Committee: Rules		Author: Lacey Horn
Date: 8-7-15	Committee Date: 8-17-15	Sponsor: Janees Taylor

2

An Act

Legislative Act 14-15

ACT RELATING TO DEPOSIT AND INVESTMENT OF FUNDS, AMENDING LA 13-85, CHAPTERS 2 AND 5; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Financial Security and Stability Act of 2015". This shall be codified as Title 62, Chapter 2.

Section 2. Purpose

The purpose of this act is to amend LA#13-85, specifically chapters 2 and 5, relating to the deposit and investment of funds, in accordance with Article X of the Cherokee Nation Constitution.

Section 3. Legislative History

Legislative Act #13-85, which repealed LA 1-80, LA 3-81, LA 1-82, LA 1-83, and LA 1-84, and replaced LA 3-76, LA 7-76, and LA 1-77.

Section 4. The following section shall be added to Title 62, Chapter 2

Chapter 2. ~~Deposit~~ Investing of Funds.

Section 201a. Definitions.

A. Cherokee Nation shall mean the government, including all commissions, boards, and committees.

B. Donations shall be any monies, assets, property, contributions, gifts, bequests, endowments and/or other donations made to or given to the Cherokee Nation, upon acceptance by the Treasurer.

C. Financial Institution shall be an entity or depository whose primary business and function focuses on dealing with financial services and transactions, such as investments, loans and deposits. A financial institution shall include Federal Deposit Insurance Corporation (FDIC) insured banks, National Credit Union Association (NCUA) insured credit unions and other financial institutions whose activities are controlled or regulated

by federal law and/or federal regulations or regulators, including but not limited to the U.S. Securities and Exchange Commission.

D. Financial Instrument shall be any negotiable asset or instrument with monetary value. Allowable financial instruments shall include, but not be limited to, Demand Deposits, Certificates of Deposit, Certificates of Deposit Account Registry (CDARS), Insured Cash Sweeps (ICS), Savings Accounts, repurchase/reverse repurchase agreements, U.S. Treasuries and U.S. government securities and those issued by its agencies and instrumentalities, and Institutional Money Market Funds whereby those funds are comprised of a majority of allowable Financial Instruments as described above.

E. Funds shall include all funds of the Cherokee Nation, including grants, donations, dividends, and any other funds held by the Cherokee Nation for the operation of the government.

F. Invest shall mean to place Cherokee Nation funds in a financial instrument held by a Financial Institution on behalf of the Cherokee Nation for the purpose of safekeeping.

Section 5. LA 13-85, §201 shall be amended as follows:

Section 201. Requirements.

A. Any funds in the custody of the Cherokee Nation shall be ~~deposited~~ invested only in allowable financial instruments safe kept in ~~an approved~~ a ~~depository~~ financial institution, except for funds kept on hand for operation, such as petty cash funds and change funds. There shall be ~~one principal depository, provided for by law, and~~ as many ~~subsidiary depositories~~ financial institutions as may be necessary for the efficient ~~regulation and~~ management of tribal business. ~~Said subsidiary depositories shall be approved in accordance with section 203 of this act.~~

B. Investments shall be made with judgment and care, under circumstances then prevailing, not for speculation, but for investment, considering the probable safety of the capital as well as the probable fees to be incurred and/or income to be derived.

C. Donations may be invested in separate accounts as directed or allowed.

Section 6. LA 13-85, §202 shall be amended as follows:

Section 202. ~~Principal Depository~~. Financial Institutions.

~~The Principal depository for funds under the control of the Cherokee Nation shall be the 1st National Bank of Tahlequah.~~

The Cherokee Nation Treasurer shall notify the Executive and Finance Committee of the Tribal Council and the Principal Chief on at least ~~an annual~~ a quarterly basis of all Financial Institutions utilized by the Cherokee Nation.

Section 7. LA 13-85, §203 shall be amended as follows:

Section 203. ~~Subsidiary~~ Determination of Financial Institutions.

~~A. Subsidiary depositories used for investment of~~ Financial Institutions for ~~tribal~~ funds held by the Cherokee Nation ~~shall~~ may be determined by competitive bidding and/or other qualifying factors. If bid, ~~S~~said bidding and selection process of ~~investment~~ Financial Institutions ~~Depositories~~ shall be conducted by the Controller, under the review of the ~~Secretary-~~Treasurer ~~on a regular basis~~. The following criteria may be used in the determination of Financial Institutions:

1. The institution's ability to best protect the Cherokee Nation's funds;
2. The institution offering the highest interest rate on the funds, and/or;
3. The institution's ability to reduce the cost to the Cherokee Nation for investing the funds.
4. The size of the financial institution is adequate for the amount of funds to be invested.
5. The Financial Institution's ability to allow electronic access to all transaction and portfolio reports.

~~(B). Other subsidiary depositories may be designated for the purposes of efficient regulation and management of tribal business in a particular locale. Subsidiary depositories provided for under this subsection shall maintain a checking/general banking relationship with the Cherokee Nation and shall be approved, upon recommendation of the Controller, by resolution from the Council. Said resolution shall contain the name of the financial institution, the purpose of the depository, and the names of those persons authorized to conduct transactions with said depository.~~

Section 8. LA 13-85, §204 shall be amended as follows:

Section 204. Control of ~~deposited~~ funds.

Any funds ~~deposited~~ invested by the Cherokee Nation shall be under the control of the ~~Secretary-~~Treasurer who may, at his or her discretion, delegate fiduciary responsibilities to the Controller of the Cherokee Nation. The Council may from time to time establish laws ~~and regulations~~ governing said funds.

Section 9. LA 13-85, §205 shall be amended as follows:

Section 205. Protection of invested ~~deposited~~ funds.

