SUPPORTING STATEMENT
Reporting and Recordkeeping Requirements for Brokered Deposits
(OMB No. 3064-0099)

<u>INTRODUCTION</u>

The Federal Deposit Insurance Corporation ("FDIC") is requesting OMB approval for the revision of a currently approved collection of information as a result of proposed changes to 12 CFR §303.243 of the FDIC's regulations implementing Section 29 of the Federal Deposit Insurance Act. The collection of information is being re-captioned "Reporting and Recordkeeping Requirements for Brokered Deposits" to reflect the expanded recordkeeping and reporting requirements in the proposed rule.

A. <u>JUSTIFICATION</u>

1. <u>Circumstances that make the collection necessary:</u>

Section 29 of the Federal Deposit Insurance Act (FDI Act) restricts the acceptance of deposits by insured depository institutions from a ''deposit broker.'' Well capitalized insured depository institutions are not restricted from accepting deposits from a deposit broker. An ''adequately capitalized'' insured depository institution may accept deposits from a deposit broker only if it has received a waiver from the FDIC. A waiver may be granted by the FDIC ''upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice'' with respect to that institution. An ''undercapitalized'' depository institution is prohibited from accepting deposits from a deposit broker. The requirements for a brokered deposit waiver are found at 12 CFR 303.243.

Section 337.6 of the FDIC's Rules and Regulations implements and closely tracks the statutory text of Section 29, particularly with respect to the definition of ''deposit broker'' and its exceptions. Section 29 of the FDI Act does not directly define a ''brokered deposit,'' rather, it defines a ''deposit broker'' for purposes of the restrictions. Thus, the meaning of the term ''brokered deposit'' turns upon the definition of ''deposit broker.''

The proposed rule would amend Section 337.6 to define the term ''deposit broker'' to include:

(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 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 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.

Under the proposed rule, a person is "engaged in the business of facilitating the placement of deposits" of third parties with insured depository institutions, by, while engaged in business, engaging in one or more of the following activities:

(A) The person directly or indirectly shares any third party information with the insured depository institution;

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

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

(D) the person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity.

Section 29 of the FDI Act (12 U.S.C. 1831f) provides that an agent or nominee is excluded from the definition of deposit broker if its primary purpose is not the placement of funds with depository institutions. The proposed rule also amends 12 CFR §303.243 by setting forth the recordkeeping and reporting requirements to establish and obtain a "primary purpose" exception waiver from the FDIC.

2. Use of the Information:

For the application for waiver of the prohibition on the acceptance of brokered deposits, the applicant is required to furnish information in letter form. Generally, the required information pertains to the timeframe for which the waiver is requested; policies governing the use of the deposits; the volume, rates, and maturities of deposits held and anticipated; asset growth plans; procedures and practices regarding deposit solicitations; management oversight of the solicitation, acceptance, and use of the deposits; the reasons the institution believes its acceptance, renewal, or rollover of brokered deposits would pose no undue risk; and a recent consolidated financial statement, including balance sheet and income statement.

For the application for a primary purpose exception, the applicant is required to furnish information to establish that it qualifies for the primary purpose exception. The information furnished by the applicant is used by the FDIC as a basis for evaluating the factors required by the proposed rule before approving the application.

A depository institution must maintain and, upon request must present to an examiner, records to establish that applicable requirements continue to be met for deposits placed by a third party that has been granted a primary purpose exception by FDIC.

3. Consideration of the use of improved information technology:

Applicants are free to use whatever methods are least burdensome for them to supply the required information. Records can be maintained utilizing any information technology that permits review by FDIC examiners.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated elsewhere.

5. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

All insured state chartered associations (and federal savings associations, where applicable), regardless of size, must submit the same applications. The information required to be submitted in the applications are intended to impose the minimum burden consistent with the FDIC's statutory mandates.

6. Consequences to the Federal program if the collection were conducted less frequently:

Conducting the collection less frequently would present safety and soundness risks.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320.5(d)(2):

None. This information collection is conducted in accordance with the guidelines in 5 CFR 1320.5(d)(2).

8. Efforts to consult with persons outside the agency:

On February 10, 2020 the FDIC published a notice of proposed rulemaking in the Federal Register (85 FR 7453) requesting public comment for 60 days on proposed revisions to this information collection. The comment period for this notice expires on April 10, 2020. The FDIC address any comments received when the final rule is published.

9. Payment or gifts to respondents

None.

10. Any assurance of confidentiality:

The information will be kept private to the extent permitted by law.

11. Justification for questions of a sensitive nature:

No information of a sensitive nature is requested.

