

September 26, 2018

FDIC Seeks Comment on the Treatment of Reciprocal Deposits

The FDIC is seeking comment on a proposed rule to implement Section 202 of the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA)¹, which amends Section 29 of the Federal Deposit Insurance Act (FDIA). The proposed rule would exempt certain reciprocal deposits from being considered brokered deposits.

Comments are due on or before October 26, 2018. The FDIC's specific requests for comments are listed in the last section of this Bulletin. Instructions on how to submit comments also appear at the end of this Bulletin.

Section 202 of EGRRCPA defines "reciprocal deposits" as "deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks."

Prior to the enactment of EGRRCPA, all reciprocal deposits were classified as brokered deposits. EGRRCPA amended Section 29 of the FDIA to exempt certain capped amounts of reciprocal deposits from treatment as brokered deposits for

certain institutions. The amendments to Section 29 took effect upon enactment on May 24, 2018. The FDIC is now proposing to amend its regulations to conform to the new law in the manner described below.

The "General Cap"

The "general cap" is the lesser of the following amounts: 20 percent of an institution's total liabilities, or \$5 billion. Well capitalized and well rated¹ institutions are not required to treat reciprocal deposits up to the general cap as brokered deposits. These institutions may still accept all brokered deposits without restrictions, but any such reciprocal deposits over the general cap will be treated as brokered deposits.

The "Special Cap"

Institutions that are either not well capitalized or not well rated are subject to the lesser of the general cap or the special cap. The amount of reciprocal deposits within the institution's applicable cap would not be considered brokered deposits but reciprocal deposits exceeding the applicable cap would be considered brokered deposits.

¹ Enacted May 24, 2018, Public Law No. 115-174

The “special cap” is defined as the average amount of reciprocal deposits held at quarter-end during the last four quarters preceding the quarter that the institution fell below well capitalized or well rated.

An institution that is well capitalized but not well rated that receives reciprocal deposits above the special cap would need to decide whether to (1) retain all of its reciprocal deposits and report them as brokered deposits, or (2) lower the amounts of its reciprocal deposits to within the special cap by the end of the quarter that it is notified that it is no longer well rated, in which case all of the institution’s reciprocal deposits could be excepted from its brokered deposits.

An institution that is less than adequately capitalized would have the option to lower its reciprocal deposits to within the special cap by the end of the quarter for which the change in its capital status is reported, or work with its primary federal regulator to establish a supervisory plan for addressing reciprocal deposits.

Conforming Assessments Amendments

The FDIC is also proposing conforming amendments to its assessments regulations to conform to the statutory definitions in EGRRCPA. Specifically, it proposes to create a new definition of “brokered reciprocal deposit,” which is a reciprocal deposit that exceeds the applicable caps described above.

For assessment purposes, “brokered reciprocal deposits” will continue to be excluded from the brokered deposit ratio for established small institutions that are

well capitalized and well rated. For new small banks and large and highly complex banks that are less than well capitalized or not well rated, “brokered reciprocal deposits” will continue to be included in an institution’s total brokered deposits for the brokered deposit adjustment.

The FDIC’s Specific Requests for Comments

The FDIC seeks general comments on all aspects of the proposed rule, but has singled out the following questions in particular:

- For an institution that is determined to not be well rated and thus can only meet the “agent institution” definition by maintaining its reciprocal deposits at or below the special cap, the FDIC is considering evaluating this issue based on Call Report Data submitted for the reporting date immediately following the when the determination is made. The FDIC seeks comment on any unintended consequences this approach may cause to institutions.
- The FDIC seeks comment on other ways an institution that is not well rated or not well capitalized could manage its holdings of reciprocal deposits in excess of the special cap, consistent with the definition of “agent institution” so that its reciprocal deposits would be treated as non-brokered.
- The FDIC seeks comment on the extent to which institutions may be affected by the FDIC’s proposed changes to certain definitions for assessment purposes.
- The FDIC requests comments on whether reciprocal deposits that are now

no longer considered brokered deposits would be viewed by a potential acquiring institution bidding on the deposits of a failed institution the same way it views traditional retail deposits for which a premium would be offered.

- The FDIC seeks comments on how the regulations should apply to de novo institutions that lack four prior quarters of reciprocal deposits to calculate the special cap.

Instructions for Submitting Comments

The notice of proposed rulemaking and request for comments can be reviewed at https://www.fdic.gov/news/news/press/2018/pr18060a.pdf?source=govdelivery&utm_medium=email&utm_source=Eloqua&utm_campaign=ABA-Newsbytes-091418

Instructions: Comments submitted must include "FDIC" and "RIN 3064-AE89."

You may submit comments, identified by RIN 3064-AE89, by any of the following methods:

- **Federal eRulemaking Portal:**
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Agency Web site:**
<http://www.FDIC.gov/regulations/laws/federal/>
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, **Federal Deposit Insurance Corporation**, 550 17th Street, NW, Washington, DC 20429.

- **Hand Delivery/Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building NW (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

- **E-mail:** comments@FDIC.gov.

Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/>, including any personal information provided.

The information contained in this CBA Regulatory Compliance Bulletin is not intended to constitute, and should not be received as, legal advice. Please consult with your counsel for more detailed information applicable to your institution.

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ⁱ "Well rated" institutions are defined as those having a composite condition of outstanding or good (CAMELS "1" or CAMELS "2", respectively).