

GUIDANCE ON IDENTIFYING, ACCEPTING, AND REPORTING BROKERED DEPOSITS FREQUENTLY ASKED QUESTIONS

(Updated 12/24/2014)

A. BROKERED DEPOSITS AND DEPOSIT BROKERS

A1. What is a “brokered deposit”?

The term “brokered deposit” is defined in the FDIC’s regulations as “any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.”¹ Thus, the meaning of the term “brokered deposit” depends upon the meaning of the term “deposit broker.”

A2. What is a “deposit broker”?

A “deposit broker” is “[a]ny 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.”² This definition is very broad. Subject to certain exceptions, a deposit broker is any person, company or organization engaged in “placing deposits” belonging to others, or “facilitating the placement of deposits” belonging to others, at an insured depository institution. As a result of this broad definition, a brokered deposit may be any deposit accepted by an insured depository institution from or through a third party, such as a person or company or organization other than the owner of the deposit.

A3. How does the FDIC view brokered deposits?

Brokered deposits can be a suitable funding source when properly managed as part of an overall, prudent funding strategy. However, some banks have used brokered deposits to fund unsound or rapid expansion of loan and investment portfolios, which has contributed to weakened financial and liquidity positions over successive economic cycles. The overuse of brokered deposits and the improper management of brokered deposits by problem institutions have contributed to bank failures and losses to the Deposit Insurance Fund.

A4. What are the restrictions on brokered deposits?

Section 29 of the Federal Deposit Insurance (FDI) Act includes restrictions on the acceptance of brokered deposits and certain restrictions on deposit interest rates. Under Section 29, an undercapitalized insured depository institution may not accept, renew, or roll over any brokered deposit.³ An adequately capitalized insured depository institution may not accept, renew, or roll over

¹12 C.F.R. § 337.6(a)(2).

²12 C.F.R. § 337.6(a)(5)(i)(A).

³Capital group assignments are made quarterly in accordance with the FDIC’s Rules and Regulations, using the method agreed upon by the Federal Financial Institutions Examination Council Surveillance Task Force for calculating capital ratios. The method uses data reported in an institution’s Consolidated Reports of Income and Condition (Call Reports), Report of

any brokered deposit unless the institution has applied for and been granted a waiver by the FDIC. A well-capitalized insured depository institution, for the purposes of section 38 of the FDI Act, is not restricted by Section 29 in accepting or renewing brokered deposits.⁴

Deposit rate restrictions prevent a bank that is not well capitalized from circumventing the prohibition on brokered deposits by offering rates significantly above market in order to attract a large volume of deposits quickly. As a general rule, a bank that is not well capitalized may not offer deposit rates more than 75 basis points above average national rates for deposits of similar size and maturity. See section G of this document for additional information.

A5. What factors are considered when determining if a third party is a deposit broker?

The definition of deposit broker applies to third parties engaged in “placing deposits” and “facilitating the placement of deposits.” The term “facilitating the placement of deposits” is interpreted broadly to include actions taken by third parties to connect insured depository institutions with potential depositors. As a result, a third party could be a deposit broker even when the third party does not open bank accounts on behalf of depositors or directly place funds into bank accounts.

The third party may qualify as a deposit broker even if it receives no fees or other direct compensation from the depository institution where the funds are placed. The fee structure is simply one factor used by the FDIC in determining whether a particular party is a deposit broker. Other factors include the nature of the fees (*i.e.*, whether the amount of the fees is connected to the amount of deposits placed at the insured depository institution), the purported purpose of the fees (*i.e.*, whether the fees are intended to reward the third party for placing deposits as opposed to rewarding the third party for providing some other service), and the degree of involvement by the third party in placing the deposits.

B. PLACING DEPOSITS AND FACILITATING THE PLACEMENT OF DEPOSITS

B1. What activity qualifies as “placing deposits”?

A third party “places deposits” for others when the third party actually delivers the funds to an insured depository institution. In this situation, unless the third party is covered by one of the exceptions to the definition of deposit broker (discussed in section E of this document), the third party will be a deposit broker and the deposits will be brokered deposits.

B2. What activities qualify as “facilitating the placement of deposits”?

Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report. See [Capital Groups](https://www.fdic.gov/deposit/insurance/risk/trps_ovr.html) (available at: https://www.fdic.gov/deposit/insurance/risk/trps_ovr.html).

