June 9, 2020

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

Submitted Electronically

Re: Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions
RIN 3064–AE94

Dear Mr. Feldman,

The Ohio Bankers League[1] (OBL) appreciates the opportunity provide comment and input on the FDIC proposal updating and modernizing the restrictions on brokered deposit restrictions that apply to less than well-capitalized insured depository institutions (IDIs). We thank Chair McWilliams and the FDIC staff for the thorough review of this issue and the thoughtful proposal published in the Federal Register. For the reasons we discuss below however, the OBL believes the regulation as proposed falls short of the stated goals of clarity and transparency. Further, the proposal does not address all of the issues created by technology that was not available in 1989 when the underlying statute was first adopted by Congress[2], as well as the statutes and regulations enacted since then.[3] Thus, there is an even stronger case that reform is overdue to recognize innovation community banks can leverage to further strengthen an evolving banking system.

[1] The Ohio Bankers League ["OBL"] is a non-profit trade association that represents the interests of Ohio's commercial banks, savings banks, savings associations as well as their holding companies and affiliated organizations. The Ohio Bankers League has over 180 members which represents the overwhelming majority of all depository institutions doing business in this state. OBL membership represents the full spectrum of FDIC insured depository institutions from small mutual savings associations owned by their depositors, community banks that are the quintessential locally-owned and operated businesses, up to large regional and multistate holding companies that have several bank and non-bank affiliates and conduct business from coast to coast. Ohio depository institutions directly employ more than 70,000 people in Ohio. We are the only trade association in Ohio that represents all segments of FDIC insured depository institutions.

In serving their local communities, several of our members utilize brokered deposits and have a keen interest in this proposed regulation.

[2] Federal Deposit Insurance Act, Section 29; 12 USC 1831f

[3] The new provisions that have changed the context in which brokered deposits need to be considered includes, but is not limited to the following: The Riegle Neal Interstate Banking and Branching Efficiency Act of 1994 and the Gramm, Leach Bliley Act.

The primary concerns of the OBL are, the definition of a deposit broker remains too broad and the proposed definition of facilitation is also overly broad and complex. As a result, we believe the proposal will actually have the perverse practical impact of *increasing* deposits that are considered brokered deposits. The Ohio banking industry believes that this broader sweep will include stable deposits that are of no risk to the bank or the Deposit Insurance Fund. This cannot be the intended result of this reform process. In addition, if this regulation is not revised as suggested in this comment letter, it will have a disproportionate adverse impact on community banks.

The definition of "Deposit Broker" should be amended and narrowed

The FDIC proposes to revise the definition of deposit broker to include the following:

> (1) Any person engaged in the business of placing deposits of third parties;
>
> (2) Any person engaged in the business of facilitating the placement of deposits of third parties with IDI's;
>
> (3) Any person engaged in the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and
>
> (4) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an IDI to use the proceeds of the account to fund a prearranged loan.

While this certainly represents a step in the right direction, we believe this definition remains too broad and captures too many relationships.

One improvement would be to eliminate entirely the concept of facilitation, substituting instead a test of control. That is, a deposit broker would be limited to a person who has the authority to open, close, move an account or otherwise negotiate terms with the IDI on behalf of a depositor.

Another solution would be to create an exclusion from the definition of "deposit broker" for third parties who assist banks in offering deposit products directly to individual depositors, provided the third party has no contractual relationship with the individual depositor to place, move or manage the depositor's funds. As long as the depositor relationship resides directly with the bank and not with the third party, the bank should be able to utilize the third party's services without triggering any brokered deposit rules.

The concept of "Facilitating the Placement of Deposits" should be deleted from the NPR or at least rewritten

As noted above, it is the second prong of this test, addressing persons engaged in the business of facilitating the placement of deposits that has caused the most concern and consternation among Ohio bankers.

To define activities that constitute the business of facilitating the placing of deposits, the FDIC is proposing a four-factor definition. Any one or more of the following will ensnare the third party as a deposit broker:

> (1) The person directly or indirectly shares any third party information with the insured depository institution;
>
> (2) The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;
>
> (3) The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account; or,
>
> (4) 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 insured depository institution, other than in a purely administrative capacity.

