

## Questions and Answers Related to Brokered Deposits Rule – As of July 15, 2022

Below are answers to a collection of questions about the [FDIC's brokered deposits rule](#). Any determination about whether an entity meets the deposit broker definition or one of the exceptions to the definition is based upon the facts and circumstances of each particular deposit placement arrangement. These questions and answers will be periodically updated on the FDIC's website.

### A. Extended Compliance Date

- 1. When should an institution that is relying upon a previous staff advisory opinion for a primary purpose exception begin relying upon the new framework for the primary purpose exception provided in the rule?**

The rule is effective as of April 1, 2021. However, the full compliance date of the rule is January 1, 2022, to allow entities to continue to rely upon existing staff advisory opinions or other interpretations that predated the rule in determining whether deposits placed by or through a third party are brokered deposits. For example, entities that are currently relying upon [FDIC staff advisory opinion 05-02](#) for a primary purpose exception may continue to rely upon the opinion, so long as the qualifications are satisfied, until January 1, 2022. Such entities may begin relying on the new framework at any time after April 1, 2021. After January 1, 2022, all previous staff advisory opinions will be moved to inactive status, and entities must use the new framework provided by the rule. 86 Fed. Reg. 6759 (January 22, 2021).

### B. Exclusive Deposit Placement Arrangements

- 1. If an insured depository institution (IDI) has separate affiliates that each sweep funds to that IDI (and do not sweep to any other IDI), would each of the affiliates be considered to have an “exclusive deposit placement arrangement” with the one IDI?**

Yes, if each affiliate is placing funds at only one IDI, then each affiliate does not meet the “deposit broker” definition. However, if the affiliates were each sweeping deposits to a different IDI, the IDIs should be aware that, as the FDIC noted in the preamble of the rule, “a person that creates or utilizes multiple entities that each place deposits with one IDI to evade the rule, while still maintaining a relationship with one or more of such entities, will collectively be viewed as one “person” and thus qualify as a deposit broker.” 86 Fed. Reg. 6745 (January 22, 2021).

- 2. If a broker dealer is sweeping deposits only to one IDI, will it need to file a notice to rely upon the “25 percent” designated exception?**

As long as the broker dealer is not placing or facilitating the placement of deposits at any other IDIs as part of the same business line, no. A third party that has an exclusive deposit placement arrangement with one IDI does not meet the “deposit broker” definition. 86 Fed. Reg. 6745 (January 22, 2021).

## C. Deposit Broker Definition

1. **Under the “deposit broker” definition, when is a third party considered to be “engaged in the business of placing deposits”? Could a third party that has no discretion over where the deposits are placed meet this part of the definition?**

A person meets the first part of the “deposit broker” definition when it is “engaged in the business of placing deposits” on behalf of a third party (i.e., a depositor) at IDIs. A person is “engaged in the business of placing deposits” of third parties if that person, while engaged in business, receives third party funds and deposits those funds at more than one IDI. 12 CFR § 337.6(a)(5)(ii); 86 Fed. Reg. 6745 (January 22, 2021). Under the rule, whether a person has discretion over where the deposits are placed is not a factor in determining if the person is engaged in the business of placing deposits. This factor may, however, be relevant to whether the person qualifies for a primary purpose exception.

2. **[As of 11/19/2021] With respect to the first prong of the “facilitation” definition, does having the legal authority (contractual or otherwise) to move a depositor’s funds or close a depositor’s account include having the legal authority (contractual or otherwise) to *direct another entity* (e.g., custodial agent) to move a depositor’s funds between insured depository institutions, or close a depositor’s account?**

Yes. A third party that has legal authority, contractual or otherwise, to direct another entity (e.g., custodial agent) to move a depositor’s funds or close a depositor’s account would meet the first prong of the “facilitation” definition. 12 CFR § 337.6(a)(5)(iii)(A). However, a third party that has legal authority, contractual or otherwise, to direct another entity to move a depositor’s funds or close the depositor’s account based only upon either instructions or an approval received from the depositor for each occurrence and specific to each deposit account, would not meet the first prong of the “facilitation” definition. Note that, depending upon the particular facts and circumstances, a third party that recommends the placement of funds in a particular deposit account may meet the second and/or third prong of the “facilitation” definition.

