Independent Bankers Association of Texas

November 1, 2019

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

Via https://www.fdic.gov/regulations/laws/federal

Re: RIN 3064–AF02

Mr. Feldman:

The following comments are submitted on behalf of the Independent Bankers Association of Texas ("IBAT"), a trade association representing more than 350 independent, community banks domiciled in Texas.

IBAT submits these comments in response to the Federal Deposit Insurance Corporation (FDIC) proposed revisions to regulations relating to interest rate restrictions that apply to less-than-well-capitalized insured depository banks.

The national rate cap, which is the highest rate that a less-than-well-capitalized bank may pay on deposits, would be set to the higher of (1) the rate offered at the 95th percentile of the rates weighted by domestic deposit share, or (2) the proposed national rate plus 75 basis points. The FDIC would compute the national rate and publish rate cap information on a monthly basis.

Several references are made throughout the proposal referring to the "problematic" and "challenging" task of determining an accurate national rate cap for various deposit types. The world has changed significantly since 1989, and that change in the banking industry since the latest revisions in 2010 has not abated but rather has accelerated. We do not expect this dynamic to slow down going forward.

We applaud the FDIC for working on this critical issue during "good times" and recognizing the potential deleterious impact on individual banks, as well as on the industry and economy as a whole in the next economic downturn.

Methodology for Calculating National Rate and Rate Cap
The national rate cap is currently calculated as a simple average of rates paid by all depository banks and branches that offer and publish rates for specific products.

The national rate is calculated weekly and the rate cap is determined by adding 75 basis points to the national rate. The current methodology:

- Allows the largest banks with the most branches to have a disproportional impact on the national rate;
- Does not account for online banks with few, if any, brick-and-mortar branches but tend to pay high interest rates;
- Ignores the impact of credit unions;
- Ignores “off-tenor” deposit products; and
- Does not consider promotions and cash bonuses related to deposit products.

Under the rule proposed in the NPR, the methodology for calculating the national rate is the weighted average of rates paid by all insured depository banks on a given deposit product, where the weights are the bank’s market share of domestic deposits (rather than the bank’s number of branches). While a significant improvement over current methodology, we firmly believe that further revisions/enhancements are critically important and appropriate.

The proposed methodology in the NPR:

1. Continues to give the nation’s largest banks a disproportional impact on the national rate cap.

   A “one bank, one entry” calculation would be much more reflective of the realities of the marketplace. Given the dominance of a handful of large banks in deposit market share, even a “weighted average” method opens the door to manipulation – purposeful or not – of market rates. Their funding strategies may be entirely different than those of community banks, and in our assessment, all banks should be given equal weight.

2. Continues to ignore credit unions.

   We hear consistently from our bankers that credit unions are formidable and ever-increasing competition both in the deposit and loan space, and they are distorting the market much as the savings and loan industry did in Texas and the Southwest in the 1980s. As the “common bond” has become an absolute farce, and virtually anyone, anywhere can “bank” with multiple credit unions, these *de facto* banks should absolutely be included in any rate cap calculation.

3. Does not address “off-tenor” deposit offerings.

   While there was significant discussion regarding “off-tenor” CD maturity offerings, we believe the solution, while improved from current policy, does not address the concerns raised. A bank wishing to offer a particular maturity outside of “normal” would be allowed to match a competitor’s off-tenor rate or be restricted to that offered on more traditional term products with a similar maturity. If this particular maturity was not beneficial to the asset/liability matching needs of the bank, it could actually be counterproductive. A “date-range” process would provide needed flexibility in this area and should be seriously considered. The FDIC should consider including “date ranges” rather than “standard” CD terms. For example, for a 30-day CD, use 1-45 days; instead of a one-year CD, use 200–400 days, etc.

4. Does not consider “non-interest accommodation” for non-traditional, and in many cases, non-interest deposit incentives.

   One of our senior staff members received three solicitations from different large banks in one week offering between \$300 and \$500 in incentives to open new accounts. As competition for core deposits intensifies, these and other “non-interest” incentives including “club accounts” are becoming a normal business practice. If a less-than-well-capitalized community bank opted to match these cash bonus offers, it would face virtually certain regulatory criticism. A variety of “fintechs” are pushing the envelope with unusual incentives as well and are not at all a part of any of these calculations This is, in our opinion, further validation that a national rate cap with any degree of reasonable accuracy is a futile quest in this dynamic environment.

