

REDLINE comparing [existing 12 CFR 337.6](#) to proposed changes in the [FDIC NPR announced on July 30, 2024](#)

---

### § 337.6 Brokered deposits.

(a) **Definitions.** For the purposes of §§ 337.6 and 337.7, the following definitions apply:

(1) **Appropriate Federal banking agency** has the same meaning as provided under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(2) **Brokered deposit** means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

(3) **Capital categories.**

(i) For purposes of section 29 of the Federal Deposit Insurance Act, this section and § 337.7, the terms well capitalized, adequately capitalized, and undercapitalized, shall have the same meaning as to each insured depository institution as provided under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.

(ii) If the appropriate federal banking agency reclassifies a well-capitalized insured depository institution as adequately capitalized pursuant to section 38 of the Federal Deposit Insurance Act, the institution so reclassified shall be subject to the provisions applicable to such lower capital category under this section and § 337.7.

(iii) An insured depository institution shall be deemed to be within a given capital category for purposes of this section and § 337.7 as of the date the institution is notified of, or is deemed to have notice of, its capital category, under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.

(4) **Deposit** has the same meaning as provided under section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(1)).

(5) **Deposit broker.**

(i) The term deposit broker means:

~~(A) Any person engaged in the business of placing deposits of third parties with insured depository institutions;~~

~~(B)~~ Any person engaged in the business of [placing or](#) facilitating the placement of deposits of third parties with insured depository institutions;

~~(C)~~ Any person engaged in the business of placing deposits with insured depository institutions for the purpose of selling those deposits or interests in those deposits to third parties; and

~~(D)~~ An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

~~(ii)~~ **Engaged in the business of [placing or](#) facilitating the placement of deposits.** A person is engaged in the business of [placing or](#) facilitating the placement of deposits of third parties ~~with~~

~~insured depository institutions, by, while if that person engageds in business, with respect to deposits placed at more than one insured depository institution, engaging~~ in one or more of the following activities:

(A) The person receives third party funds and deposits those funds at one or more insured depository institutions;

~~(A)B~~ The person has legal authority, contractual or otherwise, to close the account or move funds of the third party's ~~funds~~, to another insured depository institution;

~~(B)C~~ The person is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account; ~~or~~

(D) The person proposes or determines deposit allocations at one or more insured depository institutions (including through operating or using an algorithm, or any other program or technology that is functionally similar);

(E) The person has a relationship or arrangement with an insured depository institution or customer where the insured depository institution or the customer pays the person a fee or provides other remuneration in exchange for deposits being placed at one or more insured depository institution.

~~(C) The person engages in matchmaking activities.~~

~~(1) A person is engaged in matchmaking activities if the person proposes deposit allocations at, or between, more than one bank based upon both the particular deposit objectives of a specific depositor or depositor's agent, and the particular deposit objectives of specific banks, except in the case of deposits placed by a depositor's agent with a bank affiliated with the depositor's agent. A proposed deposit allocation is based on the particular objectives of:~~

~~(i) A depositor or depositor's agent when the person has access to specific financial information of the depositor or depositor's agent and the proposed deposit allocation is based upon such information; and~~

~~(ii) A bank when the person has access to the target deposit balance objectives of specific banks and the proposed deposit allocation is based upon such information.~~

~~(2)iii~~ **Anti-evasion.** Any attempt by a A person ~~to that~~ structures a deposit placement arrangement in a way that evades meeting the ~~matchmaking~~ deposit broker definition in this section, including a structure involving more than one person engaged in activities that result in placing or facilitating the placement of third party deposits, while still playing an ongoing role in placing or facilitating the placement of third party deposits or providing any function related to ~~matchmaking~~ the placement or facilitating the placement of third party deposits, may, upon a finding by and with written notice from the FDIC, result in the person meeting the matchmaking deposit broker definition.

~~(iv) Engaged in the business—A person is engaged in the business of placing, or facilitating the placement of, deposits as described in paragraph (a)(5)(ii) or (iii) of this section, respectively, when that person has a business relationship with third parties, and as part of that relationship,~~

~~places, or facilitates the placement of, deposits with insured depository institutions on behalf of the third parties.~~

(vii) The term *deposit broker* does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

(B) An employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) A trust department of an insured depository institution, if the trust or other fiduciary relationship in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that person is performing managerial functions with respect to the plan;

(F) The trustee of a testamentary account;

(G) The trustee of an irrevocable trust (other than one described in paragraph (a)(5)(i)(B) of this section), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d) or 403(a));  
or

(I) Primary purpose exception. An agent or nominee whose primary purpose ~~is not the placement of funds with~~ in placing customer deposits at insured depository institutions; ~~or is for a substantial purpose other than to provide a deposit-placement service or to obtain FDIC deposit insurance with respect to particular business lines between the individual insured depository institutions and the agent or nominee.~~

