



Third-Party Referrals Promising Above-Market Rates on Certificates of Deposit

Summary:

FDIC-insured institutions should be aware of any unsolicited deposits received through third-party referrals. Certain insurance companies and other financial services firms (third parties) are advertising above-market rate certificates of deposit (CDs) to attract customers. When a customer buys the advertised CD, the customer is referred to the Web site of an FDIC-insured institution with the third party "making up" the difference between the insured institution's actual rate and the advertised above-market rate. This practice may cause a contradiction with the terms in the insured institution's Truth-in-Savings disclosures. In some cases, these third parties have used the FDIC official sign, seal, logo, or similar representations in connection with these offers.

Distribution:

FDIC-Supervised Institutions

Suggested Routing:

Chief Executive Officer
Chief Financial Officer
Compliance Officer
Internal Auditor

Related Guidance:

[FIL-44-2008, "Third-Party Risk: Guidance for Managing Third-Party Risk"](#)

Contact:

For questions related to the Third Party Deposit Referral programs, please contact Patricia Colohan, Chief, at (202) 898-7283 or pcolohan@fdic.gov or Martin Thompson, Review Examiner, at (202) 898-6767 or marthompson@fdic.gov. For all other questions, please contact Chris Hencke, Counsel, at (202) 898-8839 or chencke@fdic.gov

Note:

FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2009/index.html.

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Highlights:

- Financial institution management should be aware if a third party is referring customers to the institution, thereby facilitating the placement of deposits. All insured institutions should have controls in place to flag unusual deposit activity.
- A deposit broker, according to Part 337.6 of the FDIC Rules and Regulations, places deposits or facilitates the placement of deposits into an FDIC-insured depository institution.
- Receipt of deposits by a broker must be reported for regulatory purposes as brokered deposits.
- Financial institutions prohibited from accepting brokered deposits, per the restrictions in Part 337.6, cannot accept these third-party referral deposits.
- Brokered deposits are considered volatile funding sources. Management must be aware that such deposits impact an insured depository institution's earnings, liquidity, and interest rate risk.
- Deposits received by an insured institution from a third-party referral also may expose the institution to reputation risk, as customers may be misled about the interest rate and other terms and conditions under which the institution offers deposit products. In addition, insured institutions may be associated with third parties who have misused the FDIC logo.
- Insured institutions should ensure that any arrangements with third parties – formal or informal – conform with laws and regulations. (Refer to [FIL-44-2008, "Third-Party Risk: Guidance for Managing Third-Party Risk."](#))
- The FDIC will take legal action against entities that fail to comply with the statutory prohibitions on misuse of FDIC names, symbols, logo, false advertising, and misrepresentation of insured status.

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Third-Party Referrals Promising Above-Market Rates on Certificates of Deposit

FDIC-insured institutions should be aware of any unsolicited deposits received through third-party referrals. Certain insurance companies and other financial services firms are offering above-market rate certificates of deposit (CDs) through FDIC-insured institutions to attract customers. However, the actual rate offered by the insured institution is usually much lower. In some cases, these third parties use the FDIC official sign, seal, logo or similar representations in connection with these offers.

When a customer expresses an interest in buying a CD, the third party takes the customer's contact information for future marketing opportunities. When the customer buys the FDIC-insured CD, the third party refers the customer to an insured institution's Web site. For the customer to receive the above-market rate CD, the third party must make a payment to the issuing institution on behalf of the customer to "make up" the difference between the institution's actual rate and the above-market rate. This may misrepresent the actual rate offered by the insured institution by adding "promotional" funding to the principal balance of the CD, and therefore could be contradictory with the institution's Truth-in-Savings disclosures. Institutions may become aware of such practices when they receive two checks for the purchase of a single CD. All insured institutions should have controls in place to flag unusual deposit activity.

The marketing methods used by these third parties and the subsequent funding of the CD may cause an insured depository institution to unknowingly receive brokered deposits. Even if unsolicited, these deposits are brokered and must be treated as such. Further, being associated with companies that may be misrepresenting the status of FDIC-insured deposits exposes insured institutions to reputation risk. Insured institutions are responsible for managing third party relationships, regardless of the existence of a formal agreement. (Refer to [FIL-44-2008, "Third-Party Risk: Guidance for Managing Third-Party Risk,"](#) for more information.)

Funds received in this manner are brokered deposits and subject to the restrictions detailed in Part 337 of the FDIC Rules and Regulations. Brokered deposits are considered volatile funding sources. Management must be aware that such deposits can impact the asset quality, earnings, liquidity, and interest rate risk of an insured depository institution. Financial institutions prohibited from accepting brokered deposits, per the restrictions in Part 337.6, cannot accept these third-party referral deposits. Further, when financial institution management becomes aware of third-party referrals, these deposits must be reported as brokered deposits, and management should notify the appropriate FDIC Regional Director of the situation.

Financial institutions should ensure that any third-party arrangements comply with all laws and guidance, including the newly enacted statutory prohibitions on false advertising, misuse of FDIC names, and misrepresentation of insured status, 12 U.S.C. § 1828(a)(4). Under federal law, the FDIC will take legal action against entities that mislead the public about being an FDIC-insured institution, misrepresent the true nature of deposit insurance coverage, or otherwise misuse the FDIC official sign or symbol. This includes false advertising, misuse of FDIC names or logo, or misrepresentations of insured status.

Sandra L. Thompson
Director
Division of Supervision and Consumer Protection