Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 327 and 337

RIN 3064–AE89

Limited Exception for a Capped Amount of Reciprocal Deposits From Treatment as Brokered Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The FDIC seeks comment on a notice of proposed rulemaking to conform its current regulations that implement brokered deposits and interest rate restrictions with recent changes to section 29 of the Federal Deposit Insurance Act made by section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act related to reciprocal deposits, which took effect on May 24, 2018. Conforming amendments to the FDIC's regulations governing deposit insurance assessments are also being proposed. This rulemaking is the first part of a two-part effort to revisit the brokered deposit rules. The FDIC is currently working on the second part, which is planned for later this year and which will seek comment on the brokered deposit regulations more generally. We encourage comments not related to the implementation of section 202 to be submitted as part of the broader rulemaking effort.

DATES: Comments on the rules must be received by October 26, 2018.

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

- *Agency Website: 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 NW building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.*

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AE89.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Division of Risk Management Supervision—Thomas F. Lyons, Chief, Policy and Program Development, (202) 898–6850, *tlyons@fdic.gov;* Judy Gross, Senior Policy Analyst, (202) 898–7047, *jugross@fdic.gov;* Division of Insurance and Research—Ashley Mihalik, Senior Policy Analyst, (202) 898–3793, *amihalik@fdic.gov;* Legal Division—Vivek V. Khare, Counsel, (202) 898–6847, *vkhare@fdic.gov;* Thomas Hearn, Counsel, (202) 898–6967; *thearn@fdic.gov*.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of this proposed rule is to implement section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, codified in 12 U.S.C. 1831f, which took effect on May 24, 2018.[1] The main effect of the legislation and this proposed rule is to permit FDIC-insured financial institutions, under certain circumstances, to except certain amounts of reciprocal deposits from treatment as brokered deposits.

II. Background

The Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) was enacted on May 24, 2018.[2] Section 202 of the Act amends section 29 of the Federal Deposit Insurance Act (FDI Act) [3] to except a capped amount of reciprocal deposits from treatment as brokered deposits for certain insured depository institutions. In addition, section 202 ensures that the interest rate restrictions in section 29 remain applicable to *any* deposit, including reciprocal deposits, whether or not they fall under the limited exception. Section 202 was effective immediately upon enactment.

As more fully discussed below, well-capitalized institutions are not restricted from accepting or soliciting brokered deposits and have no restrictions on the rates they pay on deposits. However, under section 29, less than well-capitalized institutions may not accept or solicit brokered deposits and may not offer rates on any deposits that are significantly higher than the prevailing rates in the institution's normal market area. Section 29 defines the term ''deposit broker'' and provides a list of exclusions to that term. Funds obtained through a deposit broker are considered brokered deposits. Section 202 amends section 29 to effectively provide that a capped amount of reciprocal deposits will not be considered funds obtained through a deposit broker for certain insured depository institutions, and thus such deposits will be non-brokered. Reciprocal deposits that do not meet the section 202 exception are brokered deposits under section 29.

At this time, institutions with reciprocal deposits that meet section 202's limited exception can refer to the Supplemental Instructions provided as part of the June 30, 2018, Call Report Instructions for information on reporting reciprocal deposits under the new law.[4] The Federal Financial Institutions Examination Council (FFIEC) has indicated that it anticipates issuing additional instructions regarding the application of section 202 to reciprocal deposits for purposes of reporting in the Call Report for September 30, 2018.

This rulemaking is the first part of a two-part effort to revisit the brokered deposit rules. The FDIC is currently working on the second part, which is planned for later this year and will seek comment on the brokered deposit regulations more generally.

A. Section 29 of the FDI Act

Under section 29 of the FDI Act, an insured depository institution is restricted from accepting deposits by or through a deposit broker unless the institution is well capitalized for Prompt Corrective Action (PCA)

[1] Public Law 115–174, 132 Stat. 1296–1368 (2018).

[2] Public Law 115–174, 132 Stat. 1296–1368 (2018).

[3] *See* 12 U.S.C. 1831f.

[4] FFIEC Supplemental Instructions, Call Report Date, p. 2, June 30, 2018. *https://www.fdic.gov/news/news/financial/2018/fil18039a.pdf.*

purposes.[5] The FDIC may waive this restriction if the insured depository institution is adequately capitalized; however, the restriction cannot be waived if the institution is undercapitalized.[6] Section 29 also imposes restrictions on the deposit interest rates that an insured depository institution may offer if the institution is not well capitalized.[7] These interest rate restrictions cannot be waived. Section 337.6 of the FDIC's Rules and Regulations implements section 29 of the FDI Act.[8] Through this regulation, the FDIC has largely tracked the statutory definition of ''deposit broker'' and its exceptions.

