

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

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QwickRate®

A brokered deposit or non-brokered deposit? That's not always an easy question to answer. Although the FDIC has provided specific guidance regarding deposit classification, 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. 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 for call report purposes.

The confusion for many banks occurs when the person on the other end of the phone 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

### About *the Author:*

Debbie Walker has been with QwickRate since 1988 and leads its ongoing regulatory and compliance efforts. She meets regularly with the FDIC and conducts conferences with various state and national field examiners. Debbie's product and market knowledge, combined with her ongoing regulatory research, provides bankers with a valuable resource to help them successfully implement a national market CD funding plan. Debbie Walker is a graduate of Kennesaw State University with a BS degree in Finance.



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### About **QwickRate:**

QwickRate is the premier online marketplace for non-brokered funds. We provide banks with a cost-effective approach to gain access to a nationwide CD market and speed the process for wholesale funding. Our automated tools put banks in control to get the best rates for their institution and more efficiently manage their portfolio. With no transaction fees and unlimited support and regulatory guidance, our clients rely on QwickRate as a fast and efficient source of liquidity. For more information, contact us at 800.285.8626 or [www.qwickrate.com](http://www.qwickrate.com).

placement' of deposits. In this opinion, the FDIC also said that "the fact that your 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 FDIC 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 compliance issues.

### **Non-Brokered Opinions**

The FDIC authored the regulation that governs brokered deposits and, subsequently, they have issued many legal and advisory opinions interpreting this legislation. In today's environment, being established as a non-brokered deposit resource often makes the difference in a bank's willingness to work with a particular vendor or type of funding.

Some funding resources, including QwickRate, have provided a description of their business practices to the FDIC, and requested an evaluation and written clarification to support their non-brokered classification. In the absence of an FDIC opinion, banks should clarify the appropriate classification for each deposit resource with their examiner or with their Regional Director's Office. Several banks have reported situations where vendors have established themselves as non-brokered based on their own, or their legal representative's, interpretation of the regulation defining brokered deposits. Unfortunately, legal opinions produced by an entity's own legal representation may be biased and may misinterpret the full intent of the regulation.

**Conclusion:** When determining the non-brokered status of a funding resource, remember to look for an opinion issued directly by the FDIC. Opinions or interpretations other than those of the FDIC may not be reliable. You can access QwickRate's most recent FDIC opinion at [http://www.qwickrate.com/qrweb/documents/QwickRate\\_fdic\\_opinion.pdf](http://www.qwickrate.com/qrweb/documents/QwickRate_fdic_opinion.pdf).

### **Deposit Broker Exclusions**

Some banks may not be aware that the FDIC has established certain exclusions from the deposit broker definition. These exclusions primarily address the non-brokered status of specific types of trust and employee benefit plan administrators.

*A trust department* of an insured depository institution is not considered a "deposit broker" when it is acting as an executor, administrator, guardian, conservator, or trustee under a written trust, and when it is acting as an agent pursuant to a

written agreement. The only exception is when the agency relationship has been established for the primary purpose of placing funds with insured depository institutions. Examples of “traditional” trusts include family trusts created for estate planning purposes, charitable trusts, and testamentary trusts.

*For the trustee of a pension or profit sharing plan*, the primary purpose test is not applied under section 401(d) for plans benefiting owner-employees or 403(a) qualified annuity plans of the Internal Revenue Code of 1986. The trustee of a pension or other employee benefit plan (with respect to funds of the plan) and the trustee of a testamentary account are not considered “deposit brokers” regardless of the primary purpose of the trust.

**Conclusion:** A trust department acting in a non-brokered fiduciary capacity should provide banks with a letter stating their exemption from the deposit broker definition.

## 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.



*Need additional contingency funding sources? QwickRate can help. Just give us a call at **800.285.8626**.*

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for **institutional funding and investing**



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