November 4, 2019

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

http://www.fdic.gov/regulations/laws/federal

RE: RIN 3064-AF02, Interest Rate Restrictions on Institutions That Are Less Than Well Capitalized

Mr. Feldman,

Thank you for the opportunity to respond to the most recent proposal to revise the regulations regarding interest rate restrictions that apply to less than well capitalized insured depository institutions. The FDIC's (Agency) recognition that the current regulations no longer provide a satisfactory framework for establishing the guardrails for interest paid on deposits for troubled institutions is appreciated.

In response to your request for feedback on the alternatives that the Agency is proposing, whether individually or through a series of meetings, bankers and representatives are providing thoughtful feedback to the FDIC in hope that the Agency will maintain an open mind while considering appropriate alternatives. As proposed, the alternatives offered have a number of significant challenges that should be considered.

- The proposed methodology is not inclusive of all rates paid. Rates paid by credit unions and non-bank market participants should be included in any analysis used to establish guardrails. Further, the rates that are actually paid, as opposed to those offered, are not published. While this is understandably difficult to gather, without all information that is used by market participants to set competitive rates, the result will be rates that stem from a flawed data base.

- There is no single measure that fits all products and all times as demonstrated in the charts that the FDIC provided in the NPR. The difference in impact for the demand deposits, savings, and money market accounts versus CDs is attention-getting. Like proposing an option for local markets versus the 95 percent option, the FDIC should consider applying different measures to different product groups to align with market comparisons. The Agency should also retain a set of alternatives that can be used to adapt to significant market variations such as those we saw pre- to post- The Great Recession.

- While the proposed alternative (95 percent option) is an improvement over the current methodology, it still presents the possibility of disadvantaging all but the largest institutions because, like the current regulatory framework, it over values deposit rates paid by the largest institutions. With the general, inclusive view the Agency maintains toward all insured institutions, the impact of this alternative should be re-evaluated.

- The proposed methodology suggests that a bank that is less than well-capitalized (whether through weakened capital or through an administrative directive) may not pay a rate that is within the range of averages paid, but is limited to the 95^{th} percentile. Unless an additional premium is added (to align with section 29) to establish the cap for "significantly higher", this will likely result in financial institutions being unable to retain deposits at a time when deposit retention is most critical.

- Because of the challenges of capturing all information that the market uses to set rates, a market measure – readily viewable by market participants – provides much needed transparency. Again, while difficult to align exact surrogates, the use of Treasury securities, FHLB advances, Fed Funds, or similar provide better sight for all participants.

- The proposal regarding treatment of additional funds to existing deposit accounts may be unrealistic but at a minimum, presents challenges for both bankers and customers alike. Many institutions do not have the ability to quantify and consistently measure existing deposits alongside incremental additions. This would harm relationships with long-time core depositors as bankers attempt to establish additional accounts to accommodate the separation of deposits to prevent having the original account (in its entirety) from being subject to rate restrictions. Alternately, rate restrictions should apply only to new accounts established by new or existing customers.

- The premium that is used to set the cap (e.g. 75 basis points or 120 percent of some rate) should be based on the methodologies that are finally established to determine the base. However, the premium should provide sufficient space to ensure that the bank is not unintentionally thrown into a liquidity crisis by being below the market. This would help minimize any negative impact to the DIF.

- Deposit gathering methods have changed dramatically since section 29 was written. Most, if not all, banks now gather deposits using both local and national methods. The local market alternative should allow community banks to include rates offered by all competitors in their market, including those through the internet.

In response to other questions asked in the NPR not addressed above:

- Publishing the rate caps monthly should be sufficient, although it's understood that significant market movement may require publishing within shorter periods.

- Consider whether the impact of the published rate cap should take effect prior to the next publish date rather than 3 or 5 business days as suggested.

- Because the impact of special promotions may not be supported by quantitative analysis, consider whether a factor can be added to account for the additional value.

These comments are being offered to provide the Agency with additional perspective. Others have offered alternative methods and anecdotal evidence of impact of setting rate caps for your consideration.

The best avenue may be for the Agency to take additional time to broaden its analysis of the market considering the changes in business models since prior rate cap methodologies were established, the change in depositor behavior and, the variance in deposit products (including types, tenors, specials, negotiated versus offered rates). It may also be appropriate to re-visit the definition(s) of deposit brokers / brokered deposits in light of these changes.

Your consideration is appreciated.

Very truly yours,

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