



On July 30, 2024, the FDIC Board of Directors, by a vote of 3-2, approved a notice of proposed rulemaking that would make several significant revisions to the agency's rules on brokered deposits (12 CFR 337.6).<sup>1</sup> The FDIC most recently amended its brokered deposit framework in 2020 when it narrowed the types of deposit-related activities that are considered brokered (2020 Rule).<sup>2</sup> The latest proposal would undo several elements of the 2020 Rule, which then-Director (now Chair) Martin Gruenberg opposed.<sup>3</sup> Public comments for the proposal are due 60 days after publication in the *Federal Register*.

### 5 insights you should know

**Broadening definition of deposit broker:** The proposal would broaden the definition of "deposit broker"<sup>4</sup> by replacing the term "matchmaking activities" with a wider set of deposit allocation services, as well as adding a new factor related to fees. Under the proposal, a person who proposes or determines deposit allocations, including through the operation or use of an algorithm or functionally similar program or technology, would be considered a deposit broker. Eliminating the matchmaking definition also eliminates an embedded exception for an agent and its affiliated bank(s).

**Eliminating exclusive placement carve-out:** The 2020 Rule revised brokered deposit restrictions to exclude third parties from being considered deposit brokers if they had an exclusive deposit placement arrangement with only one insured depository institution. Under this proposal, the FDIC would eliminate the exclusive placement carve-out and restore the rule to any third party that meets the definition of deposit broker, including those involved in placing deposits at only one insured depository institution (IDI).

**Narrowing primary purpose exception:** The primary purpose exception (PPE) excludes persons whose primary purpose is not the placement of funds with IDIs from being considered a deposit broker. The proposal would provide additional factors to consider (e.g., fees, level of discretion, or other remuneration provided to the third party) in determining whether the *intent* of the third party in placing deposits at an IDI is for a substantial purpose other than to provide deposit-placement services.

**Lowering the 25% test and narrowing permitted agents/nominees:** The 2020 Rule provided for PPE qualification if less than 25% of the total assets under administration of an agent/nominee—in a particular business line—is placed at IDIs. Under the proposal, this 25% test would be replaced with a new "Broker-Dealer Sweep Exception" available only to registered broker-dealers or investment advisers and provided that less than 10% of total assets under management, as agent/nominee, in a particular business line, is placed into non-maturity accounts at IDIs. This change would largely bring the regulatory framework back before the 2020 Rule. Others outside of this exception would have to apply to the FDIC to seek exempt status.

**Eliminating the enabling transaction exception:** The 2020 Rule distinguished between "acting with the purpose of placing deposits" and "acting with the purpose of placing deposits *to enable transactions*." Under the proposal, the FDIC would eliminate this enabling transaction test from PPE analysis. As such, PPE applications previously approved under the enabling transaction exception would be rescinded and IDIs currently relying on such exceptions would need to file an application under the revised general PPE.

### 5 considerations to evaluate

**1 Significant amounts of deposits expected to be reclassified as brokered:** The FDIC indicated in the proposal that fewer entities are expected to qualify for exemption from the definition of a deposit broker under the proposed rule. The 2020 Rule led to a reduction of nearly \$350 billion in brokered deposits—amounting to over a 30% decrease—which may be indicative of the size of the proposal's impact. Banks should perform an individualized assessment to better understand the potential reclassification of their deposit base under the proposal.

**2 IDIs near, or less than, the "well-capitalized" minimum requirements should assess their funding sources:** Less than well-capitalized banks face statutory and regulatory restrictions on accepting brokered deposits. Under the proposal, some deposits that are currently classified as non-brokered may be reclassified as brokered, potentially imposing significant fundings constraints at these institutions. Banks approaching or below well-capitalization thresholds should evaluate their funding sources and consider developing strategic plans to restructure liabilities in respond to potential restrictions on current funding access.

**3 IDIs may need to file more exception applications:** The proposed rule would remove multiple exceptions from the deposit broker definition and restricts third parties from directly applying for waivers, potentially causing a significant increase in brokered deposit waiver applications for many IDIs. Vice Chair Travis Hill [warned](#) of a possible "enormous avalanche of applications" hitting the FDIC initially. Banks should evaluate the potential compliance costs of such applications, including staff resourcing and information collection from third parties.

