

Frequently Asked Questions Regarding Identifying, Accepting and Reporting Brokered Deposits

This Financial Institution Letter provides a series of updated Frequently Asked Questions (FAQs) on identifying, accepting and reporting brokered deposits. The new FAQs were written after considering industry comments on FAQs issued in January 2015. It is important for insured depository institutions to distinguish brokered deposits from other deposits to comply with Section 29 of the Federal Deposit Insurance Act (FDI Act),¹ as described below. Additionally, insured depository institutions are responsible for reporting brokered deposits in their Consolidated Reports of Condition and Income (Call Reports).

Under Section 29 of the FDI Act, an insured depository institution is prohibited from accepting deposits by or through a deposit broker unless the institution is well capitalized for Prompt Corrective Action (PCA) purposes.² The FDIC may waive this prohibition if the insured depository institution is adequately capitalized; however, the prohibition cannot be waived if the institution is undercapitalized.³ Section 29 also imposes restrictions on the deposit interest rates that an insured depository institution may offer if the institution is not well capitalized.⁴ The FDIC has implemented the restrictions imposed by Section 29 through Section 337.6 of its regulations.⁵

The term “deposit broker” has been broadly defined as “any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties.”⁶ If a deposit is accepted through a deposit broker, the deposit is a brokered deposit.

In some cases, an insured depository institution may be uncertain whether a particular deposit qualifies as a brokered deposit. The FDIC has explained the requirements for identifying and accepting brokered deposits in published advisory opinions. Also, the requirements were explained in the FDIC’s Study on Core Deposits and Brokered Deposits (Study), which was issued by the FDIC in July 2011. Despite the existence of the statute, regulations, advisory opinions and the Study, questions continue to arise regarding the proper classification of certain types of deposits. Further, determining whether deposits are brokered tends to depend on specific facts surrounding a particular arrangement, which can evolve over time. Therefore, the FDIC has issued the attached

¹ 12 U.S.C. § 1831f.

² 12 U.S.C. § 1831f(a).

³ 12 U.S.C. § 1831f(c).

⁴ 12 U.S.C. § 1831f.

⁵ 12 C.F.R. § 337.6.

⁶ 12 U.S.C. § 1831f(g)(1)(A); *Study on Core Deposits and Brokered Deposits*, Section II (pp. 5, 33).

FAQs as a plain language summary of previously issued guidance. These FAQs may be updated periodically on the FDIC's website and, when appropriate, advisory opinions will be issued.

The FDIC recognizes that brokered deposit determinations are fact-specific and influenced by a number of factors. Thus, the FDIC considers these determinations on a case-by-case basis. As such, the FDIC intends these FAQs as a starting point for institutions to begin their analysis of whether a particular product or program is determined to involve brokered deposits. As institutions work through their analysis, if they have questions the FDIC encourages them to contact the FDIC regional offices or subject matter experts listed in this FIL.

Additionally, the FDIC is aware that brokered deposit determinations take time, including review of outstanding contracts and other governing documents. If an institution was unaware of brokered deposit treatment until the FAQs were released, the FDIC would generally not seek refiling of past Call Reports. However, an insured depository institution's accounting and financial reporting personnel might make their own recommendations.

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