A. No funds under the control of the Cherokee Nation shall be ~~deposited~~ invested with ~~in~~ any Financial Institution unless the Financial Institution is insured by ~~said~~ the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Association (NCUA) ~~or the~~

~~Federal Savings and Loan Insurance Corporation (FSLIC)~~ and/or the Financial Institution's activities are controlled or regulated by federal law and/or federal regulations or regulators, including but not limited to the U.S. Securities and Exchange Commission.

B. Collateralization. No funds in excess of ~~$100,000.00~~ current FDIC or NCUA insurance maximums shall be ~~deposited~~ invested in a single Financial Institution unless said funds are collateralized either by and/or invested directly into obligations and/or bonds ~~with a minimum of a AA~~which contain an investment grade rating as rated from a nationally recognized rating firm, such as Standard and Poor's, Moody's or Fitch, or local, state, U.S. Government securities, and those issued by its agencies and instrumentalities, and Cherokee Nation securities. Collaterlized funds shall be secured and pledged to the Cherokee Nation via joint custody receipts for the full amount of said funds. Nothing herein shall prevent direct investment held in allowable Financial Instruments.

Section 10. The following sections shall be added to Title 62, Chapter 2:

Section 206. Term of investments of funds.

Funds invested pursuant to this act, excluding Demand Deposits, shall be for a period not to exceed 5 years, provided that funds may be invested for a longer term upon consent of the longer term by the Executive and Finance Committee of the Council.

Section 207. Investment of judgment funds and trust funds.

Any investment of judgment funds and trust funds shall be pursuant to 25 U.S.C. 162a. The use or distribution of said funds shall be in accordance with 25 CFR 87.1 et. seq.

Section 208. Specific rights reserved.

The Treasurer of the Cherokee Nation shall be authorized to provide to the Secretary of the Interior the investment direction of the judgment funds and trust funds.

Section 11. LA 13-85, Chapter 5, §§501-506 shall be repealed as follows and reserved for future use:

~~**Section 501. Investment of judgment funds.**~~

~~Any investment of judgment funds shall be pursuant to 25 U.S.C. 162a. The use or distribution of said funds shall be in accordance with 25 CFR 87.1 et. seq.~~

~~**Section 502. Specific rights reserved.**~~

~~The Council of the Cherokee Nation reserves the right, within statutory authority and limitations, to recommend to the Secretary of the Interior preferred financial institutions for the investment of judgment funds.~~

~~**Section 503. Investment of non-restricted tribal funds.**~~

~~Surplus Funds from tribal operations may be invested by the Controller, upon direction and with the consent of the Executive and Finance Committee of the Council, in accordance with sections 203a, 504, 505 and 506 of this act.~~

~~**Section 504. Term of investments of tribal funds.**~~

~~Tribal funds invested pursuant to section 503 of this act shall be for a period not to exceed 120 days, provided that funds may be invested for a longer term upon approval of the Executive and Finance Committee of the Council.~~

~~**Section 505. Selection of investment institution.**~~

~~The Controller shall, upon determination of the amount of surplus funds, solicit bids from financial institutions for the purpose of investing said funds. The Controller shall use the following criteria in the determination of the successful bidding institution:~~

1. ~~The institution offering the highest interest rate on the funds, and;~~
2. ~~In the event that one or more institutions offer the same highest rate of interest, the funds shall be equitably distributed among those institutions, provided that if the amount of funds are not sufficient to distribute among several institutions, those institutions offering the highest rate of interest shall be selected by the earlier postmark.~~

~~**Section 506. Protection of invested tribal funds.**~~

~~In the event that the invested funds in a single institution amount to more than $100,000.00, said funds shall be collateralized as provided for in section 205(B) of this act, and provided further that the institution where said funds are invested shall secure and pledge to the Cherokee Nation joint custody receipts for the full amount of said funds.~~

Section 13. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 14. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

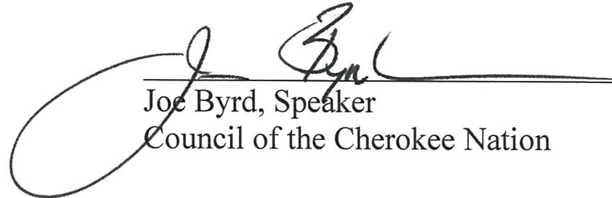
Section 15. Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Section 16. Self-Help Contributions

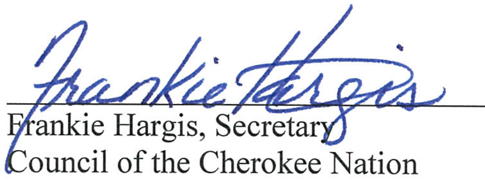
To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the 14th day of September, 2015.



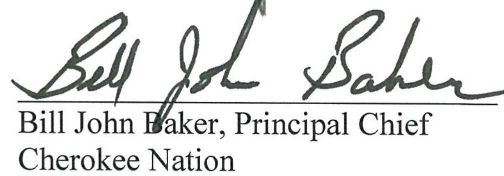
Joe Byrd, Speaker
Council of the Cherokee Nation

ATTEST:



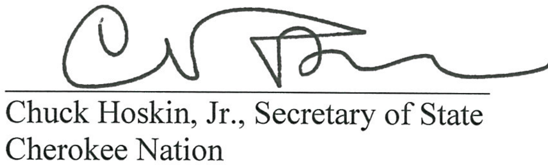
Frankie Hargis, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 15 day of September, 2015.



Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:



Chuck Hoskin, Jr., Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Rex Jordan	Yea	Janees Taylor	Yea
David Walkingstick	Yea	Dick Lay	Yea
Joe Byrd	Yea	Buel Anglen	Yea
Shawn Crittenden	Yea	Harley Buzzard	Yea
Bryan Warner	Yea	Frankie Hargis	Yea
David W. Thornton, Sr.	Absent	Victoria Vazquez	Yea
Don Garvin	Yea	Wanda Hatfield	Yea
Keith Austin	Yea	Jack D. Baker	Yea
Curtis G. Snell	Yea		

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CHEROKEE NATION®
P.O. Box 948 • Tahlequah, OK 74465-0948 • 918-453-5000 • cherokee.org

Office of the Chief

Bill John Baker
Principal Chief
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S. Joe Crittenden
Deputy Principal Chief
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To: Cherokee Nation Tribal Council

From: Lacey Horn, Treasurer

Date: August 7, 2015

Re: Financial Security and Stability Act of 2015

The Financial Security and Stability Act of 2015 is a modernization of the Cherokee Nation financial code that is necessary to allow the Cherokee Nation Treasurer to continue to manage the finances of the Nation in a prudent and efficient manner. Certain federal regulatory changes have resulted in changes to the banking environment, which is the primary reason for initiating the modernization of the Nation's financial code at this time. The new act will amend the current financial code as necessary to adapt to the current financial environment.

Background:

The Nation's financial code has not been amended or updated since its enactment in 1985. Not only has the financial landscape changed dramatically since that time, but the Nation's annual budget is approaching $800 million. Federal regulation of financial institutions has become more cumbersome and prohibitive of the manner in which the Nation has previously banked (deposit accounts with full collateralization).

Presently, financial institutions are changing the types of accounts available to the Nation and charging increasing fees, primarily in the form of FDIC insurance fees based on the amount of deposits held by those financial institutions. These FDIC fees are charged despite the Nation's deposits being collateralized and secured by specific financial instruments owned by the bank. These financial instruments act as insurance for the Nation's deposits, which means the FDIC fees provide no benefit to the Nation, which is why the Cherokee Nation Treasurer is seeking alternatives to offset these unnecessary expenses.

Also, the current market for interest rates on the Nation's deposit accounts is at or near 0%, which limits the Nation's ability to receive a fair return for its deposits. Accordingly, these new federal regulations imposed within the financial services industry and the low interest rate environment have caused all financial institutions to reevaluate large collateralized deposit accounts like the Nation's. This problem is not exclusive to Cherokee Nation and is affecting all governmental depositors, including both tribal and state entities.

The Cherokee Nation Treasurer needs more flexibility to **safeguard the Cherokee Nation's funds** and **mitigate assessment of fees** in order to be the best steward of the Nation's resources.

Basel III:

The new federal regulations referenced above are the result of an international agreement generally referred to as Basel III. Basel III (or the Third Basel Accord) is a global, regulatory framework on bank capital adequacy, stress testing and market liquidity risk. Basel III was developed and recommended by the Basel Committee on Banking Supervision based in Basel, Switzerland in 2010–11. The U.S. Federal Reserve announced in December 2011 that it would adopt and implement substantially all of the Basel III rules on U.S. banks and financial institutions over a period of time. The implementation of Basel III has begun and has led to changes in the way banks are handling collateralized funds of large governmental depositors, including Cherokee Nation.

Amendments:

The Financial Security and Stability Act seeks to incorporate changes to the current financial code by addressing the changes in the banking industry, the operational needs of the Nation, and maintaining the security and strength of the Nation's financial assets in accordance with the Cherokee Nation Constitution.

Efficiency of Merging Chapter 2 Deposit of Funds and Chapter 5 Investment of Funds. The merging of Chapters 2 and 5 of the current law is a more effective and efficient structure as all collateralized deposit of funds are effectively a form of investment intended to safeguard the Nation's funds. Under the current financial code, the Nation's funds are "deposited" into a bank account and the bank is required to purchase, then pledge and assign specific financial investments with a value equal to the deposited amounts to fully secure those deposits. This collateralization is intended to protect the Nation's funds from any loss in the event of a bank failure, essentially insuring the deposits similar to FDIC insurance (FDIC insurance is limited to certain lower amounts and does not benefit the Nation since all deposits are already collateralized, despite the Nation being forced to pay FDIC fees).

Under the new proposed Act, the terms investment and deposit are merged into invest, which is defined as "to place Cherokee Nation funds in a financial instrument held by a Financial Institution on behalf of the Cherokee Nation for the purpose of safekeeping." §201(a)(F) of the proposed Act. Both investments and deposits are a form of safekeeping of the Nation's funds and have the same restrictions under the law for how to safeguard the funds. There is not a need to have both terms used because both are included in the definitions of invest and financial instrument.

In application, the same protective requirements that insure the Nation's funds are equally applicable to deposits and investments, as collateralized deposits will no longer be offered by the banking industry, requiring the Nation to adapt the current financial code to allow for limited "investments" into the same financial instruments previously pledged and assigned as collateral for the deposited funds. This structure is actually more efficient and protective, as the Nation will now own the financial instruments in its name and no longer have to rely on the bank to deliver and release the financial instruments if there is ever a bank failure.

The protective requirements implemented under the new Act limit the types of financial instruments and accounts the Nation's funds can be placed into as the means to safeguard the funds. **The allowable financial instruments are limited to the same highly rated U.S. Treasuries, U.S. Government Securities and similar instruments that were previously purchased by the bank and used to collateralize the Nation's deposits.**

As described above, this change to the current financial code is necessary due to the phase out of large collateralized deposit accounts by the banking industry due to the implementation of Basel III. Under the current financial code, the Treasurer is limited to only making "deposits" into the types of collateralized accounts that banks will no longer be offering for large collateralized accounts. The new structure and language of the Financial Security and Stability Act of 2015 will allow the Treasurer to continue to manage the finances of the Nation in a prudent and efficient manner.

Addition of a Definitions Section. There is not a definitional section in current financial code found at LA 13-85. A definitional section serves to clarify and provide a better understanding of the terms that are used in these sections and benefits the code and improves interpretation.