12. Estimate of hour burden including annualized hourly costs:

Methodology and Assumptions –

The FDIC estimated the annual burden associated with the proposed revisions based on the following assumptions and according to the methodology described below:

1. The FDIC lacks the data necessary to determine the number of third parties which will take advantage of the applications relating to exceptions from the definition of "deposit broker," and invites comments on how its estimates could be improved. The first type of exception, that based on placing less than 25 percent of customer assets under management, is expected to be sought largely by broker-dealers. With few exceptions, broker-dealers must register with the Securities and Exchange Commission and be members of FINRA. There were 3,607 FINRA registered broker-dealer firms in 2018. Some of the 3,607 broker-dealers may not engage in activity which meets the definition of "deposit broker," while some firms which do engage in such activity may not be among the 3,607 FINRA registered broker-dealers. However, in the absence of a more refined figure, the FDIC estimated that, over the three-year period covered by this information collection request, an average of 1,203 firms will apply for an exception based on placing less than 25 percent of customer assets under management.

2. The FDIC believes that the exceptions based on enabling transactions and on other business arrangements will be sought by firms engaged in deposit brokering. However, the FDIC is unable to determine the number of firms which engage in deposit brokering. According to Census data, there are 1,105 establishments within the industry in which deposit brokers are classified. Not all 1,105 establishments engage in deposit brokering, and some firms which engage in deposit brokering may be classified in another industry. In the absence of better data, the FDIC estimated that, over the three-year period covered by this information collection request, an average of 369 firms will apply for an exception based on enabling transactions and other business arrangements.

3. The FDIC lacks the data necessary to determine the number of business lines for which firms may submit applications, and in the absence of a more refined estimate, assumed that all respondents submit one application.

4. The FDIC estimated the amount of time required to complete each application type. The most straightforward application type is that for which a primary purpose exception to the

definition of deposit broker is sought based on placing less than 25 percent of customer assets under management, by business line, with IDIs. For this type of application, two items are required: 1) the total amount of customer assets under control by the third party for that particular business line, and 2) the total amount of deposits placed by the third party on behalf of its customers, for that particular business line, at all IDIs, exclusive of the amount of brokered CDs being placed by that third party. Given the "bright line" nature of this application type, and the limited number of line items required, the FDIC estimated it would take each respondent three hours on average to gather the material and submit the request required for this application type.

5. The second application type is that for which a primary purpose exception to the definition of deposit broker is sought based on placing funds to enable transactions. Under this application type, the applicant would need to submit information, including a copy of the form of contract used with customers and with the IDIs in which the third party is placing deposits, showing that all of its customer deposits are in transaction accounts, and that no interest, fees, or other remuneration is being provided to or paid for the transaction accounts. Finally, an application under this type would need to explain how its customers utilize its services for the purpose of making payments and not for the receipt of a deposit placement service or deposit insurance: and provide a description of the deposit placement arrangement. Because the second application type should require more time to prepare than the first, the FDIC estimated it would take each respondent five hours on average the gather the required material and submit the application.

6. The third application type is for a primary purpose exception from the definition of deposit broker where the business arrangement is not covered by the other two types described above. This third type requires the items enumerated in this proposal, and due to the number of items requested, the FDIC estimates it would take each respondent 10 hours on average to gather the material required for this application type and submit the application.

7. Each application type has associated quarterly (ongoing) reporting requirements, which are to be spelled out by the FDIC in its written approval of the application. For the first two application types, the FDIC estimates it would take each respondent an average of 30 minutes per quarter to gather the information and submit the report for an annual average of 2 burden hours. The FDIC assumes that the initial quarterly report may take longer to prepare, but once reporting and recordkeeping systems are in place, the FDIC believes an average of 30 minutes per quarter is a reasonable estimate for this ongoing reporting burden. The third application type, due to its greater number of required items, is estimated to take each respondent an average of one hour per quarter to gather the information and submit the report for an annual average of 4 burden hours.

8. The FDIC revised its estimates for the information collection "Application for Waiver of Prohibition on Acceptance of Brokered Deposits." Based on consultations with subject matter experts, the FDIC estimates nine IDIs will file this application each year, on average. Each IDI applicant will spend six hours, on average, to file. Thus, the FDIC estimates the average annual burden at 54 hours.

