

Will the New Regulations Relating to Brokered Deposits Impact the QwickRate Marketplace?

On December 15, 2020, the FDIC issued a final rule to modernize and revise the agency's rules and regulations Part 337.6, which addresses brokered deposits and interest rate restrictions. In the past, the agency has often clarified the definition of brokered deposits by issuing staff advisory opinions and official interpretations. QwickRate has received multiple staff opinions, which we have relied upon to clarify our non-brokered status.

With this new rule, the FDIC is moving away from its previous heavy reliance on staff opinions for defining a deposit broker, and instead is providing additional clarification and detail regarding the foundational elements that comprise the "deposit broker" definition.

The new rule takes effect on April 1, 2021. The FDIC expects all entities to review the new criteria developed for this final rule and determine whether their business practices will meet the deposit broker definition. To allow institutions and FDIC examiners sufficient time for preparing systems and processes needed for conforming to the new regulations, the full compliance date has been extended to January 1, 2022. If a bank is relying on an FDIC staff advisory opinion or interpretation that will be made inactive by the new rule, the institution can continue to rely on that opinion until then. On January 1, 2022, however, previous FDIC staff advisory opinions will become inactive.

What This Document Explains

This document reviews QwickRate's services pertaining to standards in the new rule. Since QwickRate does not act as an agent or trustee, our detailed analysis focuses on the new rule's changes to the FDIC position on "engaged in the business of placing deposits" and "engaged in the business of facilitating the placement of deposits."

Definition of Deposit Broker

Previously the FDIC's regulations defined a deposit broker 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; and*
- 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.*

The bottom line?

While the FDIC's definitions have changed, the QwickRate CD Marketplace remains a **reliable non-brokered source of deposits** for banks.

Engaged in the Business of Placing Deposits

The new rule amends the "engaged in the business of placing deposits" portion of the "deposit broker" definition with this additional language:

A person is 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 depository institution.

- In QwickRate's online Marketplace, CD buyers and sellers come together to interact directly with one another. QwickRate does not receive customer funds, nor do we place customer funds; therefore, **we do not satisfy the criteria of being "engaged in the placement of deposits."**



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Engaged in the Business of Facilitating the Placement of Deposits

In the final rule, the FDIC expands on its “facilitation” definition by incorporating three “prongs” that describe the actions of an entity which is “facilitating the placement of deposits” as follows:

1. *The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution.*
2. *The person is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account.*
3. *The person engages in matchmaking, as defined in the rule.*

- QwickRate does not take possession of or maintain legal authority over deposits or depositors in our Marketplace.
- QwickRate does not interact with issuing institutions in the rate-setting process and does not attempt to suggest or negotiate rates to be posted in our Marketplace. We do provide tools and reports that deliver a simple, unbiased compilation of current market information for the purpose of allowing issuers to make informed decisions regarding their rate-setting activities. QwickRate does not require users to employ the tools we provide, nor do we monitor the use of these tools.
- At first glance one may assume that QwickRate would fall into the category of “matchmaker” since we do bring together buyers and sellers of CDs. The FDIC proactively addressed this potential mischaracterization in its preamble to the rule, where it states:

The third prong is defined to capture specific forms of matchmaking that are active in nature; more passive forms of matching depositors and banks, such as those in which traditional listing services often engage, would not be captured.

In the final rule, matchmaking is defined as follows:

A person is engaged in matchmaking if the person proposes deposit allocations at, or between, more than one bank based upon both (a) the deposit objectives of a specific depositor or depositor's agent, and (b) the particular deposit objectives of specific banks, except in the case of deposits placed by a depositor's agent with a bank affiliated with the depositor's agent. A proposed deposit allocation is based on the particular objectives of:

- *A depositor or depositor's agent when the person has access to specific financial information of the depositor or depositor's agent and the proposed deposit allocation is based upon such information; and*
- *a bank when the person has access to specific information of the deposit-balance objectives of the bank and the proposed deposit allocation is based upon such information.*

- QwickRate does not obtain or have knowledge of specific information on depositor objectives or on the funding objectives of the issuing bank. We do not propose or suggest specific deposit allocations between customers. **For these reasons, QwickRate does not qualify as a matchmaker under the new brokered deposit rule.**

FDIC Addresses Listing Services

In the preamble to its final rule, the FDIC specifically addresses the statute's application to listing services, providing the following explanation:

A “listing service” is a company that compiles information about the interest rates offered by banks on deposit products. Through the years, staff at the FDIC have developed criteria to help determine whether a “listing service” meets the “deposit broker” definition. Under this final rule, the FDIC anticipates that whether a listing service, or a similar service that posts information about bank rates, is a deposit broker will likely depend on whether the service meets the new criteria under the “facilitation” part of the deposit broker definition. Based upon the new “facilitation” definition, a listing service that is passively posting rate information and sending trade confirmations between the depositor and the bank



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is unlikely to be a deposit broker. However, if a listing service provides services that meet one of the three prongs of the “facilitation” definition, then it would be considered a deposit broker.

In the final rule, the FDIC continues to base the deposit broker definition on activities indicating that the third party takes an active role in the opening of an account or maintains a level of influence or control over the deposit account, even after the account is opened. **The new rule provides abundant clarity that the QwickRate deposit listing service is neither “engaged in the business of placing deposits” nor “engaged in the business of facilitating the placement of deposits.”** As a traditional passive listing service, QwickRate continues to be a reliable source of “non-brokered” deposit funding.

How QwickRate Subscribers May Benefit from the New Rule

The new rule does provide potential benefits to the QwickRate Marketplace and its subscribers.

The FDIC has excluded certain persons from its definition of a deposit broker: those “whose primary purpose is not the placement of funds with depository institutions.” This exclusion is referred to as the “Primary Purpose Exception,” and is now expanded to include 14 designated non-brokered businesses. With this revision, the QwickRate Marketplace gains the opportunity to extend membership to potential investors who may not have qualified as Marketplace subscribers in the past. By expanding the range of members meeting the FDIC’s non-brokered qualifications, we now have the option to bring many new investors into our Marketplace.

QwickRate provides more information on designated business exceptions in the document: [Exceptions to the Deposit Broker Definition FDIC Rules and Regulations 337.6.](#)

In establishing standards for the Primary Purpose Exception, the FDIC also provides meaningful documentation regarding the non-brokered status of qualified investors and eliminates much of the confusion historically associated with identifying truly non-brokered investors. All investors who satisfy the exception criteria will be encouraged to post their FDIC notice or stated exception within their QwickRate Marketplace investor profile. When accepting deposits from a third party that relies upon a primary purpose exception, institutions are expected to maintain records and documentation regarding eligibility.

QwickRate Deposits Still Qualify as Non-brokered

QwickRate appreciates the extent to which the FDIC clarified the new rules impact on “passive” deposit listing services. In summary, per the revised definitions, the **QwickRate CD Marketplace remains a qualified non-brokered source of deposit funding** for banks. We look forward to another 30+ years of serving the banking industry.

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

QwickRate® provides the premier **non-brokered CD Marketplace** for funding and investing, with fast connections to more than 3,000 institutions to proactively manage liquidity needs. QwickRate offers other affordable tools and services to help simplify and make work easier for bankers. The **IntelliCredit®** loan review and credit intelligence solutions give banks a better, more efficient way to detect and manage risk and move a decades-old loan review process online. **QwickAnalytics®** provides time-saving bank research, performance analysis and regulatory tools including CECLSolver® and Credit Stress Test.