⁴A bank under a formal agreement with a directive to meet or maintain a specific capital level is not considered to be well capitalized.

When a third party takes any actions that connect an insured depository institution with depositors or potential depositors, the third party may be “facilitating the placement of deposits.” Hence, the third party may be a deposit broker.

B3. Are there instances when facilitating the placement of deposits or placing deposits would not be considered the brokering of deposits?

Yes. For example, one of the exceptions to the definition of “deposit broker” is the “trustee of a pension or other employee benefit plan, with respect to funds of the plan.” Under this exception, the trustee is not classified as a deposit broker even if the trustee places the plan’s deposits (or facilitates the placement of the plan’s deposits) at an insured depository institution.

B4. Do companies or organizations that provide marketing for an insured depository institution, in exchange for volume-based fees, qualify as deposit brokers because they are facilitating the placement of deposits?

Yes. Some insured depository institutions attempt to attract new depositors through advertising or referrals by third parties (such as nonprofit affinity groups as well as commercial enterprises), in exchange for volume-based fees. In these cases, the FDIC has taken the position that the third party is “facilitating the placement of deposits” by connecting the depository institution with new account holders. Hence, the third party is a deposit broker, and the deposits would be brokered.

B5. Do third parties that design deposit products, such as deposit accounts with special features, qualify as deposit brokers?

Some third parties design deposit products with special features, such as deposit accounts that produce interest or rewards based on account activity. If a company merely designs deposit products or deposit accounts for one or more banks, without placing deposits or facilitating the placement of deposits at these banks, the company will not be classified as a deposit broker. However, as discussed in B4, if a company also markets the bank’s deposit products in exchange for volume-based fees, then it would be a deposit broker, and the deposits would be brokered.

B6. Are insurance agents, lawyers, or accountants that refer clients to a bank considered to be deposit brokers?

Yes. By referring clients to a bank, these persons are facilitating the placement of deposits. Therefore, they are deposit brokers, and the deposits would be brokered.

B7. What if a person or a group merely endorses a bank? Will the person or group be classified as a deposit broker?

If an individual or a group merely makes a general endorsement of a bank in exchange for a flat fee (*i.e.*, a fee unrelated to the number of accounts or amount of deposits generated by the endorsement), then that person or group will not be classified as a deposit broker. In such cases, the endorsements are not viewed as active marketing. Note, however, that the endorsement cannot appear in promotional

materials produced or distributed by the individual or the group. Rather, the endorsement must appear in promotional materials produced and distributed by the bank. Otherwise, the individual or group providing the endorsement will be a deposit broker, and the deposits would be brokered.

C. BANK NETWORKS

C1. What is a bank network?

In a bank network, a participating bank places funds at other participating banks through the network in order for its customer to receive full insurance coverage. For example, if a customer deposits \$1 million into his or her institution, the customer's bank retains the deposit insurance limit (that is, \$250,000) and places the excess of \$750,000 at three other institutions in insured increments of \$250,000.

In more complex arrangements, the customer's bank may be part of a deposit placement network that is managed by a third-party network sponsor. In this situation, when the customer deposits \$1 million, the customer's bank sends the uninsured portion to a settlement bank, which then places the funds at other banks within the network at the direction of the network sponsor.

At its most complex level, the network sponsor is facilitating the placement of millions of dollars in excess funds for all of the banks in the network. Often, these placements are made through reciprocal arrangements, in which institutions within the network are both sending and receiving identical amounts simultaneously (reciprocal deposits). This reciprocal arrangement allows the bank to maintain the same amount of funds it had when the customer made his or her initial deposit, while ensuring that deposits in excess of the \$250,000 deposit limit are fully insured.

C2. When companies facilitate the placement of deposits through a bank network, are they acting as deposit brokers?

Yes. In sponsoring or operating a bank network, the company is facilitating the placement of deposits. Moreover, in acting as agents for customers in placing the customers' funds at other insured depository institutions, the banks themselves are placing deposits and thus serving as deposit brokers. The involvement of deposit brokers in these networks means that the deposits are brokered deposits.

C3. When a bank only places deposits within a network of affiliated banks, is the bank acting as a deposit broker?

Yes. If a bank, or its parent company, places part or all of a depositor's funds with affiliated banks, then it is acting as a deposit broker. As a result, the deposits are brokered deposits.

