

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

INTRODUCTION

The Federal Deposit Insurance Corporation (“FDIC”) is requesting OMB approval for the revision of a currently approved collection of information as a result of a Final Rule that makes 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 rule.

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

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.”

Current Actions

On December 15, 2020, the FDIC issued the brokered deposits final rule.¹ This rule accomplished several objectives, including establishing a new framework for analyzing certain provisions of the “deposit broker” definition,² including “facilitating” and “primary purpose.”³

1 86 FR 6742 (January 22, 2021).

2 See Section 29(g) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831f (g)).

3 The final rule also amended the FDIC’s methodology for calculating the national rate, the national rate cap, and the local market rate cap for the interest rate restrictions under Section 29 that apply to less than well-capitalized institutions.

Relevant for brokered deposits, Section 29 of the FDI Act provides that an agent or nominee meets the primary purpose exception to the “deposit broker” definition when the primary purpose of the agent or nominee is not the placement of funds with depository institutions. In the brokered deposits final rule, the FDIC adopted revised criteria for the primary purpose exception based on the relationship between the agent or nominee and its customers.

Specifically, the primary purpose exception applies when the primary purpose of the agent’s or nominee’s business relationship with its customers is not the placement of funds with depository institutions. The following business relationships were identified in the brokered deposits final rule as “designated exceptions” from the deposit broker definition under the final rule and are business relationships in which, with respect to a particular business line:

- (1) Less than 25 percent of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions (25 percent test);
- (2) 100 percent of depositors’ funds that the agent or nominee places, or assists in placing, at depository institutions are placed into transactional accounts that do not pay any fees, interest, or other remuneration to the depositor;
- (3) A property management firm places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing property management services;
- (4) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing cross-border clearing services to its customers;
- (5) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing mortgage servicing;
- (6) A title company places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating real estate transactions;
- (7) A qualified intermediary places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating exchanges of properties under section 1031 of the Internal Revenue Code;
- (8) A broker-dealer or futures commission merchant places, or assists in placing, customer funds into deposit accounts in compliance with 17 CFR 240.15c3-3(e) or 17 CFR 1.20(a);
- (9) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of posting collateral for customers to secure credit-card loans;
- (10) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of paying for or reimbursing qualified medical expenses under section 223 of the Internal Revenue Code;
- (11) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of investing in qualified tuition programs under section 529 of the Internal Revenue Code; (12) the agent or nominee places, or assists in placing,

customer funds into deposit accounts to enable participation in certain tax-advantaged programs;

(13) A Federal, State, or local agency places, or assists in placing, customer funds into deposit accounts to deliver funds to the beneficiaries of government programs; and

(14) The agent or nominee places, or assists in placing, customer funds into deposit accounts pursuant to such other relationships as the FDIC specifically identifies as a designated business relationship that meets the primary purpose exception.

The final rule amends 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.

Under the final rule:

- Respondents may file an application with the FDIC for a waiver of the prohibition on the acceptance of brokered deposits;

- Respondents may file a notice informing the FDIC that the respondent is availing itself of the Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Administration;
- Respondents may file a notice informing the FDIC that the respondent is availing itself of the Primary Purpose Exception Based on Enabling Transactions; and
- Respondents may file an application with the FDIC for a “Primary Purpose Exception Not Based on the Business Arrangements that do not meet a Designated Exception for a ‘Primary Purpose Exception’ based on ‘Enabling Transactions’” (reporting requirement to obtain or retain a benefit).

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.

In response to the proposal, the FDIC received more than 160 comments from individuals, banking organizations, non-profits, as well as industry and trade groups representing banks, insurance companies, and the broader financial services industry. A number of commenters supported the FDIC's efforts to modernize the rule and provide clarifications to key definitions. Generally, a common theme amongst the commenters was a desire for the FDIC to provide additional clarification to its proposed changes to the "deposit broker" definition and its corresponding statutory and regulatory exceptions. Some commenters suggested that a legislative change to Section 29 was needed, including replacing the brokered deposit restrictions with a restriction on asset growth for less than well capitalized institutions. Commenters also suggested that the FDIC revise certain aspects of the proposal to permit certain types of arrangements that, under the proposal, would continue to be considered to be brokered to instead either fall within an exception or otherwise to be determined to be non-brokered. A small number of commenters opposed the proposed changes, with one commenter stating that the changes would create new loopholes in the statutory restrictions on brokered deposits, threatening safety and soundness of banks and the Deposit Insurance Fund (DIF), without evidence that the changes are necessary and without knowing the impact of the changes. Another commenter criticized the proposal for failing to focus on the underlying risks of brokered deposits and weakening the FDIC's ability to understand deposit volatility and balance sheet risks of supervised IDIs.

The FDIC's consideration and response to the comments is full discussed in the Final Rule preamble included in this Information Collection Request Package.

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 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 may avail themselves of the primary purpose exception based on placing less than 25 percent of customer assets under administration and therefore, may make a notice submission to the FDIC. When the notice of proposed rulemaking for this rule was published, the FDIC invited comments on how its estimates could be improved⁴ but received no comments on the subject.

The primary purpose exception based on placing less than 25 percent of customer assets under administration is expected to be utilized largely by broker-dealers. With few exceptions, broker-dealers must register with the Securities and Exchange Commission and be members of FINRA. There were 3,517 FINRA registered broker-dealer firms in 2019. Some of the 3,517 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 3,517 FINRA registered broker-dealers. However, in the absence of data to estimate future respondents, consistent with the changes in the rule relative to the NPR, the FDIC assumes that 703 firms will submit notices for a “designated exception” under the primary purpose exception based on placing less than 25 percent of customer assets under administration, in the initial year of implementation. Further, the FDIC assumes that 176 firms will submit

485 FR 7453 (Feb. 10, 2020).

notices for a “designated exception” under the primary purpose exception based on placing less than 25 percent of customer assets under administration, on average each year, on an ongoing basis.

