MISSISSIPPI BANKERS ASSOCIATION



June 9, 2020

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

Re: RIN 3064-AE94

Dear Mr. Feldman:

I write on behalf of more than 80 member-banks doing business in Mississippi to express concern with the recent notice of proposed rulemaking on modernizing the FDIC's brokered deposits framework. We applaud the FDIC's efforts to revisit its approach to brokered deposits and national rate cap, as brokered deposits can be an important tool for rural banks like many in our state. Simplifying the framework around brokered deposits could be helpful to our membership, and the Mississippi Bankers Association (MBA) welcomes this step by the FDIC to modernize brokered deposits.

We do have some concerns, however, that the proposed framework could have some unintended consequences, specifically with (1) the proposed definition of "deposit broker," (2) the application and reporting process for IDIs and third parties utilizing the "primary purpose" exception, (3) the lack of explanation on how current interpretations of the brokered deposit regulations would fit under the FDIC's proposed framework, and (4) that the NPR fails to eliminate the stigma of "classic" brokered deposits.

We would like to begin by emphasizing the lack of evidence that a deposit that has been classified as "brokered" possesses any enhanced risk to the safety or soundness of an insured depository institution (IDI). Rather, the gap between the brokered deposits Congress intended to restrict and those that are currently designated as such has resulted in a framework that actually discourages well-capitalized institutions from holding a diverse, stable funding base or innovating to stay competitive and meet the needs and demands of their customers.

## Deposit Broker Definition

We are concerned with the new framework for analyzing certain provisions of the definition of "deposit broker" contained in the NPR. Specifically, the meaning of "engaged in the business of facilitating the placement of deposits," should be made more precise. The currently proposed definition of "facilitation" appears to be overly broad and complex. As a result, if the definition is made more specific, it may result in inadvertently increasing the scope of deposits that will be classified as brokered. We recommend that the FDIC consider modifying the definition of "facilitation" by making discretion over an account the primary factor for the purposes of determining facilitation. We also recommend narrowing the definition by expressly exempting parties that the FDIC does not view as a deposit broker. By specifically identifying who qualifies and what transactions fall within statutory exceptions to the definition of "deposit broker," as well as who and what FDIC does not deem to be a "deposit broker," the FDIC can narrowly tailor the proposed definition and avoid inadvertently increasing the scope of deposits considered to be "brokered."

**Primary Purpose Exception**

Next, we believe the NPR should avoid placing unnecessary importance on the "primary purpose exception." We worry that the proposal could inadvertently cause this exception to become the primary means through which the FDIC would interpret and apply Section 29 now and going forward. The currently proposed application process in addition to significant ambiguity in the proposed rule could inadvertently cause this result. We recommend the FDIC specifically provide that certain activities falling within the primary purpose exemption will not require an application. By adopting this change, the FDIC could reduce much of the uncertainty associated with the proposed application and determination process, in addition to many of the operational burdens imposed on the FDIC as a result.

Additionally, the FDIC should consider enhancing transparency and compliance by requiring third parties to annually re-certify that they continue to meet the requirements of the primary purpose exception. This annual re-certification of primary purpose exemptions combined with publishing a list of these third parties that have been re-certified, while retaining anonymity, should increase transparency and compliance with the brokered deposits framework.

**Transition of Current Interpretations**

The MBA also recommends that the FDIC establish a transition period for compliance. As the effects of COVID-19 continue to be felt across the country, and as financial institutions continue to work with federal, state, and local resources to support our communities, our banks will need a transitional period to come into compliance with the FDIC's finalized framework. We are not sure how current opinions and interpretations could fit into this final framework, but we recommend that the FDIC review its prior interpretations while publicly indicating which of these interpretations will continue to be effective under its final framework. We also recommend the FDIC allow IDIs up to three years to conform their practices to the final framework after the final rule becomes effective.

**Stigma of Brokered Deposits**

Finally, while the MBA supports the FDIC's modernization efforts, we encourage the agency to take certain steps to mitigate the negative stigma associated with brokered deposits. Such steps could include increasing examiner education and allowing well-capitalized institutions to maintain a diverse and cost-effective funding base while utilizing a low-cost tool for mitigating interest rate risk. We also believe that reducing any negative stigma of "classic" brokered deposits could be especially helpful as institutions continue to develop innovative steps to collaborate with other community stakeholders to support our economy and help businesses survive the COVID-19 pandemic.

We appreciate the efforts the FDIC continues to take to support financial institutions during the COVID-19 pandemic in addition to continuing needed modernization efforts. However, we do think that further consideration of these concerns could greatly improve the FDIC's proposal to modernize the "brokered deposits" framework. Thank you for consideration of this important request and for all the work that the FDIC is doing to support bankers and their customers in this difficult economic time.

We welcome the opportunity to provide additional information and input as this process proceeds.

Sincerely,

[redacted]

Gordon Fellows
President & CEO, Mississippi Bankers Association