**4 Some IDIs will likely face higher deposit insurance assessments:** Under the FDIC's assessment regulations (12 CFR Part 327), IDIs with a significant concentration of brokered deposits may pay higher quarterly assessments, depending on other factors. As the proposed rule would be expected to result in a material amount of deposits currently considered non-brokered to be reclassified as brokered, some IDIs' deposit insurance assessments may increase. Consequently, banks should evaluate their potential assessment costs under the proposal and consider potential assessment increases into their strategic planning.

**5 Lack of cost estimates under the proposal:** The FDIC's proposal was not prescriptive on potential costs and economic impacts, including the amount of deposits that would be reclassified as brokered and the associated costs for IDIs that may arise from adjustments in liabilities, regulatory ratios, and changes to internal systems, policies, or procedures, as well as potential increases in deposit insurance assessments. Banks that utilize third parties and foresee potential impacts should conduct a financial analysis of the proposal under various scenarios, utilizing internal data where available and appropriate.



Area	Key considerations – 2020 Rule	Key considerations – 2024 proposal	Key changes	Impact
<p><b>Definition of “Deposit Broker”</b></p>	<ul style="list-style-type: none"> <li>• The rule defines a deposit broker as a person engaged in the business of placing deposits of third parties if that person receives third-party funds and deposits those funds at more than one insured depository institution.</li> <li>• It also provides that "a person is engaged in the business of facilitating the placement of deposits of third parties" if that person is engaging in any of the following activities with respect to deposits placed at more than one IDI:               <ul style="list-style-type: none"> <li>○ The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution</li> <li>○ The person is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account; or</li> <li>○ The person engages in matchmaking activities</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The proposed rule would amend the "deposit broker" definition by revising the "engaged in the business of placing deposits" (placing) and "engaged in the business of facilitating the placement of deposits" (facilitating) prongs</li> <li>• The proposed rule provides that a person is engaged in the business of placing or facilitating the placement of deposits of third parties if that person engages in one or more of the following activities:               <ul style="list-style-type: none"> <li>○ The person receives third-party funds and deposits those funds <b>at one</b> or more IDIs</li> <li>○ The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another IDI</li> <li>○ The person is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account</li> <li>○ The person proposes or determines deposit allocations at one or more IDIs (including through operating or using an algorithm, or any other program or technology that is functionally similar)</li> <li>○ The person has a relationship or arrangement with an IDI or customer where the IDI, or the customer, pays the person a fee or provides other remuneration in exchange for, or related to, the placement of deposits</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Combines the "placing" and "facilitating" prongs</li> <li>• Changes placing funds at more than one IDI to one or more IDIs</li> <li>• Removes the term "matchmaking activities" and replace it with a deposit allocation provision</li> <li>• Adds a new factor related to fees, which could cover any person who receives a fee from the IDI or the customer “in exchange for deposits being placed at one or more depository institutions”</li> <li>• These changes broaden the scope of players that would be "deposit brokers," with result that the universe of deposits that would be "brokered" would be expanded</li> </ul>	<p>High</p>



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<b>Removal of Exclusive Deposit Arrangement Exception</b>	<ul style="list-style-type: none"> <li>The preamble to the 2020 Final Rule specified that any person that has an exclusive deposit placement arrangement with one IDI and is not placing or facilitating the placement of deposits at any other IDI, will not be "engaged in the business" of placing, or facilitating the placement of, deposits at IDIs and therefore will not meet the "deposit broker" definition.</li> </ul>	<ul style="list-style-type: none"> <li>Expands the deposit broker definition to include any person that "receives third-party funds and deposits those funds <b>at one</b> or more IDIs."</li> <li>This revises the brokered deposit regulations to restore their applicability to any third party that meets the definition of deposit broker, including those involved in placing deposits at only one IDI.</li> </ul>	<ul style="list-style-type: none"> <li>Eliminates the exception that some fintechs and others enjoyed where they had an arrangement where they sent funds only to one IDI--these fintechs would now be "deposit brokers" and the funds would be "brokered deposits"</li> </ul>	<p>Medium</p>
<b>Revision of primary purpose exceptions (PPE)</b>	<ul style="list-style-type: none"> <li>The 2020 Final Rule provides that the primary purpose exception applies when, with respect to a particular business line, the primary purpose of the agent's or nominee's business relationship with its customers is not the placement of funds with depository institutions.</li> <li>The rule also identifies fourteen designated business exceptions with respect to a particular business line as meeting the primary purpose exception.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal provides that the primary purpose exception to the "deposit broker" definition would apply when an agent or nominee whose primary purpose in placing customer deposits at IDIs is for a substantial purpose other than to provide a deposit-placement service or FDIC deposit insurance with respect to particular business lines.</li> <li>The proposed rule would amend the 25 percent test and eliminate the enabling transactions test designated exception.</li> </ul> <p><i>(The details of the changes to the 25 percent test and enabling transactions exceptions are covered in subsequent slides)</i></p>	<ul style="list-style-type: none"> <li>Considers the relationship of the third party with the IDI and whether the intent of the third party in placing deposits at an IDI is for a substantial purpose other than to provide a deposit-placement service or FDIC deposit insurance</li> </ul>	<p>High</p>