2. The FDIC lacks the data necessary to determine the number of third parties which may avail themselves of the primary purpose exception based on enabling transactions and other business arrangements and may elect to make a notice submission to the FDIC. When the notice of proposed rulemaking for this rule was published, the FDIC invited comments on how its estimates could be improved but received no comments on the subject.

The FDIC believes that the primary purpose exception based on enabling transactions and on other business arrangements will be utilized by firms engaged in deposit brokering. The FDIC lacks the data necessary to determine the number of firms which engage in deposit brokering. According to Census data, there are 1,223 establishments within the industry in which deposit brokers are classified. Not all 1,223 establishments engage in deposit brokering, and some firms which engage in deposit brokering may be classified in another industry. In the absence of data to estimate future respondents, consistent with the changes in the rule relative to the NPR, the FDIC assumes that 245 firms will submit notices in reliance on the enabling transactions designated exception in the initial year of implementation. Finally, in the absence of data to estimate future respondents, the FDIC assumes that 61 will file a notice in reliance upon the enabling transactions designated exception, or a designated exception identified in the future that requires a notice, and an additional 61 will submit an application, on average each year, on an ongoing basis.

3. The FDIC lacks the data necessary to determine the number of third parties which may avail themselves of the primary purpose exception not based on one of the designated enabling transactions or placement of less than 25 percent of customer assets under administration, and do not meet a designated exception. When the notice of proposed rulemaking for this rule was published, the FDIC invited comments on how its estimates could be improved but received no comments on the subject.

The FDIC believes that the exceptions not based on a designated exception, which includes enabling transactions and placement of less than 25 percent of customer assets under administration, 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 1,223 establishments within the industry in which deposit brokers are classified. Not all 1,223 establishments engage in deposit brokering, and some firms which engage in deposit brokering may be classified in another industry. Additionally, the FDIC assumes that 245 firms submit applications for a primary purpose exception in the initial year of implementation. Finally, in the absence of data to estimate future respondents, the

FDIC assumes that an additional 61 will submit an application for a primary purpose exception, on average each year, on an ongoing basis.

4. 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.
5. The FDIC estimated the amount of time required to complete each notice submission and application type. The notice submission for a primary purpose exception to the definition of deposit broker based on placing less than 25 percent of customer assets under administration, by business line, with IDIs. For this type of submission 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 primary purpose exception, 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 information required for this notice submission.
6. The notice submission for a primary purpose exception to the definition of deposit broker based on placing funds to enable transactions requires an entity to submit the following information: 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, a submission of 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 this submission requires 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 notice.
7. The application for a primary purpose exception from the definition of deposit broker not based on a designated exception, which includes enabling transactions and placement of less than 25 percent of customer assets under administration, requires the items enumerated in the regulation, 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 and submit the application
8. Each notice submission or application has associated quarterly (ongoing) reporting requirements. For approved applications these ongoing requirements are to be spelled out by the FDIC in its written approval. For the first notice submission, the FDIC estimates it would take each respondent an average of 30 minutes per quarter to gather the information and submit the information for an annual average of 2 burden hours. For the second notice

submission, the FDIC estimates it will take reach respondent an average of 30 minutes per year to gather and submit the information. The FDIC assumes that the initial quarterly submission may take longer to prepare, but once reporting systems are in place, the FDIC believes an average of 30 minutes per quarter is a reasonable estimate for this ongoing reporting burden. For the application requirement, due to its greater number of required items, is estimated to take each respondent an average of 0.25 hours per quarter to gather the information and submit it for an annual average of 1 burden hour.

9. The FDIC revised its estimates for the information collection “Application for Waiver of Prohibition on Acceptance of Brokered Deposits.” 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							
<i>Notice submission for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Administration</i>	Reporting	Obtain or Retain a Benefit	703	1	3	On Occasion	2,109
<i>Notice submission for Primary Purpose Exception Based on Enabling Transactions</i>	Reporting	Obtain or Retain a Benefit	245	1	5	On Occasion	1,225
<i>Application for Primary Purpose Exception Not Based on the Business Arrangements that do not meet a Designated Exception</i>	Reporting	Obtain or Retain a Benefit	245	1	10	On Occasion	2,450
Ongoing							
<i>Notice submission for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Administration</i>	Reporting	Obtain or Retain a Benefit	176	4	0.5	Quarterly	352
<i>Notice Submission for Primary Purpose Exception Based on Enabling Transactions</i>	Reporting	Obtain or Retain a Benefit	61	1	0.5	Annual	30.5
<i>Reporting for Primary Purpose Exception Not Based on the Business Arrangements that do not meet a Designated Exception</i>	Reporting	Obtain or Retain a Benefit	61	4	.25	Quarterly	61
<i>Application for Waiver of Prohibition on Acceptance of Brokered Deposits</i>	Reporting	Obtain or Retain a Benefit	9	1	6	On Occasion	54

Total Estimated Annual Burden Hours	6,281.5
Note: The estimated number of respondents in the <i>Initial Implementation</i> 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 6,281.5 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.⁵ This resulted in an estimated weighted average hourly wage of \$106.11. 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 final rule is approximately \$666,530.

13. Estimate of start-up costs to respondents:

None.

14. Estimate of annualized costs to the government:

None.

⁵ 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.

15. Analysis of change in burden:

Under the final rule, total estimated annual burden increases by 6,192 hours from 90 hours in the currently-approved information collection, to 6,282 hours under this revision. The increase in burden is primarily attributable to new reporting requirements in the revised rule.

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.