

## Statement of the Federal Deposit Insurance Corporation Regarding Reporting of Sweep Deposits on Call Reports<sup>1</sup>

The Federal Deposit Insurance Corporation (FDIC) is issuing this statement to remind FDIC-insured depository institutions (IDIs) of certain requirements regarding brokered deposits under Section 337.6 of the FDIC's Rules and Regulations, as revised by the 2021 Brokered Deposits Final Rule.<sup>2</sup> Specifically, deposits placed at IDIs by unaffiliated entities (including, for example, broker dealers) that operate under a primary purpose exception (PPE) are still required to be reported as brokered if there are any additional third parties involved that qualify as a deposit broker.

The Brokered Deposits Final Rule took effect April 1, 2021, and, among other things, provides that a brokered deposit is “any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker,”<sup>3</sup> which includes, for example, “[a]ny person engaged in the business of facilitating the placement of deposits of third parties with [IDIs].”<sup>4</sup> One way that a person may be engaged in the business of facilitating the placement of deposits is if that person “engages in matchmaking activities” by proposing deposit allocations at, or between, more than one IDI.<sup>5</sup>

The preamble of the Brokered Deposits Final Rule also stated, “If an agent or nominee qualifies for a statutory exception from the deposit broker definition, it is possible that one or more additional third parties that are engaged in the business of placing, or facilitating the placement of, customer deposits may qualify as a deposit broker.”<sup>6</sup> Further, the preamble stated that if a third party intermediary is, for example, providing matchmaking functions for an agent or nominee and IDIs, then it would meet the “facilitation” part of the deposit broker definition, and the deposits placed by or through the intermediary would be brokered deposits, regardless of the status of the agent or nominee.<sup>7</sup> Moreover, the preamble noted that IDIs that receive deposits from agents or nominees that meet the PPE should be aware of any other third parties involved in the placement of deposits and whether those other third parties meet the deposit broker definition in order to properly complete their Call Reports, which require reporting of brokered deposits held by IDIs.<sup>8</sup>

Broker dealers placing deposits at IDIs not affiliated with the broker dealers have filed notices for the 25 Percent Test PPE indicating that additional third parties are involved in their deposit placement arrangements. The FDIC has reviewed agreements between certain broker dealers and the additional third parties designated in the PPE notice filings. Under these

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<sup>1</sup> This Statement specifically addresses broker dealer sweep arrangements with unaffiliated IDIs. This discussion, however, may be relevant and apply more broadly to other third party arrangements that involve a deposit broker as defined in 12 CFR § 337.6(a)(5).

<sup>2</sup> See Federal Register Notice “Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions,” 86 FR 6742 (January 22, 2021).

<sup>3</sup> 12 CFR § 337.6(a)(2).

<sup>4</sup> 12 CFR § 337.6(a)(5)(i)(B).

<sup>5</sup> 12 CFR § 337.6(a)(5)(iii)(C).

<sup>6</sup> 86 FR at 6756

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

agreements, the additional third parties' involvement was characterized in a variety of ways, including as administrative services. Based on this review, the FDIC has found that the additional third parties are engaging in facilitating the placement of deposits,<sup>9</sup> for example by engaging in matchmaking activities,<sup>10</sup> which meet the deposit broker definition.<sup>11</sup>

The impact of the Brokered Deposits Final Rule was first reflected in Call Reports for the quarter ending June 30, 2021, and new line items regarding sweep deposits became effective for the quarter ending September 30, 2021. Analysis of Call Report data suggests that some IDIs receiving sweep deposits from unaffiliated broker-dealers appear to be reporting the sweep deposits as non-brokered, despite the involvement of a third party that engages in facilitating the placement of deposits, including through engaging in matchmaking activities.

The FDIC recognizes that an IDI may not have a direct relationship with an additional third party providing services to a broker dealer with a PPE. However, when reporting sweep deposits, it is the IDI's responsibility to file accurate Call Report data,<sup>12</sup> and it therefore may be necessary for the IDI to review the agreements between the broker dealer and any additional third party to evaluate and determine whether the additional third party is facilitating the placement of deposits, including by engaging in matchmaking activities.

The FDIC also recognizes that a number of IDIs, after good faith efforts, may not have been reporting certain deposits as brokered on their Call Reports due to a misunderstanding of how the facilitation aspect of the deposit broker definition applies when additional third parties are involved. This Statement intends to address this misunderstanding by reminding IDIs how additional third parties may satisfy the deposit broker definition. Such IDIs may, after a reassessment of additional third party involvement, determine that certain deposits previously reported as non-brokered should be reported as brokered. In these cases, the FDIC will not require such IDIs to refile Call Reports that predate the issuance of this Statement. However, IDIs are encouraged to consult with their accountants and attorneys to discuss whether refileing of Call Reports may be appropriate and whether other regulatory filings may be impacted.

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<sup>9</sup> See 12 CFR § 337.6(a)(5)(iii).

<sup>10</sup> See 12 CFR § 337.6(a)(5)(iii)(C).

<sup>11</sup> See 12 CFR § 337.6(a)(5).

<sup>12</sup> Under the FDI Act Section 7, 12 USC § 1817, IDIs are responsible for filing accurate Call Reports, including reporting accurately the amount of brokered deposits. See also 86 FR at 6756 (stating in the preamble of the Brokered Deposits Final Rule that "IDIs that receive deposits from agents or nominees that meet the primary purpose exception should be aware of any other third parties involved in the placement of deposits and whether those other third parties meet the deposit broker definition in order to properly complete their . . . [Call Reports], which require reporting of brokered deposits held by IDIs.").