D. LISTING SERVICES

D1. What is a listing service?

A listing service is a company that compiles and publishes information about deposit accounts at many different banks for consideration by interested depositors. The information published by a listing service will include the interest rates offered by the various banks. Some listing services operate Internet sites open to the public, while others provide information solely to banks and institutional investors who are willing to pay subscription fees.

D2. When does a listing service qualify as a deposit broker?

If the listing service places deposits or facilitates the placement of deposits (in addition to compiling and publishing information on interest rates and other features of deposit accounts), the listing service is a deposit broker, and the deposits would be brokered. In determining whether a particular listing service is facilitating the placement of deposits, the FDIC applies the criteria set forth in FDIC Advisory Opinion No. 04-04 (July 28, 2004).

The FDIC does *not* treat the listing service as a deposit broker if the company satisfies *each* of the following requirements:

- (A) The person or entity providing the listing service is compensated solely by means of subscription fees (*i.e.*, the fees paid by subscribers as payment for their opportunity to see the rates gathered by the listing service) and/or listing fees (*i.e.*, the fees paid by depository institutions as payment for their opportunity to list or “post” their rates). The listing service does not require a depository institution to pay for other services offered by the listing service or its affiliates as a condition precedent to being listed.
- (B) The fees paid by depository institutions are flat fees, not calculated on the basis of the number or dollar amount of deposits accepted by the depository institution as a result of the listing or posting of the depository institution’s rates.
- (C) In exchange for these fees, the listing service performs no services except: (1) the gathering and transmission of information concerning the availability of deposits; and/or (2) the transmission of messages between depositors and depository institutions including purchase orders and trade confirmations. In publishing or displaying information about depository institutions, the listing service must not attempt to steer funds toward particular institutions, except that the listing service may rank institutions according to interest rates and also may exclude institutions that do not pay the listing fee. Similarly, in any communications with depositors or potential depositors, the listing service must not attempt to steer funds toward particular institutions.
- (D) The listing service is not involved in the physical placement of deposits. Any funds to be invested in deposit accounts are remitted directly by the depositor to the insured depository institution and not, directly or indirectly, by or through the listing service.

D3. Why does the FDIC treat some listing services as deposit brokers, but not others?

The FDIC recognizes a distinction between providing information about deposit accounts and facilitating the placement of deposits. If a listing service or other company merely provides information, without attempting to steer potential depositors to particular insured depository institutions, the FDIC believes that the company is not facilitating the placement of deposits. In Advisory Opinion No. 92-50 (July 24, 1992), the FDIC staff explained the distinction as follows: “Where the only function of a deposit listing service is to provide information on the availability and terms of accounts, we believe that the listing service is not facilitating the placement of deposits. Rather, it facilitates the decision of the would-be buyer whether (and from whom) to buy a certificate of deposit; it is not facilitating the *placement* of deposits *per se*.”

A similar analysis applies to communications companies (such as radio or television stations or Internet Web sites) that run advertisements for insured depository institutions. If the advertising platform is operated in a neutral manner, so that any insured depository institution could run advertisements, the FDIC would not treat the communications company as a deposit broker.

E. EXCEPTIONS TO THE DEFINITION OF DEPOSIT BROKER

E1. What are the exceptions to the definition of deposit broker?

By statute, as implemented under the FDIC’s regulations, the definition of deposit broker is subject to a list of exceptions. See 12 C.F.R. § 337.6(a)(5)(ii). The FDIC also has issued a number of Advisory Opinions. Based on the list of exceptions, the FDIC does *not* treat any of the following parties as a deposit broker:

- (A) An insured depository institution, with respect to funds placed with that depository institution⁵;
- (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;

⁵ An insured depository institution that is not well capitalized is, however, subject to interest rate restrictions under Section 29 of the FDI Act and the implementing regulations. See section G of this document.

- (F) The trustee of a testamentary account;
- (G) The trustee of an irrevocable trust . . . 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;⁶
- (I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions; or
- (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.

E2. In regard to the exception for an “insured depository institution, with respect to funds placed with that depository institution,” does the exception apply to a company affiliated with that institution, including a parent or a subsidiary?

