May 16, 2019

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

Re: Brokered Deposits RIN 3064-AE94

Dear Mr. Feldman:

WageWorks, Inc. ("WageWorks") appreciates the opportunity to provide comments to the Federal Deposit Insurance Corporation ("FDIC") on its advanced notice of proposed rulemaking ("ANPR") on brokered deposits.

WageWorks is a leading provider of consumer directed-benefit accounts, including account-based benefit plans that provide benefits in areas such as health care, child-care, and commuting. In the health care arena, we provide administrative services for Health Savings Accounts ("HSAs"), Health Reimbursement Arrangements ("HRAs") and Health Flexible Spending Accounts ("Health FSAs"). WageWorks provides administration for more than 75,000 employers nationwide.

WageWorks appreciates the FDIC's efforts to undertake a review of their regulatory approach to brokered deposits. As part of this modernization effort, the FDIC should be mindful of the increasingly important role that HSAs play in proving health care dollars for Americans of all ages and walks-of-life. We urge the FDIC to continue to treat HSAs as core deposits to which the deposit broker rule are inapplicable.

COMMENTS

The FDIC points out in the ANPR that significant changes in technology and financial products creates the need for a review of the regulations and guidance constituting their approach to brokered deposits. Nowhere is this more true than with respect to HSAs, products which were not even conceived of until fifteen years after the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

In passing FIRREA, Congress intended to place limitations on troubled banks holding significant dollars in risky deposits and investment products. Congress also desired to protect the deposit insurance system. In implementing these protections through FIRREA, Congress distinguished between entities providing banking and financial services, and entities acting as

"deposit brokers." See, Testimony of Hon. Frank H. Murkowski, U.S. Senator from the State of Alaska, "Insured Brokered Deposits and Federal Depository Institutions," Hearing before the Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance and Urban Affairs, House of Representatives, 101st Congress, 1st Sess., 7 (May 17, 1989). Congress never intended deposits involving a direct, continuing relationship between a customer and a healthy insured depository institution – such as is the case with HSAs – to be considered "brokered".

Banks, insurance companies, and other institutions authorized by the Internal Revenue Service can serve as HSA custodians. HSAs are always owned by individuals – they are never owned by employers or other third parties. The FDIC has previously acknowledged the public benefit of HSAs. In a 2013 consumer advisory the agency noted that, with an HSA, "[y]ou can save money that can help you avoid a shock to your finances from a sudden large medical bill." See, FDIC Consumer Advisory Summer 2013. Confirmation that HSAs are not brokered deposits, and non-bank custodians are not deposit brokers, will help level the playing field and increase competition which will benefit HSA accountholders by enhancing innovation and reducing costs.

HSAs are an important and growing part of employer's health benefit offerings and are currently the only employer provided health benefit product that is portable. Denevir Research reports that there were in excess of 25 million HSAs at the end of 2018, which is 13% more than in 2017.[1] In a recent report to the President, the Secretaries of Health and Human Services, Treasury, and Labor acknowledged the important role that HSAs play in "expand[ing] personal control and introduce[ing] more consumer power in the health care market."[2] The report recommends expanding access to HSAs so that "newly empowered health care consumers can make well-informed decisions about care."[3] The FDIC's rule should line up with the recommendations of the Secretaries, rather than work against it.

In light of the above, we recommend that FDIC rules clarify the following:

1. HSAs are not brokered deposits.
2. Non-bank custodians of HSAs are not deposit brokers under the exception for trustees of employee benefit plans or under the primary purpose exception. Non-bank custodians are regulated by the Treasury Department and have the primary purpose of administrating these accounts consistent with Treasury's regulations and their fiduciary duties to accountholders.
3. The placement of HSA funds in insured accounts is only incidental to the primary purpose of non-bank custodians.

[1] http://www.devenir.com/research/2018-year-end-devenir-hsa-research-report/
[2] https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf
[3] https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf, page 3

4. Exempting HSA deposits and Treasury-regulated non-bank custodians from FDIC rules serves public policy by allowing consumers to benefit from increased competition, innovation, and reduced costs provided by non-bank custodians of HSAs.

CONCLUSION

WageWorks appreciates the opportunity to provide comments regarding ANPR. Due to the policy goals underlying HSAs and ownership characteristics, we urge the FDIC to continue to treat HSAs as core deposits. We respectfully suggest that the FDIC's deposit broker rules should continue to be considered inapplicable to HSAs. We would be happy to respond to follow up questions as needed. Please feel free to contact me at Jody.Dietel@WageWorks.com or 650.577.6372 with any questions or areas needing further clarification.

Sincerely,

Jody L. Dietel, ACFCI, CAS
Chief Compliance Officer
WageWorks, Inc.

Cc: Rachel Leiser Levy, Groom Law Group