3. **Would a third party that sets certain minimum terms or conditions as part of its online platform be “engaged in the business of facilitating the placement of deposits” for purposes of the deposit broker definition? What about a third party that establishes terms or conditions for individual IDIs but not individual depositors?**

This second prong of the “facilitation” definition captures third parties that are involved in negotiating or setting rates, fees, terms or conditions on behalf of individual depositors or individual IDIs. 12 CFR § 337.6(a)(5)(iii)(B). Third parties that require IDIs and depositors to subscribe to a uniform set of terms or conditions in order to participate in its online platform, or that discuss or establish terms or conditions with or for individual IDIs, but not on behalf of particular depositors, are not captured by this prong of the “facilitation” definition. However, a third party that negotiates terms or conditions for a particular deposit product between a particular depositor and a particular IDI is a deposit broker. 86 Fed. Reg. 6747 (January 22, 2021).

**4. [As of 7/6/2021] In certain instances, third parties establish, or are involved in, programs or online platforms that connect prospective depositors with deposit accounts at participating IDIs.**

- a. If the third party establishes a specific rate that IDIs must pay in order to participate in the program, would that third party be viewed as being “engaged in the business of facilitating the placement of deposits?”**

If a third party establishes a specific interest rate that all IDIs must pay in order to participate in a program, the third party is not captured by the second prong of the “facilitation” definition. However, if such a third party regularly updates or changes rates that IDIs must pay more frequently than once a month (rather than engaging in less frequent updates or reviews to reflect changing market conditions), the FDIC would view the third party as negotiating or setting rates and thus captured by the second prong of the “facilitation” definition. Additionally, a third party that establishes a standard, uniform formula or mechanism for determining the rate that all participating IDIs must pay, so long as the formula or mechanism is identical for all IDIs, would not be captured by the second prong of the facilitation definition. 12 CFR § 337.6(a)(5)(iii)(B).

- b. If the third party offers depositors a consolidated or blended rate (based on rates each IDI chooses to pay) when deposits are placed at multiple participating IDIs, would that be viewed as being “engaged in the business of facilitating the placement of deposits?”**

If a third party offers depositors a consolidated or blended rate (based on the rates that each IDI chooses to pay), and the third party does not play any direct role in what rates each IDI pays, the third party would not be viewed as being “engaged in the business of facilitating the placement of deposits.” 12 CFR § 337.6(a)(5)(iii)(B).<sup>1</sup>

- c. Would a third party that discusses rates with IDIs be viewed as being “engaged in the business of facilitating the placement of deposits?”**

A third party that discusses rates with a particular IDI, even without discussing any particular depositor, in an effort to encourage or influence the IDI to pay a rate higher than the rate currently offered, other than in a scenario described above in the first sentence of 6a, would be considered negotiating rates for purposes of the “facilitation” definition. 12 CFR § 337.6(a)(5)(iii)(B).

**5. [As of 7/6/2021] Under the “matchmaking definition,” when does a third party have access to a bank’s “target deposit-balance objectives”?**

A third party has access to a bank’s “target deposit-balance objectives” when it has information regarding a specific deposit amount, a deposit-related percentage, or an amount of deposits within a specified range, that a bank is willing to accept. Communicating such information at any point during the deposit placement relationship with the third party would result in the third party

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<sup>1</sup> Any views provided here do not affect whether particular arrangements satisfy the FDIC’s pass-through deposit insurance requirements under 12 CFR Part 330.

having access to a bank’s target deposit balance objectives. Communicating to a third party to discontinue the placement of deposits would not be viewed as the third party having access to a bank’s target balance objectives. Note that a third party that attempts to modify its existing business arrangements in a way to evade the matchmaking definition could potentially result in the third party meeting the matchmaking definition. 86 Fed. Reg. 6747-48 (January 22, 2021).

**6. [As of 9/8/2021] Under the “matchmaking” definition, what is an example of a person proposing deposit allocations”?**

Example: If, as part of a broker dealer sweep program, a person identifies at which banks to place the funds of individual customers of the broker dealer, the person is, for purposes of the “matchmaking” definition, “proposing deposit allocations”. This is true even if the broker dealer determines the group of banks, or the order of banks, at which the person can propose placing individual depositors’ funds or the maximum amount that can be placed at each bank. If a person that is “proposing deposit allocations” at, or between, more than one bank also satisfies the other criteria in the “matchmaking” definition, the person would meet the “facilitation” part of the “deposit broker” definition. 86 Fed. Reg. 6747-48 (January 22, 2021).

