

Exceptions to the Deposit Broker Definition FDIC Rules and Regulations Part 337.6

On December 15, 2020, the FDIC passed a final rule updating its Brokered Deposit regulations. The new rule offers additional detail to define “being engaged in the business of placing deposits and or facilitating the placement of deposits of third parties” and provides clear guidelines that state when a third party meets the definition of a deposit broker. The rule also expands upon the Primary Purpose Exception and names specific business relationships which would qualify for an exception to the definition of a deposit broker.

Prior to the rule change, the brokered deposit regulation contained the following nine statutory exceptions:

- An insured depository institution, with respect to funds placed with that depository institution;
- An employee of an insured depository institution, with respect to funds placed with the employing depository institution;
- A trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;
- The trustee of a pension or other employee benefit plan, with respect to funds of the plan;
- A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;
- The trustee of a testamentary account;
- The trustee of an irrevocable trust;
- A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986;
- An agent or nominee whose **primary purpose** is not the placement of funds with depository institutions.

In the past, the FDIC applied the Primary Purpose Exception based on the intent or purpose of the agent or nominee. Under the new rule, the FDIC considers the business relationship between the agent or nominee and their customer, and stipulates that it will evaluate whether the primary purpose of that business relationship is the placement of deposits with depository institutions.

Historically, the FDIC has identified certain business relationships that it has deemed to meet the Primary Purpose Exception. The new rule recognizes several of these as “designated business exceptions” (below), which will automatically be deemed to meet the exceptions and will be exempted from the definition of a deposit broker.

Designated business exceptions

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.
- 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.
- Agent or nominee places customer funds for the primary purpose of providing property management services.



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- Agent or nominee places customer funds for the primary purpose of providing cross-border clearing services.
- Agent or nominee places customer funds for the primary purpose of providing mortgage servicing.
- A title company places customer funds for the primary purpose of facilitating real estate transactions.
- Agent or nominee places customer funds for the primary purpose of facilitating exchanges of properties under section 1031 of the Internal Revenue Code.
- A broker dealer or futures commission merchant places, or assists in placing, customer funds into deposit accounts in compliance with net capital requirements for brokers and broker dealers.
- Agent or nominee places customer funds for the primary purpose of posting collateral to secure credit-card loans.
- Agent or nominee places customer funds for the primary purpose of paying for or reimbursing qualified medical expenses under section 223 of the Internal Revenue Code.
- Agent or nominee places customer funds for the primary purpose of investing in qualified tuition programs under section 529 of the Internal Revenue Code.
- Agent or nominee places customer funds to enable participation in the following tax-advantaged programs: Individual retirement accounts under section 408(a) of the Internal Revenue Code, Simple individual retirement accounts under section 408(p) of the Internal Revenue Code, or Roth individual retirement accounts under section 408A of the Internal Revenue Code.
- A Federal, State or local agency places, or assists in placing, funds to deliver funds to the beneficiaries of government programs.
- Agent or nominee places customer funds pursuant to such other relationships as the FDIC specifically identifies as a designated business relationship that meets the Primary Purpose Exception.

Those business relationships that qualify for a designated exception will not be required to go through an application process with the FDIC. For two of the designated exceptions, the “25 percent” business relationship and the “100 percent enabling transactions” business relationship, the rule does require that a written notice be submitted to the FDIC indicating that the third party will rely upon the applicable designated exception. Additional quarterly and annual reporting will also be required by entities claiming one of these two exemptions.

Those entities that do not meet one of the designated exceptions, but believe that they meet the Primary Purpose Exemption, may apply directly to the FDIC to be evaluated. The evaluation involves a formal assessment, conducted by the FDIC, of their business relationship with their respective customers.

What will the FDIC expect from issuing institutions?

When accepting deposits from a third party that relies upon a Primary Purpose Exception, the bank is expected to maintain records regarding the third party's eligibility. This documentation may include copies of the notices delivered to the FDIC and any accepted applications pertaining to the third party's exemption. As a best practice, it will also be important to maintain information regarding the applicable “designated business exception” being claimed by any third party not subject to the FDIC notice or application requirement. This information may include: a formal description of the company and business relationship; the specific designated exemption being claimed; and a statement that there is no involvement of an additional third party that may qualify as a deposit broker.



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Investing entities in the QwickRate Marketplace that qualify for the Primary Purpose Exemption will be expected to provide the information needed to meet the due diligence requirements of our issuing financial institutions. All notices, application acceptances and formal descriptions will be posted in the investing entity's electronic profile and will be available for review when an issuing institution receives the investor's inquiry. Issuing institutions are encouraged to review the exception documentation provided and familiarize themselves with the exception being claimed by the investor.

For more information, contact *Debbie Walker, QwickRate Director of Regulatory and Compliance, at 678.797.4056. Or call Customer Service at 800.285.8626.*

About QwickRate

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