Removal of the term "depository" and replacement with "Financial Institution". The current financial code uses the term "depository" to mean "bank". This term is very limiting in today's financial environment. The banking industry has changed dramatically since the implementation of the current financial code in 1985. Few banks are solely "depositories", but instead most have expanded their business to other financial areas and are considered "financial institutions". The new Financial Institution terminology addresses this change in the banking industry and allows the Treasurer to more effectively negotiate with different financial institutions and secure the best combination of low fees and higher interest rates for the Nation's banking relationships.

Requirement to notify the Executive and Finance Committee of the Tribal Council at least annually of all financial institutions. Currently, the principal depository is named in the current financial code, which severely limits the Nation's ability to secure fair fee structures and interest rates based on the open market. By changing this language, the Treasurer will have the ability to more efficiently manage the Nation's banking relationships, based on the criteria provided, and to determine how best to organize the financial strategy for the Nation's funds. A list of all financial institutions doing business with Cherokee Nation will be provided to the Executive and Finance Committee of the Tribal Council at least annually.

Term of Investments of Funds. The current law only allows investment of funds for 120 days. The proposed law extends this to 5 years to allow for more flexibility and return on the investments by lengthening the terms. Also, Demand Deposits are specifically excluded from this time frame because they are typically accounts that are held in perpetuity (no end term), like checking accounts.

Authorization of Treasurer to give direction for Judgment and Trust Funds. Under the current law, the Council is tasked with recommending to the Secretary of the Interior the preferred financial institutions for investment of judgment and trust funds. This does not comply with 25 U.S.C. 162a or 25 CFR 87.1 et. seq., which allows the tribe to provide the Secretary of the Interior with direction on investment of the funds but does not allow for the tribe to choose the specific financial institutions. Also, under the Cherokee Nation Constitution, Article X. Section 6, the Treasurer is the party who is authorized to invest and determine the preferences to be given, not the Tribal Council. The current law does not meet the requirements of federal law or the Cherokee Nation Constitution. The proposed law, §208, remedies this issue.

Broader definition of allowable financial instruments. The types of financial instruments available for collateralization of funds have increased since 1985. This change allows for more types of financial instruments to be utilized to collateralize the Nation's funds, but **allowable financial instruments are still strictly limited to only the highest quality and lowest risk instruments available**. This amendment will provide the Treasurer more options while still safeguarding the Nation's funds and mitigating wasteful fees.

Recommendation:

The approval and adoption of the Financial Security and Stability Act of 2015 will provide the Cherokee Nation Treasurer the necessary tools and flexibility to continue to safeguard the Cherokee Nation's financial resources in the current financial environment and the foreseeable future. This Act will also allow the Treasurer to effectively negotiate and minimize the assessment of bank fees and other financial costs, which empowers the Treasurer to be a better steward of the Nation's funds.

Additional Information:

- Letter from Chief Baker and Lacey Horn to the Federal Reserve, Comptroller of the Currency and FDIC objecting rulemaking associated with the implementation of Basel III. September 2, 2014
- Wall Street Journal, "Banks urge clients to take cash elsewhere" December 8, 2014
- Wall Street Journal, "J.P. Morgan to Start Charging Big Clients Fees on Some Deposits" February 24, 2015
- Bloomberg, "Welcome to Less than Zero", May 8, 2015

CHEROKEE NATION

Office of the Chief

Bill John Baker
Principal Chief

S. Joe Crittenden
Deputy Principal Chief

September 2, 2014

The Honorable Janet Yellen, Chair
cc: Michael S. Gibson, Director
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551
Attention: Division of Banking Supervision and Regulation

The Honorable Thomas J. Curry, Comptroller
Office of the Comptroller of the Currency
Department of the Treasury
400 7th Street, S.W. Suite 3E-218
Mail Stop 9W-11
Washington, D.C. 20219
Attention: Legislation and Regulatory Activities Division

The Honorable Martin J. Gruenberg, Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Robert E. Feldman, Executive Secretary

Re: Comment of Cherokee Nation on the Notice of Proposed Rulemaking, 78 Fed Reg 71818, No 230 (November 29, 2013)

Ladies and Gentlemen:

The Cherokee Nation (the "Nation") submits this letter in response to the above-referenced proposal (the "Proposed Rule")and addresses how this Proposed Rule will inflict harm to the Nation and its tribal members. In particular, we are addressing the proposal regarding the treatment of secured funding activities of municipal and other public sector entities, including federally recognized tribal governments, which typically require their secured deposits to be directly collateralized under tribal, federal, state or local laws ("Secured Governmental Deposits"). The Proposed Rule and the calculation of the liquidity coverage ratio (the "LCR") will harm the Nation and its tribal members

by significantly reducing its ability to utilize the current banking system and making it more expensive and riskier to manage the Nation's operational cash balances.

On behalf of the Nation, we respectfully request the proposed LCR rule be amended to provide a tribal exception to eliminate these substantial, and unjustified, fiscal threats to the sovereignty of the Nation.

The Cherokee Nation is the largest federally recognized tribal nation and one of the largest depositors in the country. My office has a significant concern about the Proposed Rule and its effects on the sovereignty of the Nation. The Proposed Rule treats Secured Governmental Deposits as "secured funding transactions" with no liquidity value to the banks and subjects such deposits to a 100 percent unwind requirement. We strongly believe the assumptions underlying these provisions would increase the costs and risks associated with managing the Nation's operational cash balances and negatively impact all tribal, state, and municipal governments that collateralize their balances as required by law.

Governmental entities currently have over $400 billion of Secured Governmental Deposits with insured depository institutions. These deposits are a critical component of many governmental entities' cash management activities. In most cases, the deposits are required under tribal, federal, state or local laws, to be collateralized by the institution that holds them. In most cases, these Secured Governmental Deposits are collateralized by assets that would qualify as HQLAs, but these assets are specifically excluded from the calculation of the LCR under the current wording of the Proposed Rule. These deposits represent a stable source of funding for banks and are fundamentally different from the secured funding that banks use to finance securities inventory in the wholesale funding markets. The Proposed Rule fails to recognize the fundamental differences and classifies Secured Governmental Deposits as "secured funding transactions."