**7. Are deposits placed by “listing services” considered brokered deposits?**

As the FDIC noted in the preamble of the rule, “the FDIC anticipates that whether a listing service, or a similar service that posts information about bank rates, is a deposit broker will likely depend on whether the service meets the new criteria under the “facilitation” part of the deposit broker definition. Based upon the new “facilitation” definition, a listing service that is passively posting rate information and sending trade confirmations between the depositor and the bank is unlikely to be a deposit broker. However, if a listing service provides services that meet one of the three prongs of the “facilitation” definition, then it would be considered a deposit broker.” 86 Fed. Reg. 6760 (January 22, 2021).

**D. Primary Purpose Exception**

**1. If a third party wants to rely upon a designated exception that requires a notice submission (e.g., for placing 25% or less of its customer’s assets under administration at IDIs), when may it and the IDI that is receiving the deposits begin to rely on the exception?**

The FDIC has established an interim electronic process for the receipt of notices that is accessible through the new Brokered Deposits section of the [FDIC’s Bankers Resource](#) webpage. The requirements for a notice are also included as part of the notice filing instructions. A notice that is submitted through the electronic process will be acknowledged immediately upon receipt via a return email. Entities may begin relying upon the primary purpose exception immediately after receipt of the return email acknowledgement, and may continue to rely on the primary purpose exception unless the FDIC notifies the filer that it is not eligible for the primary purpose exception. 86 Fed. Reg. 6756 (January 22, 2021).

**2. How will the FDIC notify a third party or IDI that a notice needs additional information?**

The FDIC will review notice submissions to determine whether they include the relevant information for the applicable designated exception. If the notice requires additional information, staff at the FDIC will contact the filer electronically to make the specific request. If the FDIC learns that the entity no longer meets the criteria of the designated exception or that information provided in a notice or subsequent reporting was inaccurate or incomplete, the FDIC may, with notice, revoke the entity's primary purpose exception. 86 Fed. Reg. 6756 (January 22, 2021).

**3. How should an entity relying upon the “25 percent test” calculate its percentage of total assets under administration placed at IDIs for reporting purposes? When should those reports be provided?**

Under the rule, entities that submit a notice to rely upon the “25 percent test” are required to provide quarterly reporting to the FDIC. 12 CFR § 303.243(b)(3)(v). The reports should include calculations based upon the average daily balance of funds placed at IDIs over the course of each reporting quarter. To comply with the ongoing reporting requirement, entities should send quarterly reports to the [designated mailbox](#) no later than thirty days following the end of each calendar quarter (i.e., 3/31, 6/30, 9/30, 12/31).

**4. With respect to deposits accepted from an entity that meets a primary purpose exception, what is the bank's obligation to ensure that other third parties that may be involved in the placement of deposits are not deposit brokers?**

The rule does not affect an IDI's responsibility for managing activities conducted through third-party relationships. Relatedly, IDIs that receive deposits from entities that meet the primary purpose exception are responsible for understanding how those deposits are being placed and whether any additional third parties that meet the deposit broker definition are involved. Deposits placed by or through additional third parties that meet the deposit broker definition should be reported as brokered. 86 Fed. Reg. 6756 (January 22, 2021). As noted in the preamble to the rule, examiners will review whether banks are reporting their deposits appropriately on Call Reports. 86 Fed. Reg. 6761 (January 22, 2021).

**5. How will the FDIC address additional third parties that have been identified by a notice filer or applicant for a primary purpose exception? Will the FDIC make determinations regarding the status of an additional third party as a deposit broker publicly available?**

Following the filing of a notice or application, the FDIC may request additional information about additional third parties involved in the arrangement. If the FDIC finds that a third party applicant or notice filer (or a third party on whose behalf an IDI has submitted a notice or application) meets the primary purpose exception, and an additional third party involved in the arrangement meets the deposit broker definition, the FDIC will notify the filer and the other third party of this finding. The FDIC expects to request such additional information and make such findings only in certain circumstances, and not on a regular or frequent basis, and IDIs should not rely on the FDIC to decide whether additional third parties are deposit brokers. 86 Fed. Reg. 6758 (January 22, 2021). The FDIC is considering whether and how to make any decisions about additional third parties that meet the deposit broker definition available to banks or other interested parties.