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<b>Eligible applicants for the primary purpose exception process</b>	<ul style="list-style-type: none"> <li>The 2020 Final Rule allows a third party or an IDI on behalf of a third party to submit a primary purpose exception application.</li> </ul>	<ul style="list-style-type: none"> <li>Proposal no longer allows third parties to apply for a primary purpose exception, and instead, each IDI wishing to rely on a primary purpose exception would be required to submit an application for the specific deposit placement arrangement that it has with the third party involved.</li> </ul>	<ul style="list-style-type: none"> <li>IDI has to apply for the exception, compared to earlier when the third party could also apply</li> </ul>	<p>Medium</p>
<b>Additional factors for PPE application</b>	<ul style="list-style-type: none"> <li>Under the 2020 Final Rule, applicants that seek a primary purpose exception must include certain information when submitting an application to the FDIC.</li> </ul>	<p>The proposed rule would add new factors to be considered as part of the primary purpose exception application; specifically, it considers whether:</p> <ul style="list-style-type: none"> <li>The IDI, or customer, pays fees or other remuneration to the agent or nominee for deposits placed with the IDI and the amount of such fees or other remuneration, including how the amount of fees or other remuneration is calculated;</li> <li>The agent or nominee has discretion to choose the IDI(s) at which customer deposits are or will be placed; and</li> <li>The agent or nominee is mandated by law to disburse funds to customer deposit accounts.</li> </ul>	<ul style="list-style-type: none"> <li>To determine whether the third-party is placing deposits for a substantial purpose other than to provide deposit-placement service or FDIC deposit insurance, FDIC considers the amount of fees or other remuneration, that an IDI or customer pays for deposits placed with the IDI; whether the third party has discretion to choose the IDI(s) to place customer deposits; and whether a third-party is disbursing funds as mandated by law</li> </ul>	<p>High</p>



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<p><b>Change of “25 Percent Test” Exception to “Broker-Dealer Sweep” Exception</b></p>	<ul style="list-style-type: none"> <li>In the 2020 Rule, FDIC recognizes a number of business relationships, known as “designated exceptions”, 2 of which will not be required to go through the application process, and instead will only require a notice, and one of them is the 25 Percent Test</li> <li>These are business relationships in which, with respect to a particular business line less than 25 percent of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions</li> <li>The notice required details such as the designated exception which the third party will rely on, amount of customer assets under administration, total amount of deposits placed by the third party, etc.</li> </ul>	<ul style="list-style-type: none"> <li>The Broker-Dealer Sweep Exception would be available only to a broker-dealer or investment adviser registered with the SEC and only if less than 10 percent of the total assets that the broker-dealer or investment adviser, has under management for its customers, in a particular business line, is placed into non-maturity accounts at one or more IDIs, without regard to whether the broker-dealer or investment adviser and depository institutions are affiliated</li> <li>Amends one of the key measures of this exception from "customer assets under administration" to "customer assets under management"</li> <li>Defines “assets under management” to mean securities portfolios and cash balances with respect to which an investment adviser or broker-dealer provides continuous and regular supervisory or management services</li> <li>Proposed rule would allow an IDI to file a designated exception notice for this exception on behalf of only if no additional third party (including any affiliate) is involved in the sweep program</li> <li>An IDI may rely on the exception 90 days after filing a complete notice if the FDIC has not disapproved the notice, and FDIC also has discretion to extend the time period for an additional 90 days</li> <li>The notice requires additional details such as description of the deposit placement arrangement; registration and contact information for the broker-dealer or investment adviser; total amount of customer assets under management; total amount of deposits placed; and certification that no additional third parties are involved in the arrangement</li> </ul>	<ul style="list-style-type: none"> <li>Reduces the scope of application of the exception by reducing 25% to 10% of the assets and is also limited to registered broker dealers and investment advisers, thus materially reducing the breadth and scope of companies and services that could leverage the PPE exemption</li> <li>Only allows for the exception if no additional third party is involved in the sweep program</li> <li>The FDIC has 90 days to disapprove or extend the 90-day timeline.</li> </ul>	<p>High</p>