No. If an affiliated company places deposits or facilitates the placement of deposits at an insured depository institution, the company will be a deposit broker (assuming that the affiliated company is not the owner of the deposits and is not covered by any of the other exceptions to the definition of deposit broker). As a result, the deposits will be brokered deposits.

E3. In regard to the exception for an “employee of an insured depository institution, with respect to funds placed with the employing depository institution,” does the exception apply to a contractor or a dual employee (*i.e.*, a person employed jointly by an insured depository institution and the institution’s parent or subsidiary)?

No. This exception applies solely to an “employee” who satisfies the following definition: “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.” This exception will not apply to a contractor or dual employee because he/she will not be “employed exclusively by the insured depository institution.”⁷ Therefore, the contractor or dual employee will be a deposit broker if he/she facilitates the placement of deposits at the insured depository institution.

E4. In regard to the exceptions for “insured depository institutions” and their “employees” (discussed above), would these exceptions apply to affiliates or independent agents located in foreign countries?

⁶ 26 U.S.C. § 401(d) or § 403(a).

⁷ 12 C.F.R. § 337.6(a)(6).

No exception exists for entities or persons who seek or gather deposits in foreign countries. Unless the entity is an actual foreign branch of the insured depository institution that receives the funds, or the person is an actual “employee” as defined above, the deposits obtained by these entities or persons will be brokered deposits.

E5. Are deposits placed by the trust department of an insured depository institution classified as brokered deposits?

As stated above, the definition of deposit broker includes the following exception: “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.”⁸ Under this exception, a bank’s trust department might or might not qualify as a deposit broker. For example, if the trust department is acting as a traditional trustee with fiduciary responsibilities and investment discretion over the assets of an irrevocable trust, the trust department will not be a deposit broker because the trust relationship will have been established for the primary purpose of administering the trust and not for the primary purpose of “placing funds with insured depository institutions.”

On the other hand, if the trust department is merely assisting customers in placing funds at insured depository institutions so that the customers may obtain total FDIC insurance coverage in excess of the \$250,000 limit, the trust department will be a deposit broker and the deposits (at the receiving insured depository institution) will be brokered deposits. In Advisory Opinion No. 92-87 (December 9, 1992), the FDIC staff explained the distinction as follows: “The brokered deposit restrictions were not intended to curtail the normal activities of trust departments, but since a blanket exemption for all trust department activities might have led to circumvention of the statute through various trust-type mechanisms, the statute imposed a ‘primary purpose’ test. The primary purpose test serves to distinguish the normal activities of trust departments from arrangements that have the purpose and effect of circumventing the statute. The ‘primary purpose’ of an agreement with a trust department can only be determined on a case-by-case basis, in light of the particular facts and circumstances of each case.”

E6. What is the “primary purpose” exception to the definition of a deposit broker?

This exception applies to the following: “An agent or nominee whose primary purpose is not the placement of funds with depository institutions.”⁹ This exception is applicable when the intent of the third party, in placing deposits or facilitating the placement of deposits, is to promote some other goal (*i.e.*, other than the goal of placing deposits for others). The primary purpose exception is *not* applicable when the intent of the third party is to earn fees through the placement of the deposits. Also, the applicability of the primary purpose exception does not depend upon a comparison between the amount of revenue generated by the third party’s deposit-placement activities and the amount of revenue generated by the third party’s other activities. Rather, as previously stated, the applicability of the primary purpose exception depends upon the intent of the third party in placing deposits (or facilitating the placement of deposits).

⁸ 12 C.F.R. § 337.6(a)(5)(ii)(C).

⁹ 12 C.F.R. § 337.6(a)(5)(ii)(I).

As a number of examples will illustrate in the next several FAQs, the primary purpose exception applies only infrequently and typically requires a specific request for a determination by the FDIC. On those rare occasions when this exception may apply, the FDIC also may impose restrictions on the activity involved, routine reporting requirements, and regular monitoring. These conditions may be critical to the primary purpose exception determination. As a result, failure to comply with the conditions may trigger a reassessment of the original determination.

E7. Does the primary purpose exception apply to companies that distribute financial products (such as prepaid cards) that provide access to funds at one or more insured depository institutions?

Whether such companies qualify as deposit brokers depends upon the circumstances. As illustrated by the FAQs below, the primary purpose exception generally does *not* apply to such companies, and consequently, they are classified as deposit brokers, and the deposits would be brokered.

