

May 7, 2019

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

Re: [Brokered Deposits RIN 3064-AE94]

Dear Mr. Feldman:

Thank you for the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) advanced notice of proposed rulemaking (ANPR) on brokered deposits. The American Bankers Association's HSA Council represents about ninety-four percent of all the Health Savings Accounts (HSAs) in the United States and the millions of Americans who finance their healthcare with these plans. The Council's comments should be read as a companion to and an augmentation of comments submitted separately by the ABA¹ and are restricted to the subject of HSAs under this rule.

We agree with the FDIC, that since reform of Section 29 of the Federal Deposit Insurance Act (FDIA) as part of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, significant changes in technology and financial product evolution warrant a review of the regulations and guidance that together constitute the FDIC's approach to brokered deposits.

This is particularly true in the case of HSAs, in that these products were not even invented until fifteen years after FIRREA's passage.

Congressional Intent

FIRREA set restrictions on the acceptance of brokered deposits by institutions with *weakened capital positions* and was intended to isolate funds placed by entities *whose primary business* is "placing deposits or facilitating the placement of deposits of third parties" to insured depository institutions.

Congress, through FIRREA, intended to restrict troubled banks from holding significant quantities of risky deposits, which were bundled by intermediaries bringing together

¹ *The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, midsize, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend nearly \$10 trillion in loans.*

investors and investment products. Additionally, congress intended to distinguish between providing a banking or financial service and acting as a “deposit broker.”

Congress also intended to insulate the deposit insurance system, in the words of Senator Murkowski (R-AK), “from troubled institutions that take excessive risks and leave the taxpayers to suffer the consequences. By preventing troubled institutions from using brokered deposits – unless permitted to do so by the FDIC – we accomplish this goal and create accountability on the part of the FDIC.”²

Congress never intended deposits involving a direct, continuing relationship between a customer and a healthy insured depository institution to be considered “brokered” deposits as the quote from Senator Murkowski, FIRREA’s co-sponsor, makes abundantly clear.

History and Growth of HSAs

The HSA statute was enacted by congress in 2003 as part of a larger Medicare expansion law creating prescription drug benefits. The FDIC has previously acknowledged the public benefit of HSAs. In a 2013 consumer advisory the agency noted that, with an HSA, “You can save money that can help you avoid a shock to your finances from a sudden large medical bill.”³

Since 2003, tens of millions of Americans now finance their healthcare with an HSA and the HSA-qualifying insurance that goes with it⁴. HSAs are a growing feature of both American healthcare financing and increasingly, retirement planning. Devenir Research says by the end of 2020, they expect HSA assets to approach \$75 billion and cover approximately 30 million accounts.

In other words, HSAs are an important and growing part of employee benefit strategies and are the only health benefit product in the United States that is portable. They were specifically designed so that employees who move from job to job can associate their HSA with their new employer’s HSA-qualifying health plan. This is possible because HSAs are owned by individuals, in all cases, not employers or any other third party - there are no exceptions.

² Testimony of Hon. Frank H. Murkowski, U.S. Senator from the State of Alaska, “Insured Brokered Deposits and Federal Depository Institutions,” Hearing before the Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance and Urban Affairs, House of Representatives, 101st Congress, 1st Sess., 7 (May 17, 1989) (emphasis added); *see also id.* at 71 (written testimony). The purpose of this hearing was to update the record on brokered deposits following a prior hearing by the House General Oversight Subcommittee during the 99th Congress on July 16, 1985.

³ [FDIC Consumer Advisory Summer 2013](#)

⁴ [Devenir Research](#) reports that there are more than 25 million HSAs at the end of 2018, which is 13% more than in 2017. This suggest an appropriate estimate for 2019 enrollment would approach 30 million Americans.

Conclusion

The FDIC's effort to modernize the deposit broker rules is a welcome one and we look forward to participating in this important work. In light of their stated purpose and ownership characteristics, we recommend that HSAs continue to be treated as they are currently, which is as core deposits. We respectfully suggest that the FDIC's deposit broker rules should be considered inapplicable to these products by definition.

Respectfully,

A handwritten signature in black ink that reads "J. Kevin A. McKechnie". The signature is written in a cursive, flowing style with a large initial "J" and "K".

J. Kevin A. McKechnie
Executive Director