As my office understands it, the Proposed Rule would require banks to hold liquidity reserves equal to 100 percent of the amount of such deposits or cause a decline in the bank's LCR, while giving the bank no offset in the calculation of the LCR for the HQLAs collateralizing the deposits.

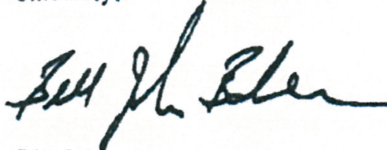
The treatment of Secured Governmental Deposits under the Proposed Rule has created a stronger incentive for banks to stop offering collateralized depository services because of decreased profitability resulting from the issues described above. As a result of the Proposed Rule, Secured Governmental Deposits are being forced "off balance sheet" by banking institutions into money-market funds in affiliated entities owned/operated by these banking institutions. These efforts to force the Nation's Secured Governmental Deposits "off balance sheet" are tied to the implementation of the Proposed Rule and in direct conflict with the tribal laws of the Nation applicable to the Nation's deposits and investments. The elimination of these depository services by banks will severely impair the Nation's ability to efficiently manage its cash deposit and payment service needs.

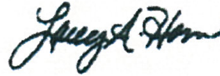
In addition to the Proposed Rule, please consider the harm that has come upon many tribal, state and local governments and municipalities resulting from the larger FDIC assessments that are now being assessed within the banking industry. It is increasingly difficult for depositors to understand the benefit that is derived from this FDIC Insurance ("Insurance") when, in many cases, the depositor or the depositor's financial institution are charged or assessed fees for that Insurance at a much greater cost than any apparent benefit to be derived from that Insurance. Consideration should be given to reduce the assessments to achieve a closer benefit relative to the cost.

In conclusion, the Proposed Rule has a laudable goal of strengthening banks' ability to withstand financial stress, but that objective can be achieved without inflicting undue harm on governmental entities like the Cherokee Nation and the tribal members we serve. As drafted the Proposed Rule will inflict such harm on the Cherokee Nation and all other governmental entities with collateralized deposits throughout the country. The Cherokee Nation seeks to amend the Proposed Rule by including a tribal and/or governmental exception to the definition of secured funding transactions, and/or include an offset for Secured Governmental Deposits collateralized by HQLAs held by the bank in the calculation of the LCR.

We appreciate your consideration of our comments and welcome any questions your agencies may have for the Cherokee Nation. Please contact Lacey Horn at 918-207-3902 or lacey-horn@cherokee.org.

Sincerely,





Bill John Baker
Principal Chief, Cherokee Nation

Lacey A. Horn
Treasurer, Cherokee Nation

Lacey Horn

Subject: WSJ: Banks urge clients to take cash elsewhere

Banks urge clients to take cash elsewhere

New rules mean some deposits aren't worth it, J.P. Morgan, Citigroup and others tell large U.S. clients

THE WALL STREET JOURNAL

By Kirsten Grind, James Sterngold and Juliet Chung December 8, 2014 9:33 AM

Banks are urging some of their largest customers in the U.S. to take their cash elsewhere or be slapped with fees, citing new regulations that make it onerous for them to hold certain deposits.

Related Stories

1. Banks Ask Big Firms To Move Out Cash The Wall Street Journal
2. Banks don't want these clients' cash: Report CNBC
3. Banks charging businesses fees a 'bad idea': Pro CNBC
4. Fed Sets Tough New Capital Rule for Big Banks The Wall Street Journal

The banks, including J.P. Morgan Chase & Co., Citigroup Inc., HSBC Holdings PLC, Deutsche Bank AG and Bank of America Corp., have spoken privately with clients in recent months to tell them that the new regulations are making some deposits less profitable, according to people familiar with the conversations.

In some cases, the banks have told clients, which range from large companies to hedge funds, insurers and smaller banks, that they will begin charging fees on accounts that have been free for big customers, the people said. Bank officials are also working with these firms to find alternatives for some of their deposits, they said.

The change upends one of the cornerstones of banking, in which deposits have been seen as one of the industry's most attractive forms of funding, said more than a dozen corporate officials, consultants and bank executives interviewed by The Wall Street Journal.

Deposits have traditionally been a crucial growth engine for banks. Banks generally pay depositors one interest rate and then make loans with higher rates, often collecting fees in the process. But deposits also can be withdrawn at any time, potentially leaving a bank short of cash if too much money is removed at once.

The new rule driving the action is part of a broader effort by U.S. regulators and policy makers to make the financial system safer. But the move may inconvenience corporations that now have to pay new fees or look for alternatives to their bank.

Sal Sammartino, vice president of banking at Stewart Title, a unit of Stewart Information Services Corp., a global title insurance company based in Houston, said he has had sleepless nights in recent weeks as he has negotiated with large banks to try to keep the firm's deposits there. He declined to name the banks.

"Ultimately my balances aren't as profitable for the banks, and that's going to impact my business." he said.

In an environment of slow economic growth with fewer opportunities to make loans and ultralow interest rates. some banks feel they have too much money on deposit.

Some banks, including J.P. Morgan and Bank of New York Mellon Corp., have also started charging institutional clients fees to hold euro deposits, mainly driven by the European Central Bank's move to make firms pay to park their cash with the ECB. BNY Mellon recently started charging 0.2% on euro deposits. State Street Corp. said in its third-quarter earnings call in October that it planned to begin charging fees later this year on euro deposits.

U.S. banking rules set to go into effect Jan. 1 compound the issue, especially for deposits that are viewed as less likely to stay at the bank through difficult times.

The new U.S. rules, designed to make bank balance sheets more resistant to the types of shocks that contributed to the 2008 financial crisis, will likely have little effect on retail deposits, insured up to $250,000 by federal deposit insurance. But the rules do affect larger deposits that often come from big corporations, smaller banks and big financial firms such as hedge funds.

