

November 18, 2019

The Honorable Gregory Meeks
Chairman, Subcommittee on Consumer Protection and Financial Institutions
Committee on Financial Services
Washington, D.C. 20515

Dear Chairman Meeks:

Thank you for your interest in modernizing the brokered deposit laws and regulations. The statute governing the rules and regulations on brokered deposits, Section 29 of the Federal Deposit Insurance Act, was enacted in 1989. Thirty years later the statute is ambiguous, outdated and in urgent need of modernization to ensure that banks are not prohibited from holding stable funding, engaging in modern business practices or serving the needs of their customers.

A primary policy goal of Section 29 is to protect the deposit insurance fund by restricting weaker institutions from soliciting and accepting enhanced risk, rate-sensitive deposits from a third party intermediary that stands between the bank and the depositor. Section 29, however, allows for an extremely broad interpretation of who is considered a deposit broker, and thereby, what deposits are considered brokered. Today's list of people and entities that are classified as "deposit brokers" has grown long and nonsensical, and is not limited to those that stand between the bank and a depositor. Rather, the list comprises virtually any third party involved in gathering a deposit, including affiliates, affiliate employees, advertising and marketing partners, technology providers, universities with which a bank may partner, small businesses, employee benefits providers, homeownership associations, consultants, and even a bank's own subsidiary.

Today, neither the statute nor its interpretations accommodate modern banking practices. Over the 30 years since Section 29's enactment, there have been significant structural and regulatory changes, technological advancements and changes to business models and practices within the banking industry, which are not reflected in either the statute or the Federal Deposit Insurance Corporation's interpretations. The result is that apps, app user interfaces, websites and social media platforms can be classified as "deposit brokers."

Section 29 aims to identify a specific type of funding that was distinct from and perceived to be more volatile than a "core" deposit. Today, however, due to the broad interpretation of who qualifies as a deposit broker, the line between which deposits are classified as "brokered" and which as a practical matter are "core" has blurred. In fact, as the law is currently written and interpreted, those terms are no longer mutually exclusive. The cumulative effect is that a broad swath of stable deposits, such as those raised with the help of advertising, affiliates or modern technology, are unnecessarily subjected to supervisory stigma, limits, and additional regulatory costs, even when held by well-capitalized banks. This, in turn, limits bank access to stable sources of deposits.

A fundamental role of banks is to provide financial services including deposit-taking, lending, access to payments systems, wealth management, trust and custody services and cash management services.

Modern technology allows banks to offer these services, gather stable deposits and obtain access to potential depositors via new mechanisms. Going forward, it is imperative that Section 29 be restructured to accommodate these advances in banking and ensure that banks are not penalized for engaging in practices that are well within the bounds of their normal course of business and traditional customer relationships.

We urge the subcommittee to conduct a hearing on this subject and advance legislation to clarify and modernize the statute so that it accommodates modern banking, provides a clear and workable definition of deposit broker, and recognizes that certain deposits should not be considered “brokered.”

As the process moves forward, we look forward to working with you to address this issue and keeping an open line of communication. Please contact me if I can be of any assistance.

Sincerely,

A handwritten signature in black ink that reads "ROB NICHOLS". The letters are bold and slightly slanted, with a stylized flourish at the end of the word "NICHOLS".

cc: The Honorable Blaine Luetkemeyer