- 6. If a broker dealer that satisfies the primary purpose exception for a particular business line sweeps (1) some deposits to certain IDIs without the presence of an additional third party that is a deposit broker and (2) other deposits to other IDIs by or through an *additional* third party that is a deposit broker, how should such deposits be reported?**

If a broker dealer satisfies the primary purpose exception, any deposits swept to IDIs (as part of the relevant business line) without the presence of an additional third party that is a deposit broker do not need to be reported as brokered. If that same broker dealer sweeps other deposits to other IDIs through an additional third party that qualifies as a deposit broker, then those deposits would be brokered. 86 Fed. Reg. 6755 (January 22, 2021). For additional clarification, if the broker dealer were to sweep certain deposits to an affiliated IDI through an additional third party that would, if the IDI was not an affiliate of the broker dealer, satisfy the matchmaking prong, such deposits would not be brokered, because the matchmaking prong does not apply to deposits that are placed by a third party at an affiliated IDI.

- 7. Can a third party place or facilitate the placement of some deposits that are brokered and some deposits that are not brokered if all such placement or facilitation is part of the same business line?**

In the preamble to the proposed rule, the FDIC explained that analyzing whether the primary purpose exception applied required analyzing specific business lines. “Otherwise,” the preamble noted, “any agent or nominee engaged in the brokering of deposits could evade the statutory restrictions by adding or combining its brokering business with another business such that the deposit broker business is no longer its primary purpose.” 86 Fed. Reg. 7461 (Feb. 10, 2020). Under the rule, the concept of the business line is only relevant in the context of the primary purpose exception. When analyzing whether the primary purpose applies, the FDIC will look at all deposits that a third party places or facilitates the placement of at IDIs as part of the relevant business line. If the primary purpose exception does not apply, this does not necessarily mean all such deposits would need to be reported as brokered. Outside of the primary purpose exception context, the business line that deposit placement activity is a part of is not relevant under the rule to whether the deposits are brokered.

- 8. Is the primary purpose exception, including the designated exceptions, available for third parties that “facilitate the placement” of customer deposits? Could a third party rely upon a designated exception for a particular business line when it both places and facilitates the placement of deposits in that business line?**

Yes, a third party may seek to rely upon a primary purpose exception, including a designated exception, if applicable, when “facilitating the placement” of customer deposits at IDIs. Under the rule, a third party may qualify for a primary purpose exception for a particular business line. In that case, all deposits that the third party either places or facilitates the placement of for the relevant business line are nonbrokered, assuming no additional third party that is a deposit broker is involved in the flow of funds.

- 9. [As of 12/29/2021] Under certain business arrangements, third party administrators of health savings accounts (“HSAs”) employ third parties to place, or assist in placing,**

**customer funds into HSAs. Could a third party, other than a third party administrator of a HSA program, qualify for the designated business exception under 12 CFR 337.6(a)(5)(v)(I)(1)(x) (the “HSA exception”)?**

Yes. The rule provides that the HSA exception applies when: “[t]he agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of paying for or reimbursing qualified medical expenses under section 223 of the Internal Revenue Code.” 12 CFR 337.6(a)(5)(v)(I)(1)(x). Thus, a third party that is an agent or nominee of a customer may qualify for the HSA exception, provided that the third party’s primary purpose is to assist in placing customer funds into HSAs to facilitate the payment for or reimbursement of qualified medical expenses under section 223 of the Internal Revenue Code. For example, a third party that has a contractual relationship with a customer to place the customer’s HSA funds at IDIs in a custodial capacity would qualify for the HSA exception to the extent the custodian places funds to facilitate the payment for, or reimbursement of, qualified medical expenses under section 223 of the Internal Revenue Code. However, a third party that receives HSA funds from a customer’s custodian, but is not an agent or nominee of the customer, would not qualify for the HSA exception.

**10. [As of 07/15/2022] If an IDI receives sweep deposits from an unaffiliated broker dealer with a primary purpose exception for that business line, must the IDI consider the involvement of additional third parties when reporting the sweep deposits on its Call Report?<sup>2</sup>**

Yes. An IDI that receives sweep deposits from an unaffiliated broker dealer with a primary purpose exception for that business line must determine whether there are any additional third parties involved in the deposit placement arrangement that qualify as a deposit broker because the IDI is responsible for accurately reporting the deposits on its Call Report. *See* FDI Act Section 7, 12 USC § 1817; 86 FR 6742, 6756 (Jan. 22, 2021). If an additional third party is involved that would qualify as a “deposit broker” under 12 CFR § 337.6(a)(5), for example if the third party is engaging in “matchmaking activities” under 12 CFR § 337.6(a)(5)(iii)(C), then the sweep deposits received from the broker dealer must be reported as a brokered deposit by the IDI, even if the broker dealer has a primary purpose exception for the relevant business line. *See* 12 CFR § 337.6(a)(2). Note that even when the sweep deposits are placed by the broker dealer directly, the IDI must consider whether an additional third party may be “facilitating the placement of the deposits.” *See* 12 CFR § 337.6(a)(5)(iii).