E8. Does the primary purpose exception apply to companies that sell or distribute general purpose prepaid cards?

No. Some companies operate general purpose prepaid card programs, in which prepaid cards are sold to members of the public at retail stores or other venues. After collecting funds from the cardholders, the retail store or the card company (as agent for the cardholders) may place the funds into a custodial account at an insured depository institution. The funds may be accessed by the cardholders through the use of their cards.

The retail stores and the card companies that sell or distribute general purpose prepaid cards (or similar products) are not covered by the primary purpose exception. Rather, in placing the cardholders' funds into custodial accounts at insured depository institutions, such companies (or the retail stores that may be involved in the placement of the deposits) qualify as deposit brokers. Therefore, the funds qualify as brokered deposits.

E9. Does the primary purpose exception apply to companies or organizations that distribute debit cards or similar products that serve multiple purposes? For example, what if a debit card provides access to funds in a bank account but also serves as a college identification card?

In evaluating this scenario, the FDIC would consider the following factors: (1) the stated primary purpose of the third party in distributing or marketing the debit cards; (2) the features of the card (such as whether the card is reloadable and whether the card will provide access to a permanent account in the student's name at the insured depository institution); and (3) the compensation (if any) received by the third party from the bank for distributing or marketing the cards.

For example, in the case of a debit card distributed to students by a college, the stated primary purpose of the card might be to promote education. In making this argument, the college (or the insured depository institution) might rely upon the fact that the card will serve as the cardholder's student identification card and vehicle for access to student loan funds. Other factors such as the reloadability of the card and the permanency of the account, however, might indicate that the primary purpose of the

card is to provide access to the account at the insured depository institution. This conclusion would be confirmed by the payment of fees or commissions to the college by the insured depository institution as compensation for distributing or marketing the cards. Under these facts, the primary purpose exception would be inapplicable. Therefore, the college would be a deposit broker, and the associated funds would be brokered deposits.

E10. What is an example of a company that distributes prepaid cards (providing access to funds at an insured depository institution) without being classified as a deposit broker?

An example is a corporation that distributes prepaid cards as part of a rebate program. In this scenario, the corporation places its own corporate funds (not the cardholders' funds) into an account at an insured depository institution. The cardholders collect their rebates by using the cards. Thus, the distribution of prepaid cards in this case is no different than the distribution of checks (payable against the corporation's checking account). The corporation is not a deposit broker.

Of course, if a third party (not the corporation) is involved in the placement of the corporation's funds into the account at the insured depository institution, the third party would be a deposit broker. As a result, the deposits would be brokered deposits.

F. ACCEPTING DEPOSITS

F1. When does an insured depository institution "accept" a deposit?

A deposit is "accepted" when the insured depository institution receives the funds. Under Section 29 of the FDI Act, an insured depository institution may accept brokered deposits without restriction if the institution is well capitalized for the purposes of section 38 of the FDI Act. In contrast, if the insured depository institution is adequately capitalized, the institution cannot accept brokered deposits unless it has obtained a waiver from the FDIC. Finally, if the institution is undercapitalized, it may not accept brokered deposits under any circumstances.

F2. Does a renewal or rollover of an account qualify as an acceptance of a deposit?

Yes. The funds in a certificate of deposit (CD) account are accepted when the account is renewed or rolled over. Of course, an acceptance of a deposit is not restricted under Section 29 of the FDI Act unless the deposit is accepted from or through a deposit broker. Therefore, if no third party is involved with the CD account at the time of renewal or rollover, the insured depository institution will be free to accept the deposit (*i.e.*, renew the account), even if the institution is not well capitalized at the time of the renewal or rollover and even if a third party (*i.e.*, a deposit broker) was involved with the original opening of the account. However, *any* type of involvement by the third party will be sufficient to qualify the renewed account as a brokered deposit. For example, the payment of a fee to the third party by the insured depository institution, such as a "renewal fee," would constitute involvement. A common example of involvement would be the actual holding of the account in the name of the third party (as agent or custodian for the owner or owners). Another example of involvement by the third

party would be its continued access to account information (such as the balance of the account). As a result of these types of involvement, or any other types of involvement by the third party, the renewed account would be a brokered deposit subject to the restrictions in Section 29.

