

Clearing up the Confusion: Classifying Brokered vs. Non-Brokered Deposits

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A brokered deposit or non-brokered deposit? That's not always an easy question to answer. The FDIC has provided specific guidance regarding how deposits should be identified, classified and reported for purposes such as Call Reports. However, certain situations and circumstances can make this a difficult task for banks. The regulatory and compliance department at QwickRate understands this challenge and provides ongoing assistance to subscribers in their efforts to comply with FDIC regulations and opinions. Below, we address some of the most common questions we have received recently regarding deposit classification are addressed below.

Rate Finders and Referring Brokers

Like many banks you probably receive numerous calls from "rate finders" or "referring brokers" offering their assistance to generate bank deposits. As with any deposit order, especially one by telephone, your bank is responsible for identifying the caller and determining if a third party is facilitating the deposit. If the answer is yes, the deposit should be classified as a brokered deposit.

The confusion for many banks occurs when the person on the other end of the line represents herself/himself as a rate finder and says that he/she is not acting as a deposit broker. The FDIC has stated a very clear opinion on this point: even though a rate finder or referring broker may not actually have possession of the investor's deposit, they are still acting on behalf of the investor to locate and facilitate the placement of a deposit; therefore, this deposit is classified as brokered.

A rate finder working on behalf of a credit union may try to justify a non-brokered position by referring to the National Credit Union Association (NCUA) regulations governing credit union investments. Guidance issued by the NCUA addressing Part 703 of the agency's rules and regulations does take the position that a rate finder is not a broker. Some rate finders may cite the NCUA guideline and assert that it's not necessary for your bank to consider the rate finder's role in facilitating the deposit from a credit union depositor. This interpretation is false: banks are required to adhere to the brokered deposit definition as defined by their regulatory agency -- the FDIC -- and not the NCUA.

According to FDIC legal opinion, the broad definition of a deposit broker used in the Federal Deposit Insurance Act (FDI Act) does encompass such "match-making" or "finder" activities. When asked a specific question about whether a rate finder qualifies as a broker in FDIC Advisory Opinion 92-53, FDIC legal counsel took the position that "even where the investor, after having been contacted by you (the rate finder), calls the depository institution directly to establish an account, you (the rate finder) would be considered to be a deposit broker because you are 'facilitating the placement' of deposits. In this opinion, the FDIC also said, "The fact that the company (the rate finder) is never in possession of the investor's principal or interest and never acts as trustee or agent for the investor, does not exempt it from the FDI Act requirements applicable to deposit brokers." Per this explanation, a rate finder or referring broker does qualify as a deposit broker and any deposits generated through activities with these entities should be classified as brokered deposits.

Conclusion: Be proactive and ask questions when communicating with depositors over the telephone. Always ask if they are contacting you directly from the investor institution and clarify whether or not they obtained your rate information from a referring broker or rate finder. By fully understanding the FDIC's position regarding this type of deposit broker, your bank can respond appropriately to avoid noncompliance.

Clarifying the Regulatory Application

Section 29 of the FDI Act governs brokered deposits and the FDIC has issued various legal and advisory opinion to explain and clarify that regulation. In 2011 the FDIC released an extensive study of Core and Brokered Deposits and as recently as 2016, it issued a Frequently Asked Question document with additional interpretations regarding the brokered deposit classification.

Since the inception of the brokered deposit rule the FDIC has maintained that a deposit listing service, such as QwickRate, whose only function is to compile and publish information, should not be classified as a deposit broker. The FDIC has identified specific characteristics to distinguish a non-brokered listing service: (1) service is compensated solely by means of subscription fees; (2) subscription fees are flat fees and not based on the amount of deposits generated; (3) service performs no function other than the gathering and transmitting of information and/or messages; and (4) service is not involved in the physical placement of the deposit.

In today's environment, a bank's willingness to work with a particular vendor or type of funding often hinges on whether the service provider is established as a non-brokered deposit resource. In the absence of an FDIC opinion, FAQs document or a more detailed study in which the FDIC has addressed the funding type, banks may want to clarify the appropriate classification for the deposit resource with their examiner or with their Regional Director's Office. Some banks report incidents where vendors have established themselves as non-brokered deposit resources on their own, based on their internal or legal representative's interpretation of the regulation. Unfortunately, legal opinions produced by an entity's own legal representation may be biased and may misinterpret the full intent of the FDIC's regulatory definition.

