

MEMORANDUM

TO: Public File – Notice of Proposed Rulemaking
Brokered Deposits Restrictions (RIN 3064-AE94)

FROM: Vivek Khare, Counsel

DATE: March 2, 2020

Recently, FDIC regional and field office staff have received questions about the impact of the proposed rule based upon materials being provided to bankers that include certain mischaracterizations of the proposal. Specifically, the materials state that the proposal would prohibit banks from engaging with companies that provide certain services, such as data collection and consulting or advisory services.

The following information was provided to FDIC regional and field staff.

- **Background:** Under Section 29 of the FDI Act, well capitalized institutions are *not* restricted from accepting or accessing brokered deposits. Adequately capitalized institutions may apply for and receive a waiver from the FDIC. Institutions that are below adequately capitalized are prohibited from accepting brokered deposits.
- **NPR:** The definition of “deposit broker” includes someone who is engaged in the business of placing deposits of others or who is engaged in the business of facilitating the placement of deposits of others. In the NPR, the FDIC provides additional clarity on the activities that would involve “facilitating” the placement of deposits. These would include, while engaged in the business of facilitating the placement of deposits, the following:
 - directly or indirectly sharing any third party depositor information with the insured depository;
 - having the legal authority, contractual or otherwise, to close the account or move the third party’s funds to another insured depository institution; or
 - providing assistance in setting rates or fees for a deposit account.
- Activities which would not be covered by the “facilitating” definition, absent more involvement, include, for example:
 - Market research or advertising by simply including a link on a website; and
 - General consulting and other advisory services.
- As stated in the preamble, “[t]he proposed “facilitation” definition is intended to capture activities that indicate that the person takes an active role in the opening of an account or maintains a level of influence or control over the deposit account even after the account is open. See 85 Fed. Reg. 7457.

- The proposed “facilitation” definition also addresses intermediaries that provide services *between* a third party that is placing deposits on behalf of a depositor and an insured depository institution. Such intermediaries would meet the proposed “facilitation” definition by providing any assistance outside of purely administrative functions.
 - This provision would *not* apply to a third party that is interfacing directly with the depositor.
 - It appears that some interested parties have misinterpreted this provision and incorrectly believe this provision would apply to a third party interfacing directly with the depositor.
- The NPR would also expand the application of the primary purpose exception for third parties so that even if an entity meets the general deposit broker definition it might be excepted under another part of the rule.