

Locke Lord QuickStudy: FDIC Launches Brokered Deposit Resource Webpage and Provides Guidance for Expedited Processing of Notices for Designated Exemptions Under the “25 Percent Test” and the “Enabling Transactions Test”

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Effective April 1, 2021, the Federal Deposit Insurance Corporation (“FDIC”) launched a “Brokered Deposit” bankers’ [resource web page](#), concurrently with the effective date of its final rule (the “Rule”) to modernize the brokered deposit regulations that implement Section 29 of the Federal Deposit Insurance Act (“FDI Act”).

The Rule requires entities that wish to rely on two of the “designated exceptions” under the primary purpose exception (“PPE”), the “25 percent test” and the “enabling transactions test,” to notify the FDIC of the criteria on which they base their exemption. Entities that submit exemption notices will also be subject to periodic reporting requirements as well as regular recertification of eligibility for the PPE. The FDIC’s exemption notice form and link to file the exemption can be found [here](#).

The FDIC also provides “Q&A” on its resource page designed to assist financial institutions and other entities in the deposit business to better understand the new Rule. The brokered deposit Q&A can be accessed [here](#). As an example, Question 7 of the Q&A provides “7. If a third party wants to rely upon a designated exception that requires a notice submission (e.g., for placing 25% or less of its customer’s assets under administration at IDIs), when may it and the IDI that is receiving the deposits begin to rely on the exception?”

The FDIC has established an interim electronic process for the receipt of notices that is accessible through the new Brokered Deposits section of the FDIC’s Bankers Resource Center webpage. The requirements for a notice are also included as part of the notice filing instructions. A notice that is submitted through the electronic process will be acknowledged immediately upon receipt via a return email. Entities may begin relying upon the primary purpose exception immediately after receipt of the return email acknowledgement, and may continue to rely on the primary purpose exception unless the FDIC notifies the filer that it is not eligible for the primary purpose exception.”

The FDIC provides additional guidance on the Q&A page regarding its formula to be used to calculate assets under administration for the 25% test, as well as guidance for other notice and disclosure requirements to obtain and maintain exempt status under the PPE. We note that there is an extended compliance date of January 1,

2022, to comply with the Rule for institutions that have relied on previous staff opinions.

Feel free to reach out to the authors on any questions related to these topics. As we have in the past, we will continue to monitor these issues and will provide future client updates. This ?QuickStudy is for guidance only and is not intended to be a substitute for specific legal advice.?

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