F3. When an institution is less than well capitalized, must it refuse to renew or roll over a brokered CD if the deposit broker (at the time of renewal or rollover) continues to be involved with the account?

Yes. Under Section 29 of the FDI Act, if an insured depository institution is not well capitalized, the institution will be prohibited from accepting (*i.e.*, renewing) the brokered CD account without a waiver from the FDIC.

F4. If an insured depository institution ceases to be well capitalized after the opening of a brokered CD account but before the maturity of the account, must the institution close the account immediately (assuming the institution does not obtain a waiver to accept brokered deposits), or can the institution wait until the CD matures before closing the account?

For a maturing CD, the deposit is accepted when the CD rolls over. Therefore, assuming a third party would be involved with the renewal of the account, the insured depository institution can wait until the maturity of the CD before closing the account.

F5. If an insured depository institution ceases to be well capitalized, must the institution immediately close brokered deposit accounts that never mature or renew (such as an interest checking or savings account)?

Section 29 restricts institutions from continuing to hold brokered nonmaturity accounts once they fall below well capitalized. Therefore, institutions that cease to be well capitalized must close these accounts. However, it is critical that bank management contact the bank's primary federal regulator when the closing of these accounts could have a significant impact on liquidity or other factors affecting bank operations.

G. INTEREST RATE RESTRICTIONS

G1. What are the interest rate restrictions?

Under the FDIC's regulations, a bank that is not well capitalized generally may not offer deposit rates more than 75 basis points above the "national rate" for deposits of similar size and maturity. The regulations define the national rate as "a simple average of rates paid by all insured depository institutions and branches for which data are available."¹⁰ On a weekly basis, the FDIC posts the national rates and rate caps at National Rates.¹¹ If a bank believes that the posted national rates do not represent the actual rates in the bank's local market area, the bank may seek a determination from the FDIC that the bank is operating in a high-rate area. Assuming that the FDIC makes such a

¹⁰ 12 C.F.R. § 337.6(b)(2)(ii)(B).

¹¹ Available at: <https://www.fdic.gov/regulations/resources/rates/>.

determination, the bank may offer the prevailing market rates instead of the national rates within the local market area. In accepting deposits from outside the local market area, however, the bank must use the national rates.

G2. How is the prevailing rate calculated for a local market area?

As stated above, the national rate should be used to determine conformance with the interest rate restrictions unless the bank has requested and received a determination from the FDIC that it is operating in a high-rate area. The prevailing rate (effective yield) in a particular market area is the average of rates offered by other FDIC-insured depository institutions and branches in the geographic market area in which the deposits are being solicited. Rates offered by credit unions can be included in this calculation if an institution can support that it is competing directly with the credit unions for deposits.

Using a local market approach, the prevailing rate is calculated based on the maturity and size of the deposit as described below.

Maturity: For accounts with a maturity, calculate the prevailing rate by averaging competitors' rates based on the deposit term. For example, the bank's one-year certificate of deposit (CD) should be compared against the average rate for its competitors' one-year CDs. Separate rates may be calculated for savings accounts, NOW accounts and money market deposit accounts (MMDAs). However, further account bifurcation (for example, separate calculations for special-feature NOW accounts) is not consistent with the regulations and is therefore not allowed.

Size: For deposits of like maturity, calculate the prevailing rates for deposits under \$100,000 (non-jumbo) and over \$100,000 (jumbo).

For example, a bank's market area has seven other banks and branches offering these rates for a one-year CD under \$100,000:

Bank A	1.15%
Branch of Bank A	1.15%
Your Bank	1.35%
Bank B	1.50%
Bank C	1.55%
Bank D	1.20%
Bank E	1.25%
Branch of Bank E	1.30%

The effective yield on a one-year CD for the subject bank's market area is:

$$(1.15 + 1.15 + 1.50 + 1.55 + 1.20 + 1.25 + 1.30)/7 = 1.30\%$$

Note: The average excludes the rate offered by the subject bank.

In this case, the maximum allowable rate, or rate cap, for the market area is:

$$1.30\% + 0.75\% = 2.05\%$$

G3. Why are branches of other banks included in determining the prevailing rate in a geographic market area?

Individual branches of other institutions are considered to be competitors in soliciting deposits within a market area. As mentioned previously, the regulations define the national rate as “a simple average of rates paid by all insured depository institutions and branches for which data are available.” Excluding branches in calculating the prevailing rate for a local market would be inconsistent with the methodology for calculating the national rate.