Hundreds of companies and other bank customers with deposits that exceed the insurance limits could be affected by the banks' actions.

Overall, about $4 trillion in deposits at banks in the U.S. were uninsured, covering more than 3.5 million accounts, according to Federal Deposit Insurance Corp. data.

The rule primarily responsible involves the liquidity coverage ratio, overseen by the Federal Reserve and other banking regulators. The new measure, finalized in September, as well as some other recent global regulations, are designed to make banks safer by helping them manage sudden outflows of deposits in a crisis.

The banks are required to maintain enough high-quality assets that could be converted into cash during a crisis to cover a projected flight of deposits over 30 days.

Because large, uninsured deposits would be expected to leave most quickly, the rule will now require that banks maintain reserves that they cannot use for profitable activities like making loans. That makes it much less efficient or profitable for banks to hold these deposits.

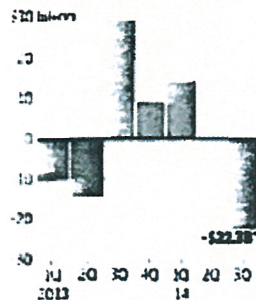
The new rules treat various types of deposits differently, based on how fast they are likely to be withdrawn. Insured deposits from retail customers are regarded as more safe and require that banks hold reserves equal to as little as 3% of the sums.

View gallery

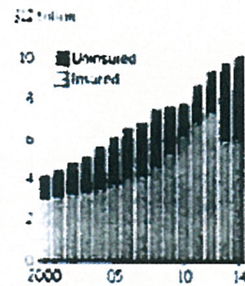
Turning Away Money

Banks, facing new rules that make some uninsured deposits less attractive, are pushing some clients to move their large deposits or pay a new fee

Change in Bank of America total deposits from previous quarter



Total bank deposits in U.S.



WSJ

But the banks must hold reserves of as much as 40% against certain corporate deposits and as much as 100% of some big deposits from financial institutions such as hedge funds.

Some corporate officials said the new rules could make it more expensive for them to keep money in the bank or push them into riskier savings instruments such as short-term bond funds or uninsured money-market funds.

"You're going to see a lot of corporations that have had much simpler portfolios that are going to move toward more sophisticated portfolios," said Tory Hazard, president and chief operating officer of Institutional Cash Distributors, a broker to large clients looking for places to hold their cash.

Some bankers said they are advising corporate clients to break up large deposits across several banks, including smaller ones not affected by all of the new rules. Others might be attracted to other products offered by banks or products being created by asset managers.

Some customers are negotiating for a reduction in the fees, said people familiar with the discussions.

J.P. Morgan told some clients of its commercial bank recently that it would begin charging monthly fees on deposit accounts from which clients can withdraw money at any time. The new charges will start Jan. 1 for U.S. accounts, according to an Oct. 21 memo reviewed by the Journal, and later for international accounts.

"New liquidity and capital requirements have changed the operating environment and increased the cost of doing business with financial institutions," the memo read.

The change affects some hedge-fund customers, rather than corporate accounts. The charges include items such as a $500 monthly account maintenance fee for demand deposits and a $25 charge per paper statement.

Larger clients with broad, long-term relationships with their banks may get a break on the new fees, according to people familiar with the situation. Banks also are likely to differentiate between clients' operational deposits, used for things like payroll, and excess cash that can be pulled more easily, the people said.

At a National Association of Corporate Treasurers conference in October, consultant Treasury Strategies noted that the new rules "will redefine the economics and dynamics of corporate banking relationships."

Some argue that while it is a good policy on its face, the rule potentially magnifies problems in a recession by encouraging banks to hoard high-quality assets, potentially paralyzing markets for these assets such as Treasury securities and some corporate bonds.

"This proposal, which is supposed to promote financial stability, actually does the opposite," said Thomas Quaadman, a vice president at the U.S. Chamber of Commerce.

Thomas Deas, treasurer at chemicals company FMC Corp. said dialogue is increasing between banks and corporate clients as company executives get their arms around the potential new fees.

Robert Marley, assistant treasurer at EnerSys Inc., a maker of industrial batteries in Reading, Pa., said he was recently told by banks that his company would need to move cash that had been sitting in short-term deposit accounts in Europe or face new fees. "I'm not happy about it," he said

http://www.wsj.com/articles/j-p-morgan-to-start-charging-some-big-clients-deposit-fees-1424743293

Markets

J.P. Morgan to Start Charging Big Clients Fees on Some Deposits

New deposit fees likely to reduce deposits by billions

Updated Feb. 24, 2015 8:40 a.m. ET

J.P. Morgan Chase & Co. is preparing to charge large institutional customers for some deposits, citing new rules that make holding money for the clients too costly, according to a memo reviewed by The Wall Street Journal and people familiar with the plan.

The largest U.S. bank by assets is aiming to reduce the affected deposits by up to $100 billion by the end of 2015, according to a bank presentation Tuesday morning.

The move is the latest in a series of steps large global banks have been discussing in recent months to discourage certain deposits due to new regulations and low interest rates.

J.P. Morgan's steps are among the most detailed and widespread. Specifics are likely to be unveiled Tuesday by J.P. Morgan executives at the bank's annual strategy outlook with investors, these people said. Among other points, the bank is expected to stress alternatives customers affected by the deposit moves can use for their excess cash.

The plan won't affect the bank's retail customers, but some corporate clients and especially an array of financial firms, including hedge funds, private-equity firms and foreign banks, will feel the impact, according to the memo. The bank is focusing on around $200 billion of certain "excess" deposits from financial institutions out of $390 billion of total financial institutions deposits, according to the presentation.

J.P. Morgan is making the moves because certain deposits are less profitable to handle than they used to be. New federal rules essentially penalize banks for holding deposits viewed as prone to fleeing during a crisis or a stressed environment.

