



Brokered Deposit and Interest Rate Restrictions Under Revised Sections 337.6 and 337.7

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Summary of Rulemaking (§337.6 and 337.7)

- Section 29 of the FDI Act restricts banks that are less than well capitalized from accepting brokered deposits and paying interest rates significantly in excess of rates paid in their normal market area.
- Sections 337.6 and 337.7 of the FDIC Rules and Regulations implements Section 29.
- A well capitalized IDI is not subject to the restrictions imposed by §337.6 or §337.7.
- An adequately capitalized IDI must have a waiver from the FDIC for any brokered deposits.
- An undercapitalized IDI cannot hold any brokered deposits.
- A less than well capitalized IDI is limited in the interest rate that it can pay on deposits. Interest rate restrictions moved to §337.7.

Final Rule

- On December 15, 2020, the FDIC Board approved a Final Rule revising the brokered deposit and interest rate restrictions in §337.6 of the FDIC Rules and Regulations. The Final Rule was published in the *Federal Register* on January 22, 2021.
- This presentation will concentrate on the revisions to the brokered deposit and interest rate restrictions.
- Brokered deposit analysis is based on the relationship between the person placing or facilitating the placement of the deposit and its customer, not the relationship between that person and the IDI.

Brokered Deposits – Definitions

Under Section 29 of the FDI Act, a Deposit Broker includes:

- Any person engaged in the business of placing deposits or of facilitating the placement of deposits of third parties with IDIs;
- An agent or trustee who establishes a deposit account to use the proceeds of the account to fund a prearranged loan.
- Any person placing deposits with IDIs to sell those deposits or interests in those deposits to third parties [brokered CDs]; and
- Any IDI that is less than well-capitalized, and any employee of any such IDI, that solicits deposits by offering rates of interest significantly higher than offered by other IDIs in such IDI's normal market area.

Brokered Deposit - Definitions, continued

- A person is engaged in the business of:
 - Placing deposits if that person, while engaged in business, receives third party funds and deposits those funds at more than one IDI.
 - Facilitating the placement of deposits, with respect to deposits placed at more than one IDI, if the person, while engaged in business:
 - Has legal authority to close the account or move the third party's funds to another IDI;
 - Is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account; or
 - Engages in matchmaking activities.

Brokered Deposits – Exceptions

- Section 29 of the FDI Act and §337.6 list 10 exceptions from the “deposit broker” classification.
- The exceptions are the same as before the final rule.
- We have received the most questions about the primary purpose exception.
- The final rule provides an interpretation for the PPE and a new framework clarifying the PPE.

Brokered Deposits – Exceptions, continued

- Note that in the definition of “deposit broker,” the person must be placing or facilitating the placement of deposits at more than one IDI.
- The final rule clarifies the primary purpose exception and lists some designated business lines that qualify for that exception.

Primary Purpose Exception (PPE)

- Must file notice with FDIC to use the first two designated exceptions:
 1. “25 % of Assets”: where <25% of the total assets that the agent or nominee has under administration for its customers are deposited in IDIs (e.g. broker-dealer sweeps of uninvested cash balance)
 2. “Enabling transactions”: where 100 percent of depositors’ funds that the agent or nominee places at IDIs are in transaction accounts and do not pay any fees, interest, or other remuneration to the depositor (e.g. prepaid card program managers)

Primary Purpose Exception (PPE), continued

- No notice required for the others:
 3. Property management services
 4. Cross-border clearing services
 5. Mortgage servicing
 6. Real estate transaction services
 7. 1031 exchanges
 8. Certain reserve accounts under CFTC and SEC rules
 9. Collateral securing credit card loans
 10. Programs to pay for qualified medical expenses (HSAs)
 11. 529 Plans
 12. Tax-advantaged retirement programs (IRAs)
 13. Programs for government beneficiaries
 14. Other relationships FDIC recognizes for PPE

PPE – Notice and Application (§303 of the FDIC Rules and Regulations)

- For the “25 percent” and the “enabling transactions” business relationships, the IDI or the third party must notify the FDIC of its reliance upon the designated exception.
 - Upon the FDIC’s receipt, the third party may rely upon the PPE.
 - No notice is required for the other designated exceptions.
- An agent or nominee not covered by a designated exception must apply for and receive FDIC approval to qualify for the PPE.

PPE – Process for Submitting Notices and Applications (§303)

- §303 lists requirements for notices and applications in general; the notice and applications related to brokered deposits are new requirements.
- The Bankers Resource Center Brokered Deposit page on the FDIC website will include instructions for submitting notices and applications related to the brokered deposit rule, including supporting documentation, as well as any required annual certifications or periodic reports.
(<https://www.fdic.gov/resources/bankers/brokered-deposits/index.html>)
- General questions about brokered deposits and the notice and application process should be sent to Brokered_Dep@fdic.gov.

PPE – Process for Submitting Notices and Applications (§303), continued

- Initially, Notices and Applications are to be sent through FDIC’s secure e-mail to the specifically designated mailboxes that will be available through the FDIC’s Banker Resource webpage beginning April 1, 2021.
- Secure e-mail requires a registration process that includes providing a name, e-mail address, and establishing a password. Instructions are posted at <https://www.fdic.gov/secureemail/>.
- Secure email will be an interim process until a more fully automated system is made available.