*(1) Designated business exceptions that meet the primary purpose exception. Business relationships are designated as meeting the primary purpose exception, subject to § 303.243(b)(3) of this chapter, where, with respect to a particular business line:*

(i) A broker-dealer or investment adviser that places or facilitates the placement of less than 10 percent of the total assets that it has under management for its customers is placed at depository institutions, and no additional third parties are involved in the deposit placement arrangement;

~~(i) Less than 25 percent of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions;~~

~~(ii) 100 percent of depositors' funds that the agent or nominee places, or assists in placing, at depository institutions are placed into transactional accounts that do not pay any fees, interest, or other remuneration to the depositor;~~

(ii) A property management firm places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing property management services;

~~(iii)~~ The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing cross-border clearing services to its customers;

~~(iv)~~ The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing mortgage servicing;

~~(v)~~ A title company places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating real estate transactions;

(vi) A qualified intermediary places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating exchanges of properties under section 1031 of the Internal Revenue Code;

(vii) A broker dealer or futures commission merchant places, or assists in placing, customer funds into deposit accounts in compliance with 17 CFR 240.15c3-3(e) or 17 CFR 1.20(a);

~~(viii)~~ The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of posting collateral for customers to secure credit-card loans;

~~(ix)~~ The 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;

~~(x)~~ The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of investing in qualified tuition programs under section 529 of the Internal Revenue Code;

(xi) The agent or nominee places, or assists in placing, customer funds into deposit accounts to enable participation in the following tax-advantaged programs: ~~i~~ individual retirement accounts under section 408(a) of the Internal Revenue Code, Simple individual retirement accounts under section 408(p) of the Internal Revenue Code, ~~or~~ and Roth individual retirement accounts under section 408A of the Internal Revenue Code;

(xii) A Federal, State, or local agency places, or assists in placing, customer funds into deposit accounts to deliver funds to the beneficiaries of government programs; ~~and~~

(xiii) The agent or nominee places customer funds at insured depository institutions, in a custodial capacity, based upon instructions received from a depositor or depositor's agent specific to each insured depository institution and deposit account, and the agent or nominee neither plays any role in determining at which insured depository institution(s) to place any customers' funds, nor negotiates or set rates, terms, fees, or condition, for the deposit account; and

(xiv) The agent or nominee places, or assists in placing, customer funds into deposit accounts pursuant to such other relationships as the FDIC specifically identifies as a designated business relationship that meets the primary purpose exception.

(2) **Approval required for business relationships not designated in paragraph (a)(5)(v)(I)(1).** An ~~agent or nominee~~insured depository institution that does not rely on a designated business exception described in this section must receive an approval under the application process in § 303.243(b) of this chapter in order to qualify for the primary purpose exception.

(3) **Brokered CD ~~p~~Placements ~~n~~Not ~~e~~Eligible for ~~p~~Primary ~~p~~Purpose ~~e~~Exception.** An agent's or nominee's placement of brokered certificates of deposit as described in 12 U.S.C. 1831f(g)(1)(A) shall be considered a discrete and independent business line from other deposit placement businesses in which the agent or nominee may be engaged.

(4) Brokered CD means a deposit placement arrangement in which a master certificate of deposit is issued by an insured depository institution in the name of the third party that has organized the funding of the certificate of deposit, or in the name of a custodian or a sub-custodian of the third party, and the certificate is funded by individual investors through the third party, with each individual investor receiving an ownership interest in the certificate of deposit, or a similar deposit placement arrangement that the FDIC determines is arranged for a similar purpose.

(J) An insured depository institution acting as an intermediary or agent of a U.S. government department or agency for a government sponsored minority or women-owned depository institution deposit program.

(vi) Notwithstanding paragraph (a)(5)(v) of this section, the term *deposit broker* includes any insured depository institution that is not well-capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

(6) **Employee** means any employee:

(i) Who is employed exclusively by the insured depository institution;

- (ii) Whose compensation is primarily in the form of a salary;
- (iii) Who does not share such employee's compensation with a deposit broker; and
- (iv) Whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(7) **FDIC** means the Federal Deposit Insurance Corporation.

(8) **Insured depository institution** means any bank, savings association, or branch of a foreign bank insured under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

(9) **Broker-dealer** means a person that is registered with the United States Securities and Exchange Commission as either a broker, a dealer, or both types entities.

(10) **Investment Adviser** means a person that is registered with the United States Securities and Exchange Commission as an investment adviser.

(11) **Assets under management** means securities portfolios and cash balances with respect to which an investment adviser or broker dealer provides continuous and regular supervisory or management services.

(b) **Solicitation and acceptance of brokered deposits by insured depository institutions.**

(1) A well capitalized insured depository institution may solicit and accept, renew or roll over any brokered deposit without restriction by this section.

