CALIFORNIA
BANKERS
ASSOCIATION

May 7, 2019

Via email to *comments@fdic.gov*

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

Re: Brokered Deposits (RIN 3064-AE94)

Dear Mr. Feldman:

The California Bankers Association (CBA) appreciates the FDIC's willingness to reevaluate its approach to brokered deposits and welcomes the opportunity to provide comments in response to the above-referenced ANPR.[1]

It is CBA's understanding that comprehensive, detailed comments and analysis will be offered by others, for example, the Bank Policy Institute. CBA does not intend to duplicate all of the points that will be raised by BPI and others; rather, CBA intends to highlight those aspects of the FDIC's interpretation of brokered deposit restrictions and its use of the national rate cap that appear to be of the most concern to its members.

First, it is important to remember the environment in which Section 29 of the Federal Deposit Insurance Act was enacted. Section 29 was part of the Financial Institutions Reform Recovery and Enforcement act of 1989 (FIRREA). FIRREA was a direct response to the "savings and loan crisis" of the 1980's. Section 29 in particular addressed the abuse by troubled institutions of "hot money" deposits; i.e., deposits that were bought through brokers and which often offered higher-than-market rates, but involved no real relationship between the insured depository institution (IDI) and the actual owners of the deposits. These deposits were considered particularly volatile and unstable, in that the brokers could readily move deposits from IDI to IDI in search of higher interest rates.

[1] CBA has also received and reviewed comments filed May 7, 2019 by the American Bankers Association (ABA) and concurs with and supports those comments.

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The definition of a "brokered deposit" is driven by the definition of a "deposit broker." A "deposit broker" is defined as "[a]ny person engaged in the business of placing deposits, or facilitating the placement of deposits, of third party with insured depository institutions or the business of placing deposits with insurance depository institutions for the purpose of selling interests in those deposits to third parties." The FDIC stated in its 2011 *Study on Core Deposits and Brokered Deposits* that the definition of deposit broker is "broad." In its July 14, 2016 FAQ's, the FDIC elaborated on the definition by stating, among other things, that "'facilitating the placement of deposits' is interpreted broadly to include actions taken by third parties to connect insured depository institutions with potential depositors" and that "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.'" (Emphasis added).

In the 30 years since the enactment of Section 29, technology, business practices and banking products have evolved to the extent that Section 29's definition of "deposit broker," and the FDIC's excessively broad interpretation of the term, have become archaic and unworkable. The availability of convenient services demanded by today's customers is inhibited by the FDIC's analysis of what constitutes a "brokered deposit." The FDIC's approach limits an IDI's access to deposit funding solely because of the manner in which the customer first comes into contact with the bank, notwithstanding that a stable bank/customer relationship ensues. For instance, under the FDIC's interpretation, deposits that are created through referral programs, internet marketing, marketing through mobile channels, online banking, prepaid debit cards, and myriad other modern methods of creating customer relationships could be considered "brokered deposits" simply because a third party has taken an action that connects the IDI and the customer. Actually, these modern techniques, particularly solicitation through online banking platforms, represent highly cost-effective methods of deposit gathering.

The FDIC should narrow its interpretation of "deposit broker" to persons that contract to place deposits of unaffiliated third parties with IDI's or who contract with troubled insured depository institutions for the purpose of selling interests in their deposits to third parties. Deposits that involve a direct, continuing relationship between a customer and an IDI should be expressly excluded from consideration as "brokered." Certain deposits that are inherently stable, such as time deposits for longer than a year, should also be excluded from the definition and treated as core deposits.

CBA would also like to direct the FDIC's attention to comments dated April 30, 2019 by First Financial Northwest Bank (FFNB) (which is a member of the Western Bankers Association, of which CBA is a division). FFNB presents a cogent analysis of the FDIC's treatment of brokered deposits and also of flaws in FDIC's use of the national rate caps, from the perspective of a community bank. FFNB argues that "[t]he regulatory stigma inappropriately attached to the use of brokered deposits and the national rate cap calculation is inhibiting the abilities of community banks to compete with national branch and branchless banks and credit unions." FFNB notes that the method of calculating the national rate cap is weighted by the number of an institution's branch offices, and does not take into account the rate practices of credit unions, which are increasingly aggressive competitors for deposits (along with being tax-advantaged). FFNB's analysis of these topics is apt and deserves consideration.

FFNB also raised a concern previously addressed by the ABA in its letter to the FDIC dated Mach 21, 2019 – that the national rate cap, which by regulation does not apply to healthy banks, is in fact being applied to healthy banks through the supervisory process. Moreover, as the ABA observed, the FDIC's current methodology for calculating the rate cap is flawed, in that it does not sufficiently capture the effect of local competition and market conditions on an IDI's rate decision, which is particularly significant in the case of community banks that do not have extensive branch networks. As both the ABA and FFNB have noted, the FDIC's methodology leads to a rate cap that is in fact below the rates determined by the market. That fact means that supervisory use of the national rate cap, which was originally designed to address and deter risky practices by trouble banks, is actually a hindrance to healthy institutions trying to price deposits to meet their market conditions.

Again, CBA appreciates the FDIC's recognition of the need to reevaluate its definitions and treatment of brokered deposits and the national rate cap. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

CALIFORNIA BANKERS ASSOICATION

By [redacted]

Martha Evensen Opich
Vice President, Association Counsel