November 28, 2019

Robert E. Feldman
Executive Secretary,
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Interest Rate Restrictions on Institutions That Are Less Than Well Capitalized

Dear Mr. Feldman:

Merrick Bank ("the Bank") appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") notice of proposed rulemaking ("the Proposal") on interest rate restrictions on institutions that are less than well capitalized. The Proposal would amend the methodology for calculating the national rate and the national rate cap ("NRC") and simplify the local rate cap determination.[1] The Proposal would also reiterate that the interest rate restrictions should not be applied to well-capitalized institutions, and require modifications to the *Risk Manual of Examinations Policies* to solidify this. The Bank fully supports amending the current NRC as well as the FDIC's efforts to reinforce that these restrictions be applied to only financial institutions that are less than well capitalized.

The Bank is a state, non-member Industrial Bank that is licensed and regulated by the state of Utah and the FDIC. The Bank is primarily an issuer of non-prime revolving consumer credit cards, personal installment loans, and near-prime recreation loans. The Bank utilizes brokered deposits to fund its loans due to the cost efficiencies gained from this market. In addition, the Bank raises significant deposits through internet and direct contractual deposit sources. The Bank does not have a branch system for gathering deposits.

The Bank is supportive of the FDIC's efforts, but we do not believe the Proposal goes far enough toward correcting the problems of the current methodology. We believe the Proposal fails to achieve an essential goal: establishing a robust and transparent methodology that accurately reflects the cost of deposits through varied business models and economic environments. Under the Proposal, the NRC would continue to be calculated significantly below the actual cost of the Bank's deposits in many cases, which is clearly counterproductive to what the cap is trying to achieve, which is setting an upper limit on the interest rates weakened banks may offer on deposits, while still allowing these banks the ability to remain in the deposit market and maintain adequate levels of liquidity. The proposed NRC would surely weaken the liquidity position of a bank resulting from the inability to raise an adequate amount of deposits.

The Bank has done extensive testing of its consumer deposit capabilities to determine what rate levels would be needed to raise sufficient deposits via the internet, in the event the Bank is deemed to be less than well-capitalized and potentially lose access to brokered deposits. We

[1] Section 29 of the Federal Deposit Insurance Act (FDIA) sets restrictions on the acceptance of brokered deposits by institutions with weakened capital positions and directs the FDIC to calculate a national rate, which limits the rates less than well capitalized institutions may offer on deposits

have found that by offering highly competitive rates on the internet in certain maturities, the Bank is able to raise sufficient deposits from this source in order to support its operations. Unfortunately, based on the rates published in Table 3 on page 46,478 of the proposed rule[2], the Bank would not be competitive enough to raise deposits, if the rate cap restrictions were in effect. Here is a comparison of key rates for terms the Bank would normally be able to issue under normal circumstances versus the proposed rate caps as of May 20, 2019:

Certificate of Deposit Term	Current National Rate Cap	Proposed National Rate Cap	Consumer Deposit Rate Requirement[3]	Shortfall to Proposed National Rate Cap
6 Month	1.16%	1.21%	2.66%	-1.45%
12 Month	1.40%	2.70%	2.83%	-0.13%
18 Month[4]	1.50%	2.68%	2.82%	-0.14%
24 Month	1.59%	2.65%	2.91%	-0.26%

While this table shows a marked improvement in several rates between the current and proposed NRCs, the Bank is certain, through evidence gained while testing various rate-maturity combinations, that the rates under the proposed rate cap would not be robust enough to allow the Bank (or any other bank that is primarily limited to the internet for sourcing deposits) to continue it's lending at the levels needed to maintain its current customer base and meet operational liquidity requirements. As a result, we recommend that the FDIC implement the market-based methodology proposed by the American Bankers Association ("ABA").

This methodology would add a spread to the Effective Fed Funds rate that is based on Treasury yields of similar maturities. An additional, adjustable, spread may then be added to this total if prevailing Treasury rates reflect abnormal market conditions. The advantage to using the Effective Fed Funds rate is it prices in market and credit conditions and is especially reflective of those market conditions that often influence a bank's deposit pricing decisions. Similarly, the Treasury yield curve reflects current economic conditions and guides Banks in making deposit pricing decisions for products of various durations. The Bank has worked very closely with the ABA and helped develop a robust market-based solution to the rate cap issue that would work for all banks in all markets. Please refer to the ABA's response to help illustrate the effectiveness of this rate cap calculation versus the current rate cap proposal developed by the FDIC. The ABA calculation is a much more robust method for calculating the rate cap and would allow banks to maintain adequate levels of liquidity without the hindrance of an insufficient rate cap calculation.

Conclusion

We appreciate the FDIC's first step toward modernization of the national rate cap methodology. We urge the FDIC to adopt the ABA's proposed rate methodology in order to ensure all banks

[2] https://www.fdic.gov/news/board/2019/2019-08-20-notice-dis-b-fr.pdf
[3] Bankrate.com published rates as of 5/20/2019
[4] Rate caps are extrapolated

are given a fair chance to correct any capital deficiencies that may occur, while still being able to gather deposits to sustain liquidity and operations. If you have any questions about these comments, please contact the undersigned at (801) 545-6698 or email: andy.bauman@merrickbank.com.

Sincerely,

[redacted]

Andrew J. Bauman

VP/Treasurer