

FDIC Proposed Changes to 2020 Brokered Deposit Rule

	2020 RULE	2024 NPR	STATED RATIONALE	COMMENTS
Definition of “deposit broker” — Types of activities	Four activities cause a person to be a deposit broker, with “placing” and “facilitating” as separate activities	Three activities cause a person to be a deposit broker, combining “placing” and “facilitating” into a single activity	Combining terms will make it simpler for IDIs and other stakeholders to apply the definition accurately	This is a minor change that may add clarity
Definition of “engaged in the business of” — Number of IDIs (i.e., exclusive arrangements)	To be “engaged in the business of” (placing or facilitating) relates to deposits “at more than one” IDI	To be “engaged in the business of” (placing or facilitating) relates to deposits “one or more” IDIs	Less than well-capitalized IDIs may seek exclusive deposit placement arrangements as their condition is deteriorating without being subject to the limitations on brokered deposits, even though the risk is the same.	This change from “more than one” to “one or more” eliminates the exclusions for exclusive deposit placement arrangements and is likely to impact a significant number of banks and nonbanks.
Definition of “engaged in the business of” — Facilitation by matchmaking	Facilitation when a person proposes “deposit allocations” at “more than one bank” based on “the particular deposit objectives” of both a “specific depositor” and “specific banks”	Facilitation when a person “proposes or determines deposit allocations at one or more” IDI and this includes “through operating or using an algorithm”	Matchmaking definition has not been well understood; new prong will make it easier understand.	This change eliminates the specificity requirements of the matchmaking prong and replaces it with a broad general definition of allocation; also replaces “more than one” with “one or more”
Definition of “engaged in the business of” — Paying fees or other remuneration	n/a	Receipt of fees (e.g., for administrative services in connection with a deposit placement arrangement) or other remuneration is indicia of “engaged in the business of”	If a person has a relationship or relationship with an IDI or customer and the IDI or customer pays the person a fee, or other compensation, related to the placement of deposits at an IDI, it means the third party is “engaged in the business..”	This change introduces a “catch all” concept—i.e., it significantly broadens the “engaged in the business of” definition

<p>Primary purpose exception— Generally</p> <p>(The primary purpose exception (PPE) is an exception from the definition of deposit broker, and it applies to certain persons who would otherwise be deposit brokers)</p>	<p>Applies to a person “whose primary purpose is not the placement of funds”</p>	<p>Applies to a person “whose primary purpose in placing customer deposits . . . is for a substantial purpose other than . . . deposit-placement service or to obtain FDIC deposit insurance”</p>	<p>Focusing on the intent of <i>the third party</i> in placing deposits at a particular IDI or IDIs is necessary in determining whether the deposit placement activity is primary. Consideration should be given to both the customer third-party and third-party IDI relationship.</p>	<p>This change muddles the primary purpose exception and shifts the analysis. It is difficult to understand how a purpose could be primary but not also substantial.</p> <p><u>Previously approved primary purpose exemption applications and notices filed under the 2020 Rule would be rescinded.</u></p>
<p>Primary purpose exception— Eligible applicants; application process; relevant factors</p>	<p>Allows a third party or an IDI on behalf of a third party to submit a PPE application; generally, eleven categories of information are required.</p>	<p>Third parties can no longer apply for a PPE. Instead, each IDI wishing to rely on a PPE would be required to submit an application. An additional three categories of information would be required.</p>	<p>Some third parties have provided insufficient information in their applications. Limiting eligible applicants to IDIs will make it easier for IDIs to correctly rely on the primary purpose exemption once granted.</p>	<p>Additional categories of information required in the application could potentially extend application process. Fintechs and other third parties will no longer be able to get “preclearance” of the structure and will need to rely on partner banks.</p>
<p>Designated business exceptions that meet PPE— 25% test for agents with assets under administration</p>	<p>Applies if less than 25% of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions</p> <p>Notice required to FDIC by third parties or IDIs; FDIC provides immediate knowledge of receipt; quarterly reporting requirements</p>	<p>Renamed the “Broker-Dealer Sweep Exception.” Only available to broker dealers and investment advisors and only if less than 10% of total assets that broker dealer of investment advisors has under management for its customers is at one or more IDI. No additional parties can be involved in the deposit placement arrangement</p> <p>Proposed rule would create an application process for IDIs who wish to rely on the exception when additional third parties are involved in the arrangement</p>	<p>Placing less than 10% of customer funds at IDIs is more indicative that the primary purpose is to temporarily safekeep customer funds, rather than providing placement services or deposit insurance</p>	<p>This change reduces the 25% test to 10% and narrows the scope. Entities who currently meet the test would no longer be able to rely on it. Notice would be insufficient. Instead, a new PPE application would need to be submitted for the FDIC’s consideration, on a potentially longer timeframe.</p> <p>IDIs could rely on exception if no written disapproval is received within 90 days (but FDIC has discretion to extend period another 90 days, and ask for additional information)</p>

<p>Designated business exceptions that meet PPE— Enabling transactions test</p>	<p>Applies to an agent or nominee if 100% of customer funds that have been placed at IDIs regarding a particular business line are placed into transaction accounts, and no fees, interest, or other remuneration is provided to the depositor</p> <p>Third party either submits application or provides notice.</p>	<p>ELIMINATED</p>	<p>Merely placing deposits into transactional accounts is not sufficient to demonstrate the primary purpose test has been satisfied</p>	<p>This change eliminates the enabling transactions test and corresponding notice requirement. Entities who currently meet the test would no longer be able to rely on this exception.</p>
<p>Reciprocal deposits exception— Procedures for IDIs to regain “agent institution” status</p>	<p>Applies to allow “agent institutions” to carve out “reciprocal deposits” from treatment as brokered deposits where total amount held does not exceed the lesser of \$5 billion or 20% of the total liabilities of the agent institution.</p> <p>No process in place for IDIs to regain “agent institution” status</p>	<p>Outlines four ways IDIs could to regain “agent institution” status based on well-capitalized or well-rated status, if FDIC grants a brokered deposit waiver, or IDIs ability not exceed its special cap on the last day of the third consecutive calendar quarter.</p>	<p>Banks should have a clear onramp.</p>	<p>This addition provides a process for IDIs who wish to regain “agent institution” status, although it is unclear how the FDIC would proceed in practice</p>