



June 8, 2020

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

Re: RIN3064-AE94

Dear Mr. Feldman:

I write in response to the Notice of Proposed Rulemaking on Brokered Deposits. This letter is submitted on behalf of the Nebraska Bankers Association (NBA) which is a trade association that represents 174 of the 180 commercial banks and savings institutions in the state of Nebraska.

The Proposed Rule is a welcome step towards modernizing the FDIC's framework for analyzing "brokered deposits." We commend the FDIC for its work in updating the brokered deposit and interest-rate regulations to account for the significant changes in technology, and the manner in which financial services are provided and delivered since the regulations were originally adopted. However, as set forth below, more work remains to be done to carry out the intent described by the FDIC in issuing the Proposed Rule.

While the restrictions on brokered deposits under Section 29 and Part 337 apply directly to community banks that are less than "well-capitalized," the Proposed Rule could have a far greater impact. Our comment letter addresses the following concerns that we have with the broker deposit framework proposed in the NPR:

- the proposed definition of "facilitation" is overly broad, complex and create significant gray areas, and, as a result, inadvertently increases the scope of deposits classified as brokered;
- the proposed application process combined with significant ambiguity will cause the primary purpose exception to become the rule; and
- the Proposed Rule does not explain how current interpretations of the brokered deposit regulations fit under its proposed framework.

A. *Brokered Deposit Definition*

The proposed rule introduces a new definition of “facilitating the placement of deposits” that outlines specific activities that the FDIC considers to be representative of the activities of a deposit broker. Rather than creating a bright-line standard, the new “facilitating” definition is overly broad and is likely to capture a wide range of industry participants who were previously unaffected by the current statute and rule. This potential expansion of “deposit brokers” will negatively impact community banks who routinely rely on third-party resources to assist them in providing deposit offerings to their local communities.

The Proposed Rule outlines four factors that, if any are met, would determine the person to be engaged in facilitating the placement of deposits.

The first factor provides that a person will meet the facilitation prong if the person directly or indirectly shares any third-party information with the IDI. This factor appears to restrict community banks from receiving any external information from any third-party about their current customers and/or potential new customers. As a result, many activities in which community banks routinely engage during the normal course of business will now be subject to being considered brokered deposits. Generally established relationships with third-party vendors pursuant to which information is shared to assist community banks in delivering services such as marketing and data processing would place deposits at risk of being considered to be brokered. However, simply providing information to an IDI does not constitute influence or control over a deposit account and as such should not be considered to be facilitating the placement of deposits.

The second factor indicates that the person has legal authority, contractual or otherwise, to close the account or move third party's funds to another IDI. It is appropriate that the definition of “facilitation” focus on the person who has control or discretion over the account to determine whether the person is engaging in the facilitation of deposits.

The third factor notes that the person provides assistance or is involved in setting rates, fees, terms or conditions for the deposit account. Unfortunately, what constitutes “providing assistance” is unclear and difficult to ascertain. The FDIC should consider utilizing specific examples of what constitutes “providing assistance” to remove any ambiguities from this factor.

The fourth factor specifies that the person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third-party that is placing deposits on behalf of a depositor and an IDI, other than in a purely administrative capacity. The terms “indirectly” and “acting as an intermediary” need to be more clearly defined. Once again, specific examples of the type of activities envisioned by this factor would be helpful in providing greater clarity.

B. Exceptions to the Deposit Broker Definition

The NBA would recommend that the FDIC explicitly exempt parties that they do not deem to be deposit brokers from the definition of deposit broker. The definition of “brokered deposits” should be crafted narrowly to exempt all third parties that provide services to a community bank in which the bank offers deposit accounts directly to individual depositors and the third-party has no contractual relationship with any individual depositor to place, manage or otherwise control any of the depositor’s funds.

C. Primary Purpose Exception

The Proposed Rule would amend and connect the existing “primary purpose exception” to the definition of “deposit broker” and establish a procedure for third parties seeking exception approval to make application under the “primary purpose exception.” Under this approach, virtually all community bank service providers would be required to apply for the “primary purpose exception” through the proposed application process. The NBA would recommend that the FDIC provide that certain activities falling within the primary purpose exemption do not require an application. This would reduce some of the uncertainty associated with the proposed application and determination process, as well as operational burdens on the FDIC.

D. Transition Period

Accompanying the Proposed Rule, the FDIC indicates its intention to evaluate staff opinions to identify the opinions that are outdated based on revisions made to the brokered deposit regulations. As part of any Final Rule, the FDIC plans to codify staff opinions of general applicability that remain applicable and rescind those that do not. This approach creates uncertainty in the short-term for community banks and third parties which have traditionally relied on established advisory opinions. Industry participants and community banks have made significant investments in the products, platforms and services utilized in reliance upon these Advisory Opinions and the protections they provide.

The NBA urges the FDIC to implement a reasonable transition period for community banks to continue to rely on past staff opinions determining that activities had met the primary purpose exemption to the deposit broker definition. As it is difficult to ascertain which staff opinions will be deemed relevant versus those that will be considered obsolete or no longer applicable, we suggest that all staff opinions that have granted a deposit broker exemption continue to be honored and that a transition period be established that would commence from the time the comment period is ended and extend for three years after the rule has been finalized. This will allow community banks to continue to rely upon past opinions and respond and comply with any additional changes in a timely fashion.

The NBA supports simplification and clarification of “brokered deposits” and modernization of the framework by which brokered deposits are analyzed. However, the FDIC should establish “bright line tests”, that are easily understood and which result in less, rather than more activities being considered brokered. The proposed rules need to be refined as set forth above in order to accomplish the objectives outlined by the FDIC.

In closing, the NBA appreciates the opportunity to comment and applauds the efforts of the FDIC to modernize the broker deposit restrictions. Please feel free to contact me should you have any questions.

Very truly yours,



Richard J. Baier
President & CEO

/tjm