MISSOURI BANKERS ASSOCIATION

Missouri Bankers Association

June 5, 2020

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

VIA: comments@fdic.gov

Subject: RIN 3064-AE94

Dear Mr. Feldman:

The Missouri Bankers Association commends the Federal Deposit Insurance Corporation for your work to update the brokered deposit and interest rate regulations to account for the significant changes in technology, business models, the economic environment, and financial services since these regulations were originally adopted. The regulations implement Section 29 of the Federal Deposit Insurance Act adopted in 1989 under FIRREA (codified 12 USC 1831f).

Consider Repeal of Section 29

The MBA prefaces our comments with a suggestion that the FDIC consider a more substantive reform – and that would be for the Corporation to recommend that Congress repeal and replace Section 29. Deposit liabilities are not the cause of bank insolvency failures.

While brokered deposits have been associated with poor asset management or poorly planned and executed asset growth, the trigger for prudential guard rails would more effectively be focused on a bank's management rating, stress testing for asset mix and asset concentrations, and tracking data for a bank's rate of asset growth or significant increases in assets beyond historic or economic trends. Brokered deposits can be used to fund imprudent and poorly executed growth but brokered deposits are not a root cause for a bank going into problem status.

Alternatively, access to brokered deposits serves the interests of all banks and the credit needs of our communities. And brokered deposits can prudently support a problem bank that is adhering to a corrective action plan. Access to brokered deposits as part of a corrective action plan would better serve the public and Corporation's interests and the interests of depositors than a forced sale of a bank's higher quality assets to address liquidity stress.

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Comments

As proposed, the rule would extend the FDIC's regulatory jurisdiction beyond banks to include both banks and non-affiliated third parties that seek an application to exclude themselves and their service from the definition of a deposit broker. To avoid an expansion of the Corporation's jurisdiction to non-banks, the application process should not be to obtain approval but rather to obtain a safe harbor finding.

The MBA also suggests that the regulation be drawn in a more precise fashion in defining the term deposit broker and that Corporation clarify or use terms that reduce the scope of deposits classified as brokered. For example, the term "facilitation" is overly broad. In addition, the Corporation should expressly state or describe known activities that fall within the primary purpose exemption.

A more precise and complete regulation combined with reserving the application process as an option for banks or non-bank service providers to obtain a "safe harbor" would allow banks and third-party service providers to independently determine the status of a relationship, service or product. This would completely avoid the burden of the application process. Applications would be reserved and limited to determine a safe harbor for a provider, service or product that presents features not addressed in the regulation or in existing and subsequent guidance. This approach will greatly reduce regulatory uncertainty and reduce regulatory burden and expense as the number of applications could be greatly reduced.

In cases where an application is necessary to obtain the Corporation's position, the application process should also allow for competitively sensitive commercial information to be submitted in a redacted public application and fully stated in an unredacted confidential application for the Corporation's review. The Corporation's decision or guidance regarding the application should be published to inform the banking and financial services industry, but commercially sensitive information or data should also be redacted by the Corporation prior to publishing the decision or guidance.

The Corporation should explicitly, in the rule and in subsequence guidance and decisions, identify the parties or transactions that fall into the exclusions or exemptions from status as a deposit broker and brokered deposits so as to better inform the industry and to support the development of new and innovative services that benefit banks and their customers.

The Corporation should also promptly publish adverse decisions on applications or relevant findings from examinations that a provider, product or transaction does present deposit brokering and include the determinative features or characteristics to further inform our industry.

After the adoption of a final regulation, current opinions and interpretations may no longer provide a safe harbor. The Corporation should provide a transition period of up to three years to allow insured depository institutions and third-party providers an opportunity to modify their

products, services and transactions to conform to the new regulation or alternatively to allow time for a safe harbor application to be prepared, submitted and determined.

Finally, we encourage the Corporation to take steps to re-orient its examination procedures and to educate examiners to the value of diverse funding structures, including brokered deposits, to de-stigmatize brokered deposits. In this way, bank supervision and bank best practices can be brought into optimal alignment.

The Missouri Bankers Association values the high quality of bank supervision that the Federal Deposit Corporation provides to our members and the accessibility of the Corporation both centrally and regionally. Thank you for this opportunity to assist you in improving bank supervisory policies.

Sincerely,

[redacted]

Max Cook
President and CEO
Missouri Bankers Association