For example, the FDIC has received primary purpose exception notice filings from broker dealers asserting that an additional third party involved in the unaffiliated sweep program provides the broker dealers with “administrative services.” It has been the FDIC’s experience that such services include activities that meet the facilitation part of the deposit broker definition, for example by engaging in matchmaking activities. (For further discussion about how the matchmaking prong applies to sweep programs, please see Q+A C.6). When receiving sweep deposits under such an arrangement, it is the IDI’s responsibility to evaluate the third party’s role and determine whether

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<sup>2</sup> Question D.10 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).

that role constitutes facilitating the placement of deposits, including by engaging in matchmaking activities, when it files its Call Report.

## E. Reporting

1. **The preamble to the rule provides that a notice filer seeking to rely on either the “25 percent” or the “enabling transactions” designated exception can rely on the relevant designated exception once the FDIC receives the notice filing. The preamble also provides that the FDIC can revoke a notice filer’s primary purpose exception. If the FDIC revokes a notice filer’s primary purpose exception, would the consequences of such a revocation be forward-looking only? Or would an IDI with deposits that became brokered only because of such a revocation have to “look back” and reclassify deposits as brokered that were previously reported as non-brokered on call reports filed during the period when the notice filing was effective?**

If a bank, acting in good faith, reports deposits as nonbrokered because it is relying on a notice that has been filed, and the FDIC later revokes the notice filer’s primary purpose exception, the bank will not need to reclassify deposits as brokered that were previously reported as non-brokered on Call Reports filed during the period when the notice filing was effective.

2. **[As of 12/29/2021] Notice filers that submit a notice under the 25 percent test must provide the FDIC with quarterly updates to the figures that were provided as part of the original notice submission. When are the quarterly updates due? What happens if the quarterly update is late or if the notice filer does not submit the report?**

Notice filers should submit their quarterly updates to the FDIC’s secure mailbox listed on the Banker Resource Center Brokered Deposit page within 30 days of the end of each calendar quarter, which will enable them to coordinate with insured depository institutions’ Call Reports. If a filer has not submitted the quarterly filing by that date, the FDIC will send one email reminder of the late quarterly report filing to the original PPE notice filer. If the FDIC has not received the quarterly report within 15 days of its email reminder to the filer, the FDIC will, with notice, revoke the primary purpose exception, consistent with Section 303.243(b)(3)(vi), and will update the Public Report of Entities Submitting Notices for a Primary Purpose Exception (PPE) available on the FDIC’s Brokered Deposit webpage. Deposits placed by or through the third party subject of the filing will subsequently need to be reported as brokered unless or until the filer files a new notice that includes the information required under Section 303.243(b)(3)(i)(A) .

3. **[As of 12/29/2021] Notice filers that submit a notice under the enabling transactions test must provide the FDIC with an annual certification that the third party continues to place all customer funds at depository institutions into transaction accounts and that customers do not receive or accrue any interest, fees, or other remuneration. When is the annual certification due? What happens if the annual certification is late or if the notice filer does not submit the certification?**

Notice filers should submit their annual certifications to the FDIC’s secure mailbox listed on the Banker Resource Center Brokered Deposit page within 30 days of the anniversary date of the



original filing. For example, if the original filing was submitted on May 31, 2021, each year thereafter the annual certification will be due by June 30. If a filer has not submitted the annual certification by that date, the FDIC will send one email reminder of the late annual filing to the original PPE notice filer. If the FDIC has not received the annual certification within 15 days of its email reminder to the filer, the FDIC will, with notice, revoke the primary purpose exception, consistent with Section 303.243(b)(3)(vi), and will update the Public Report of Entities Submitting Notices for a Primary Purpose Exception (PPE) available on the FDIC's Brokered Deposit webpage. Deposits placed by or through the third party subject of the filing will subsequently need to be reported as brokered unless or until the filer files a new notice that includes the information required under Section 303.243(b)(3)(i)(B) .