(2) An adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposit unless it has applied for and been granted a waiver of this prohibition by the FDIC in accordance with the provisions of this section.

(3) An undercapitalized insured depository institution may not accept, renew or roll over any brokered deposit.

(4) **Acceptance of nonmaturity brokered deposits.**

(i) A nonmaturity brokered deposit is accepted by an institution that is less than well capitalized—

(A) At the time a new nonmaturity account is opened by or through any deposit broker;  
or

(B) In the case of an existing nonmaturity brokered account, or accounts, that had been opened by or through a particular deposit broker:

(1) When the aggregate account balance increases above the amount(s) in the account(s) at the time the institution falls to adequately capitalized; or,

(2) For agency or nominee accounts, when funds for a new depositor are credited to the nonmaturity account or accounts.

(c) **Waiver.** The FDIC may, on a case-by-case basis and upon application by an adequately capitalized insured depository institution, waive the prohibition on the acceptance, renewal or rollover of brokered deposits upon a finding that such acceptance, renewal or rollover does not constitute an unsafe or unsound practice with respect to such institution. The FDIC may conclude that it is not unsafe or unsound and may grant a waiver when the

acceptance, renewal or rollover of brokered deposits is determined to pose no undue risk to the institution. Any waiver granted may be revoked at any time by written notice to the institution. For filing requirements, consult 12 CFR 303.243.

(d) **Exclusion for institutions in FDIC conservatorship.** No insured depository institution for which the FDIC has been appointed conservator shall be subject to the prohibition on the acceptance, renewal or rollover of brokered deposits contained in this § 337.6 or section 29 of the Federal Deposit Insurance Act for 90 days after the date on which the institution was placed in conservatorship. During this 90-day period, the institution shall, nevertheless, be subject to the restriction on the payment of interest contained in paragraph (b)(2)(ii) of the section. After such 90-day period, the institution may not accept, renew or roll over any brokered deposit.

(e) **Limited exception for reciprocal deposits** –

(1) **Limited exception.** Reciprocal deposits of an agent institution shall not be considered to be funds obtained, directly or indirectly, by or through a deposit broker to the extent that the total amount of such reciprocal deposits does not exceed the lesser of:

(i) \$5,000,000,000; or

(ii) An amount equal to 20 percent of the total liabilities of the agent institution.

(2) **Additional definitions that apply to the limited exception for reciprocal deposits** –

(i) **Agent institution** means an insured depository institution that places a covered deposit through a deposit placement network at other insured depository institutions in amounts that are less than or equal to the standard maximum deposit insurance amount, specifying the interest rate to be paid for such amounts, if the insured depository institution:

(A)

(1) When most recently examined under section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) was found to have a composite condition of outstanding or good; and

(2) Is well capitalized;

(B) Has obtained a waiver pursuant to paragraph (c) of this section; or

(C) Does not receive an amount of reciprocal deposits that causes the total amount of reciprocal deposits held by the agent institution to be greater than the average of the total amount of reciprocal deposits held by the agent institution on the last day of each of the four calendar quarters preceding the calendar quarter in which the agent institution was found not to have a composite condition of outstanding or good or was determined to be not well capitalized.

(ii) **Covered deposit** means a deposit that:

(A) Is submitted for placement through a deposit placement network by an agent institution; and

(B) Does not consist of funds that were obtained for the agent institution, directly or indirectly, by or through a deposit broker before submission for placement through a deposit placement network.

(iii) **Deposit placement network** means a network in which an insured depository institution participates, together with other insured depository institutions, for the processing and receipt of reciprocal deposits.

(iv) **Network member bank** means an insured depository institution that is a member of a deposit placement network.

(v) **Reciprocal deposits** means deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks.

### (3) Regaining agent institution status

(i) An insured depository institution that has lost its agent institution status for purposes of the limited exception for reciprocal deposits is eligible to regain its agent institution status as follows:

#### (A)

(1) When most recently examined under section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) was found to have a composite condition of outstanding or good; and

(2) Is well capitalized;

#### (B)

(1) As of the date the insured depository institution is notified, or is deemed to have notice, that it is well capitalized under regulations implementing section 38 of the FDI Act issued by the appropriate federal banking agency for that institution; and

(2) Is well-rated;

(C) Has obtained a waiver pursuant to paragraph (c) of this section; or

#### (D)

(1) Does not receive an amount of reciprocal deposits that causes the total amount of reciprocal deposits held by the agent institution to be greater than the average of the total amount of reciprocal deposits held by the agent institution on the last day of each of the four calendar quarters preceding the calendar quarter in which the agent institution was found not to have a composite condition of outstanding or good or was determined to be not well capitalized, or

(2) an insured depository institution that is not in compliance with paragraph (e)(2)(C)(1) of this section may regain its status as an agent institution after complying with paragraph (e)(2)(C)(1) of this section continuously for two successive reporting quarters.