"We are adapting to a changing regulatory environment across our company," according to the J.P. Morgan memo sent Monday and signed by the bank's asset-management, commercial-bank and corporate and investment-bank heads.

J.P. Morgan is one of the most affected by new capital and liquidity rules, in part because it is one of the largest banks and has a variety of complex businesses, including trading and serving hedge funds. The memo notes that the changes are necessary to deal with clients deemed more interconnected and risky by regulators. In addition to J.P. Morgan's relationships with hedge funds, foreign banks and private-equity firms, its dealings with central-bank clients could be also affected.

Under the bank's new push, those clients will be asked to adjust certain deposits viewed as more temporary by either paying a new fee or moving the proceeds to a similar J.P. Morgan product such as a money-fund sweep account. In some cases, the bank will likely ask clients to hold their deposits at a different firm.

The Wall Street Journal reported in early December that J.P. Morgan and several other banks, including Citigroup Inc., HSBC Holdings PLC, Deutsche Bank AG and Bank of America Corp. , had spoken privately with clients in recent months that new regulations are making some deposits less profitable, in some cases telling clients they would charge fees or work to find alternatives for some of the deposits.

The moves have thrown into question a cornerstone of banking, in which deposits have been seen as one of the industry's most attractive forms of funding.

Since the financial crisis, new rules have been put into place that require banks to maintain enough high-quality assets that could be converted into cash during a crisis to cover a projected flight of deposits over 30 days. Because large, uninsured deposits would be expected to leave most quickly, the rules will now require that banks maintain reserves for those deposits that they cannot use for profitable activities like making loans. That makes it much less efficient or profitable for banks to hold these deposits.

Certain proposals put the largest banks in an even tougher spot. Proposed global guidelines on systemically important banks include multiple categories requiring tougher capital rules as a bank gets larger, more connected and more reliant on short-term wholesale funding.

Some customers have already had to deal with new fees. J.P. Morgan's commercial bank in the fall told some clients that it would begin charging monthly fees on deposit accounts, beginning Jan. 1 for U.S. accounts and later for international accounts, according to a memo viewed by The Wall Street Journal and people familiar with the matter.

The newest fees will likely vary by client, depending on a variety of factors, including their overall relationship with the bank and the size of the account

Opening Remarks

Welcome To Less Than Zero

By Peter Coy

Interest rates have fallen into negative territory. The consequences could well be existential for the concept of cash itself

JPMorgan Chase recently sent a letter to some of its large depositors telling them it didn't want their stinking money anymore. Well, not in those words. The bank coined a euphemism: Beginning on May 1, it said, it will charge certain customers a "balance sheet utilization fee" of 1 percent a year on deposits in excess of the money they need for their operations. That amounts to a negative interest rate on deposits. The targeted customers—mostly other financial institutions—are already snatching their money out of the bank. Which is exactly what Chief Executive Officer Jamie Dimon wants. The goal is to shed $100 billion in deposits, and he's about 20 percent of the way there so far.

Pause for a second and marvel at how strange this is. Banks have always paid interest to depositors. We've entered a new era of surplus in which banks—some, anyway—are deigning to accept money only if customers are willing to pay for the privilege. Nick Bunker, a policy analyst at the Washington Center for Equitable Growth, was so dazzled by interest rates' falling into negative territory that he headlined his analysis after a Doors song, *Break on Through (to the Other Side)*.

In recent months, negative rates have become widespread in Europe's financial capitals. The European Central Bank, struggling to ignite growth, has a deposit rate of -0.2 percent. The Swiss National Bank, which worries that a rise of the Swiss franc will hurt trade, has a deposit rate of -0.75 percent. On April 21 the cost for banks to borrow from each other in euros (the euro interbank offered rate, or Euribor) tipped negative for the first time. And as of April 17, bonds comprising 31 percent of the value of the Bloomberg Eurozone Sovereign Bond Index—€1.8 trillion ($1.93 trillion) worth—were trading with negative yields. (Although dollar interest rates are higher, JPMorgan Chase's balance sheet utilization fee fits the pattern: In today's low-rate world, the only way it can shed deposits in response to new regulations is to go all the way to less than zero.)

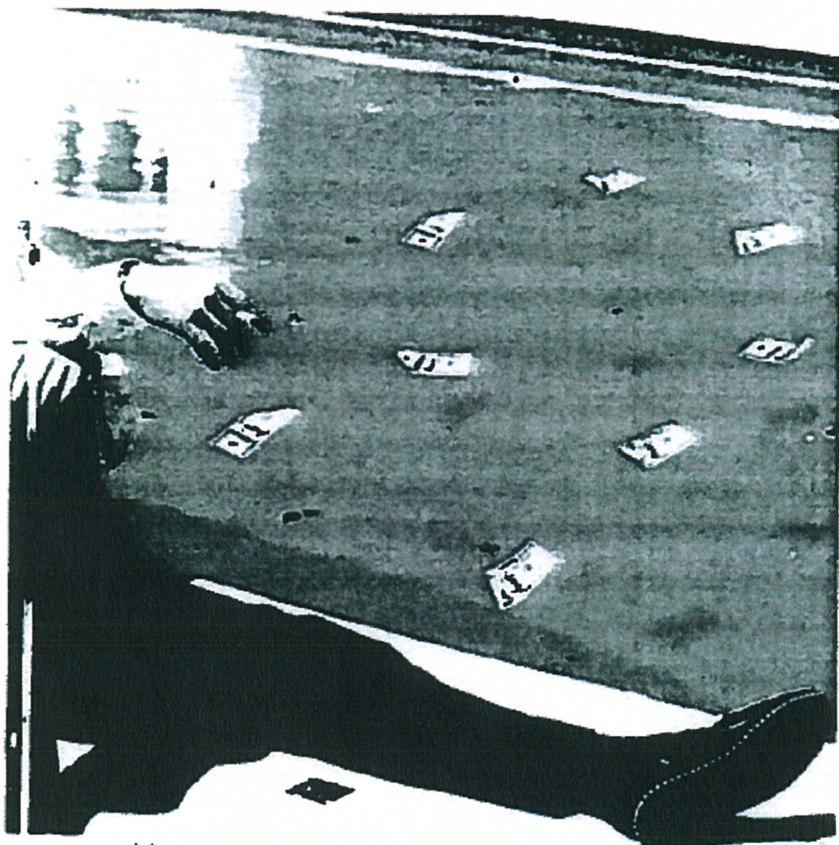
It's not unusual for interest rates to be negative in the sense of being lower than the rate of inflation. If the Federal Reserve pushes interest rates below inflation to stimulate growth, it becomes cheaper to borrow and buy something now than to wait to make the purchase. If you wait, inflation could make prices go up by more than what you owe on the loan. You can also think of it as inflation reducing the effective amount you owe.