The OBL believes this proposed definition to be overly broad, complex, and ambiguous and as noted above the best solution would be to eliminate altogether the concept of facilitation from this final regulation. Short of repealing the entire facilitation test however, it is the first factor, *merely sharing <u>any</u> information* with an IDI that has caused the greatest apprehension among Ohio bankers. This test would significantly broaden the scope of deposits classified as brokered deposits, without increasing the safety and soundness of IDIs or the Deposit Insurance Fund. The OBL does not believe that the mere sharing of information is an appropriate test for whether or not a business advisor or consultant is a "deposit broker." If the concept of facilitation survives any further rewrite of this regulation, the OBL strongly urges the FDIC to eliminate mere information sharing as a factor establishing a deposit broker relationship.

Community banks in particular rely on the input of third party experts to serve their local communities because they simply do not have the scale to maintain that expertise in house. This includes a wide variety of consultants, analysts, financial experts and marketing specialists. Relying on the data and information shared by these professionals is an important part of the benefits they provide. Today, information is shared between IDIs and affiliated and unaffiliated third parties under a variety of circumstances in the normal course of business, including data processing, web servicing, consulting, advertising, credit reporting and marketing. *If the regulation is not amended, it will put smaller, local institutions that rely more heavily on third party guidance at a significant competitive disadvantage.*

<u>The OBL urges the FDIC to consider additional amendments to ease the burden of compliance</u>

First and foremost, bank affiliates and subsidiaries should be explicitly and automatically exempt from the definition of deposit broker. Several new federal provisions have been enacted since the original brokered deposit regulations that permit banks to affiliate with other financial service providers to better serve the customer. Individual entities within that enterprise may refer deposits to an affiliated bank as a part of serving the consumer's needs. Since such entities are all within one organization, consumers expect these transfers to take place seamlessly. These affiliate transactions should <u>not</u> be considered brokered deposits and explicitly exempted.

Second, even if the following parties would otherwise meet the definition of deposit broker or have control over a deposit, because of their unique relationship with the depositor, they should be exempted from these regulations:

- Trustees;
- Custodians of health savings accounts;
- Mortgage and Loan Servicers in connection with servicing activities;
- Real estate brokerages in connection with real estate transactions;
- Title and escrow companies in connection with real estate transactions;
- Property managers in connection with their performance of management services; and,
- Third party service providers, such as call center operators, where the interaction such entities have with customers is entirely a function of the customers' relationship with the IDI.

Finally, the Primary Purpose exception needs to be streamlined so that it is more readily available to community banks.

The primary purpose exception is one of nine exceptions to the definition of a deposit broker granted to "an agent or nominee whose primary purpose is not the placement of funds with depository institutions. While the Ohio Bankers League supports clarification of the primary purpose exception, the OBL believes it would be much more useful to community banks if it were simplified. For example, the OBL encourages the FDIC to establish and publish "bright line tests" for either entities or functions that are presumed to meet the primary purpose exception so that a separate application is not required by each bank for every vendor or product. If the FDIC provided a single approval to a vendor or consultant that deposit placement is not its primary purpose, then each bank that is doing business with that vendor wouldn't be required to reapply for an exemption. This would ease the burden for banks, vendors and the FDIC. Also, this simplification would also encourage industry innovation, which Chair McWilliams has vocally supported on several occasions.

The FDIC should take steps so that when an application is required, the process is less burdensome for both banks and the agency. Taking a page from the recent proposal to modernize CRA, the OBL would urge the FDIC to make all decisions to exception applications public, although redacting any proprietary information from the publically available files. For example, if a consultant or bank receives a determination that a service or a relationship is eligible for the primary purpose exception, all banks contemplating comparable relationships with similar providers should be able to review prior approvals to determine if the activity would qualify for the primary purpose exemption.

Conclusion

The Ohio Bankers League continues to support modernization of the brokered deposit regulations, consistent with the goals of clarity, transparency and ease of compliance. To best achieve these goals, the OBL respectfully urges the FDIC to amend the current proposal consistent with this comment.

Respectfully Submitted;

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