Promontory Interfinancial Network®℠

Promontory Interfinancial Network, LLC
1300 North 17th Street
Suite 1800
Arlington, VA 22209-3810

T 703-292-3400
F 703-528-5700

www.promnetwork.com

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cra.reg@occ.treas.gov
Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

comments@fdic.gov
Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: OCC Docket ID OCC-2018-0008; FDIC RIN 3064-AF22

Ladies and Gentlemen:

On behalf of Promontory Interfinancial Network, LLC ("*Promontory Network*"),[1] I write to comment on the Notice of Proposed Rulemaking on Community Reinvestment Act Regulations, issued by the Department of the Treasury, Office of the Comptroller of the Currency ("*OCC*") and the Federal Deposit Insurance Corporation (the "*FDIC*") and published in the Federal Register on January 9, 2020 (the "*NPR*").[2]

INTRODUCTION AND SUMMARY

The NPR seeks to "strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand."[3] Among other things, the proposed rule "would require banks to delineate additional, non-overlapping 'deposit-based' assessment areas where they have significant concentrations of retail domestic deposits."[4] The

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[1] Founded in 2002, Promontory Network provides services to the banking and brokerage industries. Promontory Network's deposit allocation and sweep services include CDARS®, the Certificate of Deposit Account Registry Service®, for time deposits, ICS®, the Insured Cash Sweep® service, for non-time deposits, and IND®, the Insured Network Deposits® service, for non-time deposits swept to banks primarily by broker-dealers.

[2] Notice of Proposed Rulemaking on Community Reinvestment Act Regulations, 85 Fed. Reg. 1,204 (Jan. 9, 2020).

[3] *Id.* at 1,206.

[4] *Id.* at 1,208.

NPR defines “retail domestic deposit” in a manner that excludes brokered deposits, but does not exclude non-brokered reciprocal deposits.

Not excluding non-brokered reciprocal deposits from the definition of “retail domestic deposit,” which we recognize may have been inadvertent, would impose an unnecessary requirement on community banks that could inhibit their use of reciprocal deposits as an important funding source. The requirement could impair the ability of a community bank, especially a community development bank (“*CDB*”) or a minority depository institution (“*MDI*”), to engage in community development activities. Therefore, we respectfully submit that the agencies should exclude non-brokered reciprocal deposits from the definition of “retail domestic deposit” by modifying the proposed rule in the manner described below.

DISCUSSION

A. The Proposed Definition of “Retail Domestic Deposit” Properly Excludes Brokered Deposits.

The NPR defines “retail domestic deposit” as follows:

> *Retail domestic deposit* means ‘‘deposit’’ as defined in section 3(l) of the [Federal Deposit Insurance Act (“*FDIA*”)] (12 U.S.C. 1813(l)) and as reported on Schedule RC–E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation <u>other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA</u> (12 U.S.C. 1831f(g)).[5]

The NPR states that this definition excludes brokered deposits because such deposits “are not associated with any individual or community.”[6] Excluding brokered deposits is appropriate because receipt of brokered deposits does not imply a relationship between the receiving bank and the individual or community from which the brokered deposits originate. This approach is well-reasoned, practical, and consistent with the NPR’s objectives.

B. The Proposed Definition of “Retail Domestic Deposit” Should Also Exclude Non-Brokered Reciprocal Deposits.

For the same reason that the proposed rule properly excludes brokered deposits from the definition of “retail domestic deposit,” it should also exclude non-brokered reciprocal deposits. Under the FDIA, “reciprocal deposits” are deposits that a bank receives through a deposit

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5 *Id.* at 1,255 (proposed 12 C.F.R. § 345.03) (underlining added).

6 *Id.* at 1,218.

placement network in return for deposits that it places through the network.[7] Banks that receive non-brokered reciprocal deposits have a relationship with their own depositors, but ordinarily have no relationship with the individual or community from which a reciprocal deposit originates, which could be anywhere in the United States.

Moreover, including non-brokered reciprocal deposits in the definition of "retail domestic deposit" would be impractical. Reciprocal deposits are typically titled in the name of a custodian or sub-custodian. As a result, the receiving bank typically does not know the identity or locations of underlying beneficial owners. The proposed rule requires that the receiving bank geocode its non-brokered deposits, but, because the bank would find it impossible to geocode its non-brokered reciprocal deposits according to the location of the beneficial owners, the only option would be to geocode the deposits according to the location of the custodian or sub-custodian. That location is usually unrelated to the places in which the bank is active or from which the deposits originate.

C. The Definition, If Unchanged, Could Harm Community Banks.

Not excluding non-brokered reciprocal deposits from the definition of "retail domestic deposit" could impair the ability of community banks to achieve their community development goals. Including such deposits in the definition could subject community banks, especially CDBs and MDIs, to CRA compliance obligations in locations far distant from the communities that these banks serve. Such banks are ill-equipped to bear such long-distance compliance burdens, which at best could only divert them from serving their own communities.

Community banks rely on non-brokered reciprocal deposits as a significant source of funding. Reciprocal deposits provide a vital community benefit by enabling institutions to obtain funding that may not otherwise be available to them so that they can meet lending needs in the communities they serve.[8] Imposing additional regulatory burdens on these banks for non-brokered reciprocal deposits could – ironically and contrary to congressional intent, given the recent congressional action to facilitate the use of reciprocal deposits[9] – cause community banks to avoid this important source of funding, reducing their ability to serve their communities. Excluding non-brokered reciprocal deposits from the definition of "retail domestic deposits" would help ensure that the proposed rule supports the NPR's community service policy objective rather than, in this key respect, thwarting it.

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[7] *See* 12 U.S.C. § 1831f(i)(2).

[8] Reciprocal deposits help community banks to obtain funding that may not otherwise be available. Such deposits are typically placed through a deposit placement network in a manner that provides the depositor with access to FDIC insurance for the total amount of the deposit. This fact allows community banks to compete for large deposits from public fund units and other entities that might otherwise use large banks.

[9] *See* Economic Growth, Regulatory Relief, and Consumer Protection Act § 202 (2018) (codified at 12 U.S.C. § 1831f(i)).

D. The Proposed Rule Can Readily Be Modified to Address the Concern.

The proposed rule can readily be made more consistent with its policy objective by modifying proposed 12 C.F.R. § 345.03 to read as follows:

> Retail domestic deposit means ‘‘deposit’’ as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC–E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation other than **(i)** a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g))~~.~~**, or (ii) reciprocal deposits that, pursuant to 12 U.S.C. 1831f(i), are not considered to be funds obtained, directly or indirectly, by or through a deposit broker.**
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> (Suggested revisions in bold).

We encourage the agencies to modify the proposed rule in this way to avoid inadvertently impairing the ability of community banks to serve their communities.

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Thank you for consideration of our comments. If you wish to discuss them further, please contact the undersigned at (703) 292-3338 (dphillips@promnetwork.com).

Sincerely,

[redacted]

Douglas E. Phillips
Senior Vice President and General Counsel