Estimated Annual Burden –

Information Collection (IC) Description	Type of Burden	Obligation to Respond	Estimated Average Number of Respondents	Estimated Number of Responses	Estimated Time per Response (Hours)	Frequency of Response	Total Estimated Annual Burden (Hours)
Initial Implementation							
Application for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Management	Reporting	Obtain or Retain a Benefit	1,203	1	3	On Occasion	3,609
Application for Primary Purpose Exception Based on Enabling Transactions	Reporting	Obtain or Retain a Benefit	369	1	5	On Occasion	1,845
Application for Primary Purpose Exception Not Based on Enabling Transactions or Placement of Less Than 25 Percent of Customer Assets Under Management	Reporting	Obtain or Retain a Benefit	369	1	10	On Occasion	3,690
Ongoing							
Reporting for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Management	Reporting	Obtain or Retain a Benefit	3,607	4	0.5	Quarterly	7,214
Reporting for Primary Purpose Exception Based on Enabling Transactions	Reporting	Obtain or Retain a Benefit	1,105	4	0.5	Quarterly	2,210
Reporting for Primary Purpose Exception Not Based on Enabling Transactions or Placement of Less Than 25 Percent of Customer Assets Under Management	Reporting	Obtain or Retain a Benefit	1,105	4	1	Quarterly	4,420
Application for Waiver of Prohibition on Acceptance of Brokered Deposits	Reporting	Obtain or Retain a Benefit	9	1	6	On Occasion	54
Total Estimated Annual Burden Hours							**23,042**
Note: The estimated number of respondents in the *Initial Implementation* section is an annual average calculated over three years.							

Annualized Cost of Internal Hourly Burden -

To estimate the annual dollar cost of the total estimated annual hourly burden, the FDIC used the occupational breakdown associated with the Application for Waiver of Prohibition on Acceptance of Brokered Deposits for the new information collection requirements contained in the proposed rule. FDIC assumes that all of the 23,042 estimated annual burden hours are worked by managers and executives (5 percent), lawyers (5 percent), compliance officers (10 percent), IT specialists (30 percent), financial analysts (40 percent), and clerical staff (10 percent), so that 100 percent of the hours are allocated to an occupation.

The FDIC then used the 75th percentile wage estimates for each occupation, based on the industry of the expected applicant, from the Bureau of Labor Statistics, and adjusted them for inflation and to account for the value of non-wage benefits, to produce an annual labor cost associated with the hours estimated above.[1] This resulted in an estimated weighted average hourly wage of $106.11 for applications relating to exceptions from the definition of "deposit broker," and $83.88 for the Application for Waiver of Prohibition on Acceptance of Brokered Deposits. Based on the inflation adjusted wages, and accounting for non-wage benefits, the FDIC estimates that the average annual average reporting cost associated with the proposal is approximately $2.4 million, or approximately $1,545.70 per respondent.

13. <u>Estimate of start-up costs to respondents:</u>

None.

14. <u>Estimate of annualized costs to the government:</u>

None.

15. <u>Analysis of change in burden:</u>

1 Specifically, for the applications relating to exceptions from the definition of ''deposit broker,'' the FDIC used the wage estimates from the Bureau of Labor Statistics (BLS) ''National Industry- Specific Occupational Employment and Wage Estimates: Securities, Commodity Contracts, and Other Financial Investments and Related Activities Sector'' (May 2018), while for the Application for Waiver of Prohibition on Acceptance of Brokered Deposits, the FDIC used the wage estimates from the BLS ''National Industry-Specific Occupational Employment and Wage Estimates: Depository Credit Intermediation Sector'' (May 2018). Other BLS data used were the Employer Cost of Employee Compensation data (June 2019), and the Consumer Price Index (June 2019). Hourly wage estimates at the 75th percentile wage were used, except when the estimate was greater than $100, in which case $100 per hour was used, as the BLS does not report hourly wages in excess of $100. The 75th percentile wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the June 2019 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 33.8 percent of total compensation. Additionally, the wage has been adjusted for inflation according to BLS data on the Consumer Price Index for Urban Consumers (CPI–U), so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 1.86 percent between May 2018 and June 2019.

Under the proposed rule, total estimated annual burden increases by 22,862 hours from 180 hours in the currently-approved information collection, to 23,042 hours under this proposed revision. The increase in burden is primarily attributable to new recordkeeping and reporting requirements in the proposed revisions to the rule. The new requirements increase estimated annual burden by 22,988 hours. This increase is offset by a reduction of 126 hours due to the decrease in the estimated number of respondents for the *Application for Waiver of Prohibition on Acceptance of Brokered Deposits* from 30 to 9 which resulted in a decrease of 126 hours in the estimated annual burden for that IC from 180 hours to 54 hours.

16. Information regarding collections whose results are planned to be published for statistical use:

Not applicable. No publication for statistical use is contemplated.

17. Exceptions to Display of expiration date:

None.

18. Exceptions to certification:

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.