Virginia Bankers Association

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<u>Via: comments@fdic.gov</u>

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

Re: RIN 3064-AE94, Notice of Proposed Rulemaking Regarding Regulations Relating to Brokered Deposit Restrictions

Dear Mr. Feldman:

The Virginia Bankers Association ("VBA") represents banks of all sizes and charters and has served as the organized voice for Virginia's $615 billion banking industry and its 42 thousand employees since 1893. We appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") notice of proposed rulemaking ("NPR") regarding proposed revisions to its brokered deposit restrictions, including a new definitional framework and primary purpose exception application and reporting process.

The NPR is a welcome step towards modernizing the FDIC's rules for brokered deposits and the VBA commends the FDIC for its action on this issue. We, however, have several concerns with the proposed framework. First, the proposed definition of "facilitation" is too broad, complex, and creates significant gray areas. As a result, the scope of deposits classified as brokered is inadvertently increased. Our second concern is that the proposed application process combined with the aforementioned ambiguity will have the negative effect of the primary purpose exception becoming the rule. Our third concern is that the NPR does not explain how current interpretations of the brokered deposit regulations fit under the new proposed framework. Finally, we are concerned that the NPR does not eliminate the stigma of "classic" brokered deposits.

To remedy these concerns, we respectfully request that the FDIC make the definition of deposit broker more precise. This can be achieved by modifying the proposed definition of "facilitation" to make discretion over an account the primary factor for determining facilitation. We also request that the FDIC explicitly exempt parties that the FDIC does not deem to be deposit brokers. This can be achieved by specifically identifying parties and transactions that fall within statutory exceptions to the definition or that the FDIC does not view as a deposit broker. We request that the FDIC provide that certain activities that fall within the primary purpose exemption do not require an application. This would reduce some of the uncertainty associated with the proposed application and determination process, as well as operational burdens on the FDIC. Lastly, we request that the FDIC require annual re-certification of primary purpose exemptions and publish a list of third parties that have been re-certified (while retaining anonymity). To enhance compliance and transparency, third parties should be annually required to re-certify that they meet the requirements of the exception.

We are also uncertain how current opinions and interpretations will fit into the FDIC's final framework. It would be beneficial for the FDIC to review its prior interpretations and publicly indicate which interpretations will be effective under the final framework. It would also be beneficial to allow a transition period for compliance by providing insured depository institutions with up to three years following the effective date of a final rule to conform their practices to the new rule. We encourage the FDIC to take steps, including examiner education, to mitigate the stigma of brokered deposits and allow well-capitalized institutions to maintain a diverse funding base and utilize a low-cost tool for interest rate risk mitigation.

Thank you for the opportunity to provide comments. If you have any questions, please feel free to contact me at 804-819-4701 or bwhitehurst@vabankers.org.

Sincerely,

Bruce T. Whitehurst
President & CEO