FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

December 18, 2018

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley
Director, Division Risk Management Supervision

SUBJECT: Advance Notice of Proposed Rulemaking Relating to Brokered Deposits

RECOMMENDATION AND SUMMARY

Staff recommends that the FDIC Board of Directors (the Board) authorize publication of the attached advance notice of proposed rulemaking (ANPR or notice) with a 90-day comment period. The objective of the ANPR is to obtain input from the public as the FDIC comprehensively reviews its brokered deposit and interest rate regulations in light of significant changes in technology, business models, the economic environment, and products since the regulations were adopted. Given the changes in the industry, the FDIC would like to consider how it can approach these issues in the most effective and efficient manner consistent with the underlying purposes of the law.

SUMMARY

To facilitate comment, the ANPR has been structured in the following manner: (1) Current Law and Regulations, (2) History and Research, (3) Brokered Deposit Issues, and (4) Interest Rate Issues. Appendices with additional background and analytical information are also included. Below is a summary of the relevant discussions that appear in the ANPR.

Current Law and Regulation. Under section 29 of the Federal Deposit Insurance Act (FDI Act), an insured depository institution that is less than well capitalized is restricted from accepting deposits by or through a "deposit broker." Section 29 also imposes restrictions on the deposit interest rates that an insured depository institution may offer if the institution is not well capitalized. Section 337.6 of the FDIC's Rules and Regulations implements section 29 of the FDI Act. Through this regulation, the FDIC has largely tracked the statutory definition of "deposit broker" and its exceptions and clarified the interest rate restrictions.

History and Research. The ANPR provides an overview of the history of brokered deposit use by insured depository institution including the initial concerns arising out of bank failures that occurred during the 1980s.

Concur:

Charles Yi,
General Counsel

In response to these concerns, Congress imposed restrictions noted above on brokered deposits for institutions that did not meet their minimum capital requirements and later tied the restrictions to the PCA framework. Congress also imposed rate restrictions on institutions that were less than well capitalized out of concern that institutions would be able to circumvent brokered deposit restrictions by merely advertising or otherwise offering very high rates. Since enactment of Section 29, the FDIC has continued to study the role of brokered deposits in the performance of banks, their impact on safety and soundness, and the loss they impose on the Deposit Insurance Fund when a bank fails.

In the wake of the recent financial crisis, the Dodd-Frank Act directed the FDIC to conduct a study of core and brokered deposits, which the FDIC completed in July 2011. Recently, the FDIC updated its analysis with data through the end of 2017. The results of that analysis are provided in Appendix 2 of the ANPR.

This section of the ANPR also discusses (1) reports prepared by the Inspectors General of the federal banking agencies, (2) the largest concentrations of brokered deposits, and (3) the role brokered deposits played in bank failures between 2007 and 2017.

Brokered Deposit Issues. This section of the ANPR reviews factors considered by staff when interpreting whether a third party meets the statutory definition of a "deposit broker" or one of the exceptions to the definition. In this section, staff explains that determining what constitutes a deposit broker, and thus a brokered deposit, is very fact-specific and requires a close review of the arrangement, the documents governing the arrangement, and the third party's remuneration, among other things. Given the wide, and evolving, variety of third-party arrangements, FDIC staff reviews inquiries on a case-by-case basis, applying the statutory provisions to the facts and circumstances presented.

Interest Rate Restrictions. This section of the ANPR provides background on the interest rate restrictions under Section 29 of the FDI Act and the FDIC's two rulemakings that clarify the application of the restrictions. This section discusses new issues that have emerged since the FDIC's last rulemaking in 2009 – notably, changes to the economy and the types of deposit products.

Appendices. Appendix 1 provides descriptive statistics regarding core and brokered deposits. Appendix 2 describes the statistical analysis of core deposits and brokered deposits as they relate to increased probability of failure and increased losses for institutions that fail.

REQUEST FOR COMMENTS

Through the ANPR, the FDIC would request comments on all aspects of its regulatory approach to brokered deposits and the interest rate restrictions. In general, the FDIC would request comment on how it should approach brokered deposits in the most effective and efficient manner, and still remain consistent with the underlying purposes of the law, as well as on alternatives that it should consider in addressing Section 29's interest rate restrictions for less than well capitalized institutions.

CONCLUSION

FDIC staff recommends that the Board approve the ANPR for publication in the Federal Register. The solicitation of comments from the public will assist the FDIC in determining what actions may be warranted.

Staff contacts:

Legal Division

Thomas Hearn, Counsel, (202) 898-6967
Vivek Khare, Counsel, (202) 898-6847

RMS

Thomas F. Lyons, Chief, Policy and Program Development, (202) 898-6850
Judy Gross, Senior Policy Analyst, (202) 898-7047

DIR

Ashley Mihalik, Senior Policy Analysist 202-898-3793