What is rarer is for interest rates to go negative on a nominal basis—i.e., even before accounting for inflation. The theory

was always that if you tried to impose a negative nominal rate, people would just take their money from the bank and store cash in a private vault or under a mattress to escape the penalty of paying interest on their own money. When the Federal Reserve slashed the federal funds rate in 2008 to combat the worst financial crisis since the Great Depression, it stopped cutting at zero to 0.25 percent, which it assumed to be the absolute floor, the zero lower bound. It turned to buying bonds ("quantitative easing") to lower long-term rates and give the economy more juice.

Over the past year or so, however, zero has turned out to be a permeable boundary. Several central banks have discovered that depositors will tolerate some rates below zero if withdrawing cash and storing it themselves is costly and inconvenient. Investors will buy bonds with negative yields if they believe rates will fall further, allowing them to sell the bonds at a profit. (Bond prices rise when rates fall.) Global investors are also willing to put money into a nation's negative-yielding securities if they expect its currency to rise in value.

Now comes the interesting part. There are signs of an innovation war over negative interest rates. There's a surge of



It's a new era of banks deigning to accept money only if customers are willing to pay for the privilege

creativity around ways to drive interest rates deeper into negative territory, possibly by abolishing cash or making it depreciable. And there's a countersurge around how to prevent rates from going more deeply negative, by making cash even more central and useful than it is now. As this new world takes shape, cash becomes pivotal.

The idea of abolishing or even constraining physical bank notes is anathema to a lot of people. If there's one thing that militias and Tea Partiers hate more than "fiat money" that's not backed by gold, it's fiat money that exists only in electronic form, where it can be easily tracked and controlled by the government. "The anonymity of paper money is liberating," says Stephen Cecchetti, a professor at Brandeis International Business School and former economic adviser to the Bank for International Settlements in Basel, Switzerland. "The bottom line is, you have to decide how you want to run your society."

As long as paper money is available as an alternative for customers who want to withdraw their deposits, there's a limit to how low central banks can push rates. At some point it becomes cost-effective to rent a warehouse for your billions in cash and hire armed guards to protect it. We may be seeing glimmerings of that in Switzerland, which has a 1,000 Swiss franc note ($1,040) that's useful for large transactions. The number of the big bills in circulation usually peaks at yearend and then shrinks about 6 percent in the first two months of the new year, but this year, with negative rates a reality, the number instead rose 1 percent through February, according to data released on April 21.

Bank notes, as an alternate storehouse of value, are a constraint on central banks' power. "We view this constraint as undesirable," Citigroup Global Chief Economist Willem Buiter and a colleague, economist Ebrahim Rahbari, wrote in an April 8 research piece. They laid out three ways that central banks could foil cash hoarders: One, abolish paper money. Two, tax paper money. Three, sever the link between paper money and central bank reserves.

Abolishing paper money and forcing people to use electronic accounts could free central banks to lower interest rates as much as they feel necessary while crimping the underground economy, Buiter and Rahbari write: "In our view, the net benefit to society from giving up the anonymity of currency holdings is likely to be positive (including for tax compliance)." Taxing cash, an idea that goes back to German economist Silvio Gesell in 1916, is probably unworkable, the economists conclude: You'd have to stamp bills to show tax had been paid on them. The third idea involves declaring that all wages and prices are set in terms of the official reserve currency—and that paper money is a depreciating asset, almost like a weak foreign currency. That approach, the Citi economists write, "is both practical and likely to be effective." Last year, Harvard University economist Kenneth Rogoff wrote a paper favoring exploration of "a more proactive strategy for phasing out the use of paper currency."

Pushing back against the cash-abolition camp is a group of people who want to make cash more convenient, even for large transactions. Cecchetti and co-author Kermit Schoenholtz, of New York University's Stern School of Business, suggest a "cash reserve account" that would keep people from having to pay for things by sending cash in armored trucks. During the day, funds in the account would be payable just like money in a checking account. But every night they'd be swept into cash held in a vault, sparing the money from the negative interest rate that would apply to money in an ordinary checking account. In a way, physical cash would take on a role similar to that played by gold in an earlier era of banking.

Like chemotherapy, negative interest rates are a harsh medicine. It's disorienting when people are paid to borrow and charged to save. "Over time, market disequilibria are dangerous," G+ Economics Chief Economist Lena Komileva wrote to clients on April 21. Which side of the debate you fall on probably comes down to how much you trust government. On one side, there's an argument to be made that cash has become what John Maynard Keynes once called gold: a barbarous relic. It thwarts monetary policy and makes life easy for criminals and tax evaders: Seventy-eight percent of the value of American currency is in $100 bills. On the other side, if you're afraid that central banks are in a war against savers, or that the government will try to control your financial affairs, cash is your best defense. Taking it away "is a prescription for revolution," Cecchetti says. The longer rates break on through to the other side, the more pressing these questions become. ●