

Guidance on Deposit Placement and Collection Activities by FDIC-Insured Institutions and Their Affiliates

Some FDIC-insured depository institutions/affiliates have entered into agreements with third-party affinity groups or trade associations (groups) to collect and place deposits. In these arrangements, members of the group are referred to the institution/affiliate. In exchange for the “introduction” to new depositors, the group receives a referral fee.

Such deposit collection and placement practices add a level of complexity to the operations and handling of these accounts, making it more likely that customers could be confused about where their money is deposited, or whether their funds are fully insured. These complexities create additional risks that the institution/affiliate must manage. Institutions that accept deposits with the intent of placing a portion or all of these deposits must establish governing controls over this activity to prevent customer confusion and ensure that all activities comply with deposit insurance regulations.

An insured depository institution (or affiliate of an insured depository institution) should not enter into any deposit collection arrangements without a complete understanding of the FDIC’s rules governing the insurance coverage of accounts held by agents or custodians. A misunderstanding of the rules could lead to a situation in which a customer’s funds are *not* fully insured by the FDIC. Such a situation could undermine public confidence. To help ensure this does not happen, the FDIC has developed this guidance.

Under FDIC insurance rules, the placement of deposits at an FDIC-insured depository institution on behalf of the owner or owners of the funds may raise problems regarding “pass-through” deposit insurance. “Pass-through” insurance means the insurance coverage (up to the current \$250,000 limit) “passes through” the fiduciary to the actual owners of the funds. However, this *pass-through* coverage is available only if (1) the institution’s records expressly disclose the fiduciary relationship on behalf of others (for example, “XYZ Broker for its clients”); (2) the records maintained by either the institution, the fiduciary, or an authorized third party identify the actual owner or owners of the funds in the account and their respective ownership interests in the account; and (3) the funds actually are owned by the customer(s) and not the entity performing in a fiduciary capacity. This third requirement is likely not satisfied if the interest rate and the maturity date offered to the customer do not match the interest rate and maturity date of the certificate of deposit (CD) purchased.

In addition, “*receiving*” insured depository institutions are reminded that deposits accepted from agents or custodians (including insured depository institutions acting as agents or custodians) generally are “brokered deposits.” A well-capitalized, insured depository institution may accept brokered deposits without restriction. However, an adequately capitalized institution cannot accept brokered deposits unless the institution

obtains a waiver from the FDIC. An undercapitalized institution cannot accept brokered deposits under any circumstances. See 12 U.S.C. § 1831f; 12 C.F.R. § 337.6.

Institutions or affiliates that collect or place deposits are expected to:

- Maintain sufficient documentation for pass-through insurance coverage by determining that:
 - account records disclose the existence of the fiduciary or agency relationship (Section 330.5(b)(1)).
 - the ownership interest of each owner is ascertainable from the records of either the institution, the fiduciary, or an authorized third party (Section 330.5(b)(2)).
 - the institution/affiliate is not the actual owner of the deposit. (Section 330.3(h) and 330.5(a)(1)). (If the interest rate and maturity date offered to the customer do not match the interest rate and maturity date of the CD purchased, it is likely the CD would not be insured on a pass-through basis to the customer(s).)
- Maintain a detailed listing of the name and location of the “receiving” institution(s), the owner of the funds, and the amount, interest rate, and maturity date of the deposits.
- Provide the depositors with the deposit amount and the name of the “receiving” insured depository institution at which their deposits are ultimately placed.
- Ensure marketing materials, customer statements, and disclosures are accurate and not misleading, including whether these documents correctly represent FDIC deposit insurance coverage on the accounts.¹

¹ Questions about the accuracy of representations regarding deposit insurance coverage should be directed to a member of the FDIC Deposit Insurance staff at 1-877-ASK-FDIC (1-877-275-3342).

The misrepresentation provisions of 12 U.S.C. 1828(a)(4) of the FDIA state in part:

“(A) Prohibition on false advertising and misuse of FDIC names

No person may represent or imply that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation—

(i) by using the terms “Federal Deposit,” “Federal Deposit Insurance,” “Federal Deposit Insurance Corporation,” any combination of such terms, or the abbreviation “FDIC” as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) by using such terms or any other terms, sign, or symbol as part of an advertisement, solicitation, or other document.

(B) Prohibition on misrepresentations of insured status

No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is insured, under this chapter, if such deposit liability, obligation, certificate, or share is not so insured; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured under this chapter, if such deposit liability, obligation, certificate, or share is not so insured, to the extent or in the manner represented.”

- Provide training for all personnel involved in collecting and placing deposits from any third party or affinity group on deposit insurance coverage requirements, including maintaining pass-through deposit insurance coverage.
- Ensure these activities comply with applicable consumer protection laws, regulations, and supervisory guidance, including Regulation DD (Truth in Savings), Section 5 of the Federal Trade Commission Act (Unfair and Deceptive Acts and Practices), and the FDIC's rules and regulations on deposit insurance coverage.

Examiners will consider an institution's failure to properly administer deposit collection practices in a manner that prevents customer confusion or failure to comply with deposit insurance rules in his or her supervisory assessment of the institution. In addition, failure to comply with deposit insurance rules may result in enforcement actions including civil money penalties.

