (3) clarify in the final rule that HSA deposits are not brokered deposits. These reforms would address problems many low-risk, and small institutions face. For instance, the Brokered Deposit Ratio causes low-risk banks that use brokered deposits to be pay greater assessments than their actual risk profile would justify. Brokered Master CDs are stable deposits that are resistant to bank-runs and provide an effective tool for mitigating interest rate risk, but they are assessed as a higher risk than core deposits. Finally, the classification of HSA deposits varies by institution, leading to a disparity in the deposit insurance assessment fees between FDIC-insured depository institutions.

In this letter, we expand upon these requests in light of the Proposed Rule’s text.

## **Removing the Brokered Deposit Ratio from the Deposit Insurance Assessment Calculation**

We appreciate the FDIC's stated plan "to consider modifications to the assessment regulations in light of any changes made to the brokered deposits regulation" at a later date. At the appointed time, we believe the most effective course of action would be to remove the Brokered Deposit Ratio from the deposit insurance assessment.

As discussed in our prior comment letter, the FDIC's "Study on Core Deposits and Brokered Deposits" states, "there should be no peculiar stigma attached to the acceptance by well-capitalized banks of brokered deposits per se and that the proper use of such deposits should not be discouraged." However, the existing methodology for calculating the deposit insurance assessment stigmatizes brokered deposits by raising the cost of holding them. According to one 2018 study, "Bank Funding Sources: A New Look at Brokered Deposits" by James Barth and Yanfei Sun ("Barth Study"), if a highly rated, well-capitalized bank with a 10 percent brokered deposit ratio increased that ratio to 50 percent, the deposit insurance assessment would increase by 500 percent. The Barth Study found that the 100 banks with the highest ratio of brokered deposits-to-total deposits "have lower (better) efficiency ratios and slightly higher capital ratios than all banks with brokered deposits, as well as all banks." By including the Brokered Deposit Ratio in the deposit insurance assessment calculation, brokered deposits are stigmatized, and many well-capitalized banks that rely on brokered deposits are paying a premium that is not reflective of their risk profile.<sup>1</sup>

Adopting EnerBank's proposed reform would provide significant relief to a well-functioning, low-risk segment of the banking industry. Moreover, revising the deposit insurance assessment calculation to exclude the Brokered Deposit Ratio as part of these efforts would provide much needed relief to smaller depository institutions and enhance the efficacy of the FDIC's proposed reforms. As the FDIC notes in the Proposed Rule, a change to the assessment regulations will be necessary because "under the proposal, some deposits that are currently considered brokered will no longer be considered brokered." Removing the Brokered Deposit Ratio from the assessment calculation as part of this rulemaking will obviate the need for a second rule, thereby saving the FDIC and FDIC-insured depository institutions significant expense and time. We note that addressing the Brokered Deposit Ratio in the final rule would also provide greater clarity, thereby leading to more uniformity in assessments because there is uncertainty with respect to the classification of certain deposits (as discussed below). We certainly hope that the FDIC is not considering raising the impact associated with the Brokered Deposit Ratio due to the expected decrease in Brokered Deposit Ratios.

## **Reconsidering the Classification of Brokered Master CDs**

EnerBank, like other industrial loan companies and banks that do not have branches, acquires brokered Master CDs that can only be redeemed prior to their maturity dates upon the death of the holder or legal adjudication of incompetence of the deposit holder and presentment of an official

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<sup>1</sup> We note that other commenters have raised similar concerns through this rulemaking process.

government document verifying death or such adjudication. These restrictions make these brokered Master CDs quite stable, as depositors cannot “break” their CD and redeem it prior to the scheduled maturity date to take advantage of higher interest rates. As a result, a bank that predominantly holds such instruments is less susceptible to liquidity risk than a bank that holds traditional core deposits.

