



## Alerts

### FDIC Clarifies Bank Brokered Deposit Expectations and Requirements

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*Hinshaw Alert*

The Federal Deposit Insurance Corporation (FDIC), has previously warned that brokered deposits often received from customers located far from the market area of the bank can lead to unsound or rapid expansion of loan and investment portfolios, and can result in imprudent high interest rates.

On January 5, 2015, the FDIC released a Financial Institution Letter (FIL) that specifically addressed and reiterated the FDIC's longstanding concerns related to an excessive amount of brokered deposits.

The new brokered deposit FIL guidance, comprised in part by a consolidation of prior guidance and interpretive letters, now appears as a series of "FAQ's", which present fifteen questions and answers regarding brokered deposits. Together, these questions and responses attempt to clarify what constitutes a brokered deposit, detail the scope of the "deposit broker" definition, remind banks of the regulatory restrictions on such deposits, and highlight reporting obligations.

Brokered deposits are defined under FDIC regulations as deposits that are obtained, directly or indirectly, "from or through the mediation or assistance of a deposit broker." The FIL guidance reiterates the broad definition for the term "deposit broker" to include any person or entity engaged in the business of placing, or facilitating the placement of third party deposits with banks.

Key points addressed under the FIL include the following:

- Under the newly issued guidance, the concept of "facilitating" a deposit is viewed in an extremely broad manner. The FIL guidance cautions that "facilitating" encompasses third party advertising or referrals in exchange for volume-based fees.
- Similarly, a third party may be deemed to be a "facilitating" deposit broker even if the party receives no fee or other direct compensation from the bank that accepts the deposit. By way of example, the FIL notes that referral of deposits by lawyers and accountants are considered brokered deposits, even if the referring party receives no fee or other direct compensation from the bank that accepts the deposit.
- Networks that allow banks to place deposits into other participating banks so as to provide maximum FDIC insurance coverage have engaged in "facilitating." These deposits are, therefore, considered to be brokered.

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- Utilization of listing services, which provide more than simply an aggregate of deposit or interest rate information may also constitute "facilitating." The FIL warns that particular attention should be given to the fee structure and the services performed by the listing service. In order to avoid a presumption of engaging in activities as a deposit broker, the listing service must not be involved in the physical placement of the deposits.
- The FIL clarifies the "primary purpose" exception to the definition of deposit broker. Under this exception, an agent whose primary purpose is not the placement of funds with depository institutions is generally excluded from the definition of "deposit broker." However, the FDIC has cautioned that the exception is limited and generally will require a specific request for a determination by the FDIC.
- The FIL also reminds banks that are not well-capitalized that Section 38 of the Federal Deposit Insurance Act restricts their ability to accept new brokered deposits and further limits the interest rates that they may pay on existing brokered deposits. All banks are reminded of the requirement to maintain records and report brokered deposits on their periodic Call Reports.

Brokered deposits can be a valuable strategy for a bank. However, in light of the recent economic strain suffered by the banking industry, the FDIC continues to take an aggressive approach with regard to these forms of deposits and will likely take exception to any excessive reliance on brokered deposits as a safety and soundness concern. As a best practice, all banks should at minimum review the newly issued FIL and then analyze their own deposit accounts to ensure they meet FDIC brokered deposit expectations and reporting requirements.

The newly issued FDIC FIL on Brokered Deposits may be obtained at: <https://www.fdic.gov/news/news/financial/2015/fil15002.html>

For further information on this issue, please contact [Michael D. Morehead](#), [Tim Sullivan](#) or your regular [Hinshaw attorney](#).

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