PPE – Process for Submitting Notices and Applications (§303), continued

- To submit a Notice, go to the FDIC secure e-mail site and address e-mail to the mailbox designated for Notices.
- To submit an Application, go to the FDIC secure e-mail site and address e-mail to the mailbox designated for Applications.
- To submit an annual certification or any required periodic reports (including quarterly reports under the “25%” test), go to the FDIC secure e-mail site and address e-mail to the mailbox designated for Reports and Certifications.
- All entities providing submissions through the secure email process will receive an automatic acknowledgement.
 - Submissions outside this process will not be received or acknowledged by the FDIC.
 - After receiving acknowledgement, notice filers may immediately rely on the PPE unless and until notified by the FDIC that the notice is no longer active.

PPE – Posting of Notices

- The FDIC will post and periodically update a list of entities and business lines for which a valid PPE Notice has been received, including whether the Notice remains eligible for the PPE, on the FDIC’s website.
- Notices may become ineligible for the PPE for a number of reasons, including that the notice provider is no longer in the particular line of business, has withdrawn the notice, no longer meets the PPE requirements, did not provide quarterly reports or annual recertification, submitted an incomplete or inaccurate notice, or other reason.

National Rate and National Rate Caps Applicable To Less Than Well Capitalized Institutions – Definitions (now §337.7)

- **National Rate** is the average of rates paid by all IDIs and credit unions on a given deposit product, weighted by share of domestic deposits.
- **National rate cap** is the higher of
 - The national rate plus 75 basis points, or
 - 120 % of the current yield on similar maturity U.S. Treasury obligations plus 75 basis points or,
 - For any nonmaturity deposit, the federal funds rate plus 75 basis points.

The Interest rate restrictions are now in §337.7.

National Rate Calculation and Publication

- The FDIC will compute the national rate cap for different deposit products and tenors and publish the rates monthly on its website.
 - A national rate cap that is lower than the previously published national rate cap will take effect 3 days after publication.
- Reminder: A well-capitalized bank may pay interest on deposits without restriction by §337.6 or §337.7.

Local Rate Cap

- An IDI no longer has to receive a high rate area determination or to calculate average rates in its local market area.
- The local market rate cap is 90% of the highest interest rate on a particular deposit product offered by an IDI or credit union accepting deposits at a physical location within the IDI's local market area.
 - An IDI's local market area is any readily defined geographical market area in which the IDI accepts or solicits deposits.
 - An IDI shall notify the FDIC of the highest rate paid in its local market area and update calculations monthly.

Off Tenor Deposit Products

- If an institution seeks to offer a product with a maturity for which the FDIC does not publish the national rate cap or that is not offered by another institution within its local market area, the IDI must use the rate offered on the next lower on-tenor maturity for that product.
 - On-tenor maturities include periods of 1-month, 3-months, 6-months, 12-months, 24-months, 36-months, 48-months, and 60-months.
 - All other term periods are considered off-tenor maturities.

Treatment of Nonmaturity Deposits- §337.6

A less than well capitalized IDI may not solicit deposits by offering a rate above its rate caps or accept brokered deposits.

An IDI solicits a nonmaturity deposit when it:

- Opens a nonmaturity account
- Raises the rate paid on a nonmaturity account existing when the IDI was last well capitalized
- Credits funds for a new depositor to a nonmaturity account existing when the IDI was last well capitalized

An IDI that is less than well capitalized accepts a nonmaturity brokered deposit:

- From a particular deposit broker:
 - When opening any new nonmaturity account.
 - When the account balance exceeds the account balance at the time the institution fell to less than well capitalized.
- For agency or nominee accounts, when the IDI credits any funds for a new depositor to a nonmaturity account.

Treatment of Nonmaturity Accounts – §337.7

- A less than well capitalized IDI with a waiver to accept brokered deposits may not pay interest in excess of the applicable rate cap on:
 - For a particular deposit broker:
 - Any new nonmaturity accounts.
 - Any amount of funds exceeding account balance at the time the institution fell to less than well capitalized.
 - For agency or nominee accounts, any funds for a new depositor.

Conclusion

- Brokered deposit and interest rate restrictions remain applicable to less than well capitalized IDIs, including the requirement that adequately capitalized IDIs obtain waivers to hold brokered deposits.
- Some deposits currently classified as brokered will no longer be brokered under the final rule.
 - Adequately capitalized and undercapitalized IDIs will be able to hold such reclassified deposits without restriction.
 - Many deposits that currently have an exemption for brokered deposit classification will remain exempt.
 - When the final rule is fully effective, outstanding brokered deposit advisory opinions and FILs will become inactive.

Conclusion, continued

- IDIs continue to be responsible for proper reporting of brokered deposits in their call reports; less than well capitalized IDIs continue to be responsible to comply with §337.6 limitations on brokered deposits.
- Nothing in the rule affects a bank supervisor's ability to review or take supervisory action with respect to funding-related matters, including funding concentrations, that may affect safety and soundness, regardless of whether or not the deposits used by the IDI are brokered.
- Nothing in the rule changes the FDIC's or other federal regulators' authorities under Section 8 or Section 39 of the FDI Act.



Questions & Answers