5. Does not combine savings and money market account rates.

   These accounts are functionally equivalent and should be combined. While we may disagree, we anticipate that a weighted average system will be utilized even though many have issues with that concept. Based upon the funding strategies of a handful of large players, these rates as calculated on a stand-alone basis could and do have little relationship with the reality of the marketplace.

Process for Establishing a Local Rate Cap

The NPR also suggests a change in the manner that a bank may seek to pay higher than the national rate based on local market conditions. Currently, a less-than-well-capitalized bank may make a case to the FDIC to support a higher rate based on evidence satisfactory to the FDIC that the average rates offered in the bank’s local market for a specific deposit are higher than the national rate. If the evidence is satisfactory to the FDIC, the bank may offer a rate equal to the average for the local market plus 75 basis points.

The proposed rule also allows less-than-well-capitalized banks to provide evidence that a single bank or credit union in its local market offers a rate on a specific deposit product higher than the national rate cap, and, if such evidence is satisfactory to the FDIC, the bank may offer 90 percent of the competing financial institution’s rate on that specific product.

Although a shift from number of branches to domestic deposit market share reduces slightly the impact of the largest banks on the national rate, the largest banks will still have a disproportionate effect on the national interest rate, because they hold the largest share of deposits. Moreover, the NPR fails to effectively address the impact of internet depositories and listing services within a local market. The ability to offer a rate that is 90 percent of a local competing bank’s rate may not be enough given the ability of an internet bank or a bank using a listing service to target a local market. We believe the proposed rule should permit community banks to compete with such products, regardless of geographic location. This is especially true for less-than-well-capitalized banks subject to the national rate cap that may benefit from and rely on increased deposits as part of a liquidity plan. Further, even following the adoption of the changes, a less-than-well-capitalized bank would not be allowed to maintain above-market rates on certificates of deposit that mature. As a result, a bank that becomes less than well capitalized (including a bank that may otherwise be well capitalized but is subject to a capital provision) may still suffer substantial liquidity pressures, which in turn could result in an otherwise avoidable bank failure.

Conclusion and Recommendations

It is clearly in the best interests of most banks that seriously attempt to follow the rules and run a safe and sound operation to have the "bad actors" weeded out of the system. An imminently failing bank offering substantially higher-than-market rates to attract deposits is obviously a scenario no one would condone. Our fear is that even with the recommended enhancements, a number of very viable community banks could fall into a liquidity "death spiral" during economically challenging times, ultimately costing the FDIC fund more in resolution expenses. With that said, we believe the FDIC should seriously reconsider the efficacy of the national interest rate cap and ultimately, Congress should significantly change the statutory framework. Abuses can and should be handled on a case-by-case basis. That is a significant responsibility of the bank regulators, and they should have the tools to accomplish that objective. We believe this is the only viable solution over the long term.

Further, the regulatory approach in which a bank is labeled "less than well capitalized" when subject to a regulatory order with a capital maintenance provision (which is pretty much every order) is troubling and inappropriate. These situations should be handled on a case-by-case basis. If a bank meets the "well-capitalized" threshold, it should not be penalized for shortcomings in other areas nor further impacted by limitations on deposit gathering when under a public order.

While addressed in the commentary, it appears that no changes were recommended to this significant issue. We urge the FDIC to seriously consider our recommendations to avoid unintended consequences as a bank is attempting to rehabilitate itself subsequent to a regulatory order. It is our understanding that the current framework includes only those banks subject to a formal (public) order. It should be noted that the commentary includes "written agreement, order, capital directive or prompt corrective action directive." Regardless of the style of regulatory action, a bank meeting a "well-capitalized" threshold should not be subject to "piling on" with further unrelated restrictions on funding.

Thank you for your serious consideration of our comments on this critically important proposal. As indicated, we are very appreciative of the efforts of the FDIC to address this difficult and constantly evolving issue.

Sincerely,

Christopher L. Williston, VI, CAE
President and CEO