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<p><b>Removal of Enabling Transactions Designated Exception</b></p>	<ul style="list-style-type: none"> <li>The 2020 Final Rule distinguished between acting with the purpose of placing deposits and acting with the purpose of placing deposits to enable transactions and created the enabling transactions primary purpose exception</li> <li>A third party qualifies for the current enabling transactions primary purpose exception by either submitting an application or submitting a notice (In a deposit placement arrangement where interest, fees, or other remunerations are provided to the depositor, the agent or nominee must receive prior approval before relying on the enabling transactions primary purpose exception by submitting an application)</li> <li>As part of the application process, certain criteria will be considered: amount of interest, fees, or other remuneration; number of transactions customers make, on a monthly basis; marketing materials provided by the agent or nominee; percentage of customer funds placed in deposit accounts that are not transaction accounts</li> </ul>	<ul style="list-style-type: none"> <li>FDIC is proposing to eliminate the enabling transactions test and the corresponding notice process</li> <li>IDIs that currently rely on a primary purpose of enabling transactions under the notice process could file an application under the general primary purpose exception application process, if they believe that the primary purpose in placing customer deposits at IDIs is for a substantial purpose other than to provide a deposit-placement service or FDIC deposit insurance with respect to the particular business line</li> <li>The proposed rule would also eliminate the application process for the enabling transactions exception where interest, fees, or other remuneration is provided to depositors</li> <li>Applications previously approved under this provision would be rescinded.</li> </ul>	<ul style="list-style-type: none"> <li>Removal of enabling transactions test exception and the corresponding notice process</li> <li>IDIs that currently rely on this exception would need to file an application under the general primary purpose exception application process</li> </ul>	<p>High</p>



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<p><b>Regaining Agent Institution Status</b></p>	<ul style="list-style-type: none"> <li>The 2020 Rule did not provide clarity on the issue on when an IDI might regain agent institution status after losing such status.</li> </ul>	<p>Under the proposal, an IDI that lost its agent institution status would be eligible to regain its agent institution status as follows:</p> <ul style="list-style-type: none"> <li>If the IDI is well capitalized, the date the IDI is notified that its CAMELS composite condition is rated outstanding or good at its most recent examination</li> <li>If the IDI is well-rated, as of the date the IDI is notified, or is deemed to have notice, that it is well capitalized under regulations implementing section 38 of the FDI Act issued by the appropriate federal banking agency;</li> <li>The date the FDIC grants a brokered deposit waiver; or</li> <li>On the last day of the third consecutive calendar quarter during which the IDI did not at any time receive reciprocal deposits that caused its total reciprocal deposits to exceed its special cap (special cap is the average amount of reciprocal deposits held at the IDI on the last day of each of the four calendar quarters preceding the calendar quarter in which the agent institution was found not to have a composite condition of outstanding or good or was determined to be not well capitalized)</li> </ul>	<ul style="list-style-type: none"> <li>Provides clarity on when an IDI can regain agent institution status</li> </ul>	<p>Low</p>

## Endnotes

<sup>1</sup> Federal Deposit Insurance Corporation (FDIC), “[FDIC Board Approves Proposed Rule to Revise Brokered Deposit Regulations](#),” press release, July 30, 2024.

<sup>2</sup> FDIC, “[Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions](#),” *Federal Register*, January 22, 2021; FDIC, “[FDIC Board Approves Final Rule on Brokered Deposit and Interest Rate Restrictions](#),” press release, December 15, 2020. See Deloitte, “[The Federal Deposit Insurance Corporation’s Brokered Deposits Final Rule](#),” March 2021.

<sup>3</sup> FDIC, “[Statement by FDIC Board Member Martin J. Gruenberg on the Final Rule: Brokered Deposits and Interest Rate Restrictions at the FDIC Board Meeting](#),” December 15, 2020.

<sup>4</sup> Under section 29 of the Federal Deposit Insurance Act, “brokered deposit” is defined, in part, as “any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties.” 12 USC 1831f(g)(1)(A).

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