Conclusion: When determining the non-brokered status of a funding resource, remember to look for the clarifications issued directly by the FDIC. Opinions or interpretations other than those of the FDIC may not be reliable. You can access the FDIC's most recent Information regarding Identifying, Accepting and Reporting Brokered Deposits in the FAQ document at <https://www.fdic.gov/news/news/financial/2016/fil16042b.pdf>

Deposit Broker Exclusions

The FDIC has outlined multiple exclusions from the deposit broker definition which cover depository institutions employees, traditional trust department activities and the trustee and or administrator activities associated with pension or employee benefit plans. All of these exclusions were enacted because the third party placing the funds are understood to have a primary goal or objective other than the goal of placing deposit for others. The exceptions to the rule weighs heavily upon what the FDIC calls the "primary purpose" of the third party.

The FDIC has explained that the brokered deposit restriction were not meant to limit the normal activities of a trust department. The FDIC does not treat a trust department as a deposit broker when it is acting in a traditional sense with fiduciary responsibilities and investment discretion and when the relationship has been established for the purpose of administering the trust. They are clear to point out however, that when a trust relationship has been established for the primary purpose of assisting customers with simply placing funds in depository institutions (for example: so that a customer may obtain FDIC insurance in excess of the \$250,000 limit) the deposits would be considered brokered deposits.

Pension and employee benefit plan trustees and administrators are also exempted from the definition of a deposit broker even without the application of the primary purpose test, as are those facilitating profit-sharing plans qualified under section 401(d) (plans benefiting owner-employees) or 403(a) (qualified annuity plans) of the Internal Revenue Code of 1986.

The full list of exclusions is available in FDIC Rules and Regulations 337.6
<https://www.fdic.gov/regulations/laws/rules/2000-5900.html#fdic2000part337.6>

Conclusion: If a third party is acting in a non-brokered capacity based on one of the FDICs stated exemptions it should provide the bank with a letter referencing the specific exemption and detailing the third parties qualification under exemption.

QwickRate's eContact Helps Classify Deposits Correctly

It's essential for banks to classify deposits correctly in order to comply with FDIC regulations. That's why QwickRate's eContact automated transaction feature is an important asset to marketplace subscribers. We pre-screen and approve each institution to ensure that only non-brokered subscribers have access to eContact. This includes third-party trust departments who are required to publish a signed "non-brokered statement" in the documents section of each inquiry. With this process in place, QwickRate subscribers have confidence that the transactions they conduct through eContact can be classified as non-brokered deposits.

QwickRate subscribers should be aware that, in the past, some third parties have misrepresented themselves as QwickRate subscribers and sent misleading email communications in an attempt to secure deposits with institutions. All eContact communications are sent as emails with "QwickRate" in the subject line and include a link to the QwickRate marketplace login page. After users login to QwickRate, they can respond directly to the inquiry. Any emails received from investors that do not follow this format have not originated as a QwickRate eContact transaction and will not carry the same non-brokered assurance.

Conclusion: For your protection and peace-of-mind, QwickRate pre-screens and approves each institution to make sure that only non-brokered subscribers have access to conduct transaction activity through eContact. QwickRate subscribers can rest assured that all eContact transactions can be classified as non-brokered.

If you have any additional questions about this topic or others, please call us at 800.285.8626.

Call us at **800.285.8626** or schedule a walkthrough of the Marketplace at **www.bankliquiditysource.com**.



About QwickRate

QwickRate provides the premier Marketplace for non-brokered funding and investing. With more than 3,000 members, QwickRate offers community financial institutions a cost-effective way to gain direct access to a nationwide CD market to help proactively manage their primary and contingency liquidity needs. The company's online QwickAnalytics™ tool offers interactive research on all 6,000 U.S. banks, Bank & Peer Performance analysis and examiner-ready Regulatory Compliance reports. QwickRate, a Preferred Service Provider of The Independent Community Bankers of America (ICBA) is known for its exceptional customer service, which includes unlimited support and valuable on-staff regulatory guidance.

