

[April - May 2019]

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

Re: RIN 3064-AE94: Request For Comment On Proposed Rulemaking To Amend 12 C.F.R. Part 337 To Review Current Brokered Deposit Regulations And Interest Rate Restrictions Applicable to Banks That Are Less Than Well Capitalized.

Dear Mr. Feldman,

I am writing in response to the Federal Deposit Insurance Company's (FDIC) February 6, 2019 advanced notice of proposed rulemaking (ANPR) regarding brokered deposits and interest rate restrictions.

I appreciate Chairwoman McWilliam's invitation to comment on this important topic and I applaud her desire to review the current rules in light of the significant changes the financial industry has seen in technology, business models, product offerings, delivery channels, third-party service providers, FinTech companies and consumer banking behaviors that have occurred in the thirty (30) years since the deposit broker / brokered deposits regulations were originally put in place.

As shown below, community banks play a vital role in our nation's economy:

- Access to Financial Products & Services: 16.3 million Americans would have limited access to banking services if it weren't for community banks. Nearly one in five of our nation's 3,000 counties would have no physical banking presence if it weren't for community banks.
- Access to Local Credit: Over 900 counties across the United States rely exclusively upon community banks for extension of local credit.
- Business Loans: Community banks are responsible for 52% of all small business loans and 82% of all agricultural loans.
- Local & National Economy: Since the 1970s, small businesses have generated 55% of all jobs and 65% of all net new jobs.

And yet, according to the FDIC's figures from 2002 through Q3 2018, on average, one (1) small bank (defined as less than \$1 billion in asset size) has disappeared each business day over the past fifteen (15) years.

Equally as disturbing is the fact that 45% of all new checking accounts are being opened by just three (3) banks (Chase, Bank of America and Wells Fargo) whose institutions represent just 24% of all branch offices within the United States. (*Source: Wall Street Journal, March 2018*).

Unfortunately, these large banks have inherent business model advantages (i.e. scope, scale, staffing) that many community banks simply do not have. Consequently, community banks must leverage our finite

resources by partnering with industry innovators and third party service providers to deliver the innovative financial products, the competitive rates and the omnichannel customer experiences that will attract new consumers (and their deposits) to our institutions.

As currently interpreted by the FDIC, the brokered deposit rules are making it harder for community banks to gather deposits that are often the cornerstone of an individual consumer banking relationship.

Banking is not just about taking deposits and lending money; it is also about cross selling financial services to customers. In many cases the bank's initial contact with a customer is through the deposit account relationship, which gives the bank an ongoing view into the customer's financial resources and needs.

In order to reach out to customers and offer them attractive deposit services in today's rapidly evolving financial services world, community banks must be empowered to work with industry innovators and third party service providers to expand our product offerings, marketing services, digital delivery capabilities and customer / consumer nurturing programs.

Unfortunately, the current deposit broker rules and FDIC staff interpretations are a web of broad interpretations of scope and coverage and narrow interpretations of exceptions that makes it extremely difficult for community banks to use external resources to help our institution's gather deposits.

The regulatory "reach" associated with today's deposit brokering rules is exceedingly broad and it is also ill defined and uncertain. For example, per question B2 (shown below) within its June 30, 2016 (revised July 14, 2016) Identifying, Accepting And Reporting Brokered Deposits Frequently Asked Questions ("FAQ"), the FDIC states that any action of any third party that helps an insured depository institution attract new consumers may constitute the facilitation of deposits.

"What activities qualify as 'facilitating the placement of deposits?'"

"When a third party takes any actions that connect an insured depository institution with depositors or potential depositors, the third party may be "facilitating the placement of deposits. Hence, the third party may be a deposit broker."

The ramifications of this broad interpretation are enormous, particularly in light of the emergence of digital-only banks and internet sites that help consumers shop for, evaluate and select financial products, services and providers. Institutions like ours must be able to utilize external resources to assist us to identify prospective consumers, deliver digital capabilities, promote our institution online, participate in social media activities and constantly communicate with our customers and consumers without fear of potential retroactive and negative deposit brokering ramifications.

Furthermore, the current deposit brokering rules results do not apply to credit unions (other than low income status institutions). Consequently, the limitations imposed upon community banks by the FDIC inexplicably cede an unfair market and competitive advantage to credit unions. Credit unions for example can utilize shared service organizations (CUSOs) and pool marketing funds and advertising activities among multiple institutions to attract new members and deposits without fear of any negative regulatory ramifications.

Let me be clear, I do not underestimate the difficulty of the FDIC's reevaluation task and will not attempt to recommend a comprehensive definition of brokered deposits.

I recognize that an inappropriately narrow definition of brokered deposits could put insured depository institutions, the deposit insurance fund, and ultimately tax payers, at risk.

At the same time, an inappropriately broad definition of brokered deposits is likely to accelerate further consolidation within our country's banking system, increasing the systemic implications of problems at individual banks, and potentially creating even greater risks to the deposit insurance fund and taxpayers.

I believe the modernization of the brokered deposit rules will be facilitated most effectively, and without creating undue risks to individual banks or to the banking system itself, by identifying characteristics of deposits that the FDIC would not consider to be brokered deposits however they are acquired.

For example, the following deposits should be not considered to be brokered deposits.

- Multi-Service Relationship: All deposits (checking, savings, MMA, CDs) associated with an individual customer who has another ongoing bona fide financial services relationship with the bank should not be considered to be brokered deposits. The existence of another relationship, such as a loan, demonstrates an ongoing relationship between the individual depositor and the bank.
- Transaction Accounts: Bona fide transaction accounts (including reward-based checking accounts) should not be considered to be brokered deposits. These accounts are used for transaction purposes, are difficult to move, and result in a stable relationship between the depositor and the bank.

In addition, accounts that are opened directly by an individual depositor rather than by a third party and are held directly in the name of the beneficial owner of the funds and are subject to the individual depositor's control are less likely to be withdrawn in times of stress than accounts that are held in the name of unaffiliated third parties. These accounts should not be considered to be brokered deposits absent compelling evidence that the accounts are being controlled by a third party. And the fact that a bank utilizes external resources to help it attract new customer relationships should not be interpreted as the third party having control over an account regardless of the form of compensation the third party receives. Customer nurturing activities (i.e. identify, attract, engage, develop, retain) including personalized marketing messages build customer loyalty—the problem with brokered deposits in the past has been the absence of such individual customer loyalty.

We believe that a ground-up review of the deposit broker rules and FDIC interpretations is an important step in aligning depository regulation with twenty-first century consumer expectations, modern banking practices and our industry's ever evolving marketplace realities.

We appreciate the opportunity to share our perspectives with the FDIC as the agency reviews its current deposit broker / brokered deposit regulations and we look forward to the final outcome of the FDIC evaluation process.

Sincerely,