G4. Can a market area consist of a subset of banks with similar characteristics, such as asset size or a retail focus? Likewise, can a market area exclude branches of large institutions?

No. The market area must be a geographic area and include all FDIC-insured competitors and branches.

G5. Should the cost of gifts given for opening a deposit account be included in the calculation of the deposit rate?

Yes. The rate used should include incentives provided to the customer, including the value of any gifts or cash incentives.

G6. How are accounts with uncommon features or restrictions handled when determining the effective yield?

The regulations allow the segregation of savings accounts, NOW accounts and MMDAs for evaluation purposes. However, accounts cannot be segregated based on special features or restrictions.

G7. If an insured institution ceases to be well capitalized, should existing non-brokered CDs that exceed the applicable rate caps be reported as brokered deposits in the Consolidated Reports of Condition and Income?

No. Above-market CDs, generated before a bank falls below well capitalized, should not be reported as brokered deposits; they also may continue to be held until their maturity dates. At renewal, the certificate of deposit cannot exceed the applicable market average by more than 75 basis points.

G8. If an insured depository institution ceases to be well capitalized, must the institution immediately meet the applicable rate caps on deposit accounts that never mature or renew, such as interest checking or savings accounts?

While Section 29 restricts institutions from paying above market rates on deposit accounts once they fall below well capitalized, it is critical that institution management contact its primary federal regulator when the lowering of the deposit rates could have a significant impact on liquidity or other factors affecting bank operations.

G9. In applying the rate caps, should an insured depository institution use the all-in cost of a deposit? Or should the bank use the annual percentage yield (APY) received by a deposit broker's customers? For example, if a bank pays 2.75 percent APY but a deposit broker charges a 25 basis points fee on the deposit, should 2.75 percent or 2.50 percent be used to determine conformance with the interest rate restrictions?

In the above example, the rate restrictions would apply to the all-in cost of the deposit (the customer's effective APY plus the 25 basis points fee or 2.75 percent). This treatment is consistent with the treatment mandated by the Consolidated Reports of Condition and Income, which include the following instruction:

"Include as interest expense on the appropriate category of deposits finders' fees and brokers' fees that represent an adjustment to the interest rate paid on deposits the reporting bank acquires through brokers. If material, such fees should be capitalized and amortized over the term of the related deposits. However, exclude fees levied by brokers that are, in substance, retainer fees or that otherwise do not represent an adjustment to the interest rate paid on brokered deposits."

H. APPLICATIONS FOR WAIVERS

H1. How can an insured depository institution obtain a waiver from the FDIC to accept brokered deposits?

The application procedures are set forth in the FDIC's regulations at 12 C.F.R. § 303.243. The FDIC may grant a waiver upon a finding that the acceptance of brokered deposits by the insured depository institution will not constitute an unsafe or unsound practice with respect to the institution. It is important to note that a waiver will not exempt a less than well capitalized institution from complying with the interest rate restrictions set forth in the FDIC's regulations at 12 C.F.R. § 337.6.

H2. What factors does the FDIC consider when assessing an application for a waiver?

Applications for waivers from brokered deposit restrictions are not automatically granted and are evaluated on a case-by-case basis. Further, brokered deposit waiver applications are usually not eligible for expedited processing. Waiver applications are evaluated for traditional safety-and-soundness concerns based on an institution's capital position, asset quality, liquidity, and earnings performance. Applications also should include the institution's plan for reducing its dependence on brokered deposits. The FDIC also considers the opinion of the institution's primary federal regulator and its Bank Secrecy Act/Anti-Money Laundering compliance. Other important factors considered include management's capability to manage the potential volatility of the brokered deposits, contingency funding plans (such as alternate funding sources under lines of credit with correspondent banks or government agencies), and

the liquidity monitoring program. The FDIC also will assess the institution's current business plan, including any plans relating to expansion or growth, and management's strategy to return the institution to a sound financial condition, if applicable.

LINKS TO RESOURCES

[FDIC Law, Regulations and Related Acts](#)

<https://www.fdic.gov/regulations/laws/rules/4000-100.html#brok> – See “Brokerage Activities”

[Study on Core Deposits and Brokered Deposits](#)