By acquiring these types of brokered Master CDs, EnerBank sources funds at a competitive price without having to maintain an otherwise unnecessary and capital-intensive branch network. Moreover, by using such brokered Master CDs instead of core deposits, we are able to fund our balance sheet in lock-step with loan growth in all types of economic environments. Core deposits typically surge during recessions when loan growth is low, and they typically leave the bank when the economy improves and loan growth strengthens, inhibiting banks’ ability to serve their customers.

In sum, brokered Master CDs do not raise the concerns that underlie federal statutory and regulatory restrictions on brokered deposits. As a stable source of funding that helps entities like EnerBank mitigate interest rate risk, we ask the FDIC to further consider how the final rule can take these characteristics into account.

### **Clarifying that HSA Deposits are Not Considered Brokered Deposits**

We applaud the FDIC’s changes to the Primary Purpose Test, specifically, the proposal that “the primary purpose of an agent’s or nominee’s business relationship with its customers will not be considered to be the placement of funds if the agent or nominee places depositors’ funds into transactional accounts for the purpose of enabling payments.” We believe this change may provide additional clarity with respect to HSA deposits but have noted that such deposits are not explicitly included in the exemption. The purpose of placing HSA deposits is to store funds to be used for medical payments. Agents and nominees exclusively placing HSA deposits, therefore, place 100 percent of customer funds into a transaction account. Remuneration for such deposits does not negate the purpose of these deposits. Accordingly, HSA deposits should fall within the Proposed Rule’s exception for deposit placements that enable transactions. We encourage the FDIC to provide important clarity to the industry by clarifying in the final rule that HSA deposits, under traditional or conventional circumstances, are qualifying deposits per this exception, and waive the requirement that an institution apply for this exception for such deposits.

At a minimum, clarity on how these deposits should be classified would benefit the banking industry by ensuring more uniformity in the reporting of brokered deposits. In our prior letter, we explained that many depository institutions incorporate HSA deposits into their funding strategies; however, they do not all classify them in the same manner, resulting in different assessment rates and, potentially, restrictions on similar institutions. EnerBank, for instance, has classified HSA deposits as non-brokered partly because the existing primary purpose test excludes deposits placed by agents whose primary purpose is not the placement of funds with depository institutions. We operate under the assumption that the HSA administrator we work with is acting as a trustee and plan administrator for the deposits they manage. Their primary purpose is managing HSA

programs. That they must place funds with depository institutions is secondary. Guidance from the FDIC would help correct these disparate outcomes.

### **Performance of Brokered Deposits during the COVID-19 Pandemic**

The current crisis presented by COVID-19 highlights our comments on the positive aspects of brokered deposits when used prudently during periods of economic uncertainty. During the 2008 liquidity crisis and 2009 recession, we utilized brokered deposits to strengthen our already solid cash position while several direct competitors failed due to weak funding models.

In 2020, multiple banks have experienced a significant outflow of core deposits, whereas we have not experienced any increase in outflows. In fact, we were able to easily increase our cash position to enhance liquidity during a time of uncertainty and, while doing so, reduce our cost of funds. Once again, we are seeing direct competitors struggle with liquidity issues while our brokered deposit funding model allows us to flourish.

### **Conclusion**

We believe that the use of brokered deposits by well-capitalized, well-run banks should be embraced instead of being stigmatized by higher deposit insurance assessments. Rules that include the phrase “unsafe and sound banking practices” in the title imply that the use of brokered deposits is considered an unsafe and sound banking practice, thereby reinforcing the stigma. We ask that the FDIC’s words and actions fully consider the many benefits that brokered deposits may provide. EnerBank appreciates the opportunity to comment on the FDIC’s proposed rule. We share and support the FDIC’s mission to promote the safety and soundness of the banking industry while fostering economic growth. Please do not hesitate to contact me if we can be helpful. We look forward to continuing to work together to further refine the risk-focused regulatory framework for the banking system.

Sincerely,



Charlie Knadler  
President & Chief Executive Officer  
EnerBank USA