A ''deposit broker,'' as defined by section 29 of the FDI Act, includes ''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. . . .'' Under the FDIC's regulations, a ''brokered deposit'' is thus defined as a deposit accepted through a ''deposit broker.'' [9] The definition of ''deposit broker'' is subject to ten statutory exceptions in section 29 [10] and one regulatory exception.[11]

B. Reciprocal Deposits

The reciprocal deposit arrangement is based upon a network of banks that place funds at other participating banks in order for depositors to receive insurance coverage for the entire amount of their deposits.[12] In these arrangements, institutions within the network are both sending and receiving identical amounts of deposits simultaneously. Because reciprocal arrangements can be complex, and involve numerous banks, they are often managed by a third-party network sponsor. As a result of this arrangement, the institutions themselves (along with the network sponsors) are ''in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions,'' [13] and the involvement of deposit brokers within the reciprocal network means the deposits are brokered deposits.[14]

For assessment purposes, reciprocal deposits have been treated more favorably than other types of brokered deposits. In 2009, through rulemaking, the FDIC amended its risk-based assessment rate methodology for small institutions, *i.e.,* insured depository institutions with less than $10 billion dollars in total assets.[15] In that rulemaking, the FDIC added an ''adjusted brokered deposit ratio'' that applied to small institutions that were well capitalized and well rated. This ratio measured the extent to which significant reliance on brokered deposits helped to fund rapid asset growth. After consideration of comments received in response to the proposed rule, reciprocal deposits were not included as part of the adjusted brokered deposit ratio. In its final rule, the FDIC stated that ''[it] recognizes that reciprocal deposits may be a more stable source of funding for healthy banks than other types of brokered deposits and that they may not be as readily used to fund rapid asset growth.'' [16] When the FDIC updated its risk-based assessment rate methodology for established small banks in 2016, it replaced the adjusted brokered deposit ratio with a brokered deposit ratio.[17] The new ratio, which measures significant reliance on brokered deposits (rapid asset growth is considered as a separate measure) and applies to all established small banks, continues to exclude reciprocal deposits for institutions that are well capitalized and well rated.[18]

III. Discussion of Treatment of Reciprocal Deposits Under the Act

Prior to enactment of the Act, all reciprocal deposits were classified as brokered deposits.[19] Section 202 of the Act amends section 29 of the FDI Act to except a capped amount of reciprocal deposits from treatment as brokered deposits for certain insured depository institutions. Section 202's amendments took effect upon enactment on May 24, 2018, and the FDIC is proposing to amend its regulations to conform with the statutory amendments.

Section 202 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.'' Network member banks may receive other deposits through a network such as (1) deposits received without the institution placing into the network a deposit of the same maturity and same aggregate amount (sometimes referred to as ''one-way network deposits'') and (2) deposits placed by the institution into the network where the deposits were obtained, directly or indirectly, by or through a deposit broker. Such other network deposits meet the definition of brokered deposits but would not meet the definition of reciprocal deposits and thus would not be eligible to be excepted from an institution's brokered deposits under section 202.

In this rulemaking, the FDIC is proposing to implement section 202's limited exception by incorporating these statutory definitions into section 337.6(e)(2) of the brokered deposit rules, without change. These definitions must be satisfied in order for a capped amount of reciprocal deposits to be excepted from treatment as brokered deposits.

A. Deposit Placement Network, Covered Deposits, and Network Member Bank

The term ''deposit placement network'' is defined in section 202 as a network in which an insured depository institution participates, together with other insured depository institutions, for the processing and receipt of reciprocal deposits. Institutions that are members of the deposit placement network are ''network member banks.''

The deposits that an ''agent institution'' places at other banks in return for reciprocal deposits are termed ''covered deposits'' under section 202. The term covered deposit is defined as a deposit that (1) is submitted for placement through a deposit placement network and (2) does not consist of funds that were obtained for the agent institution, directly or indirectly, by or through a deposit broker before submission for placement through the deposit placement network.

B. Agent Institution

Consistent with section 202, proposed section 337.6(e)(2) defines ''agent institution'' as an insured depository institution that places a covered deposit through a deposit placement network at other insured depository institutions in amounts that are less than or equal to the standard maximum deposit insurance amount, and specifies the

[5] 12 U.S.C. 1831f(a).

[6] 12 U.S.C. 1831f(c).

[7] 12 U.S.C. 1831f.

[8] 12 U.S.C. 1831f(a).

[9] 12 CFR 337.6(a)(2).

[10] 12 U.S.C. 1831 f(g)(2), (i).

[11] 12 CFR 337.6(a)(5)(ii)(J); *see also,* 57 FR 23933–01.

[12] *See* FDIC Advisory Opinion No. 03–03 (July 29, 2003).

[13] Excerpt of the definition of ''deposit broker.'' 12 U.S.C. 1831f.

[14] *See FDIC's 2011 Study on Core and Brokered Deposits,* issued July 2011, Sections IV.E. and VIII.E.

[15] 79 FR 9525 (March 4, 2009).

[16] *Id.* at 9532.

[17] Generally, an established small bank is a small institution that has been federally insured for at least five years. *See* 81 FR 32180 (May 20, 2016).

[18] *See* 12 CFR 327.16(a)(1)(ii).

[19] *See FDIC's 2011 Study on Core and Brokered Deposits,* issued July 2011, Section IV.

interest rate to be paid for such amounts, if the insured depository institution:

- Is well capitalized [20] and has a composite condition of outstanding (CAMELS ''1'') or good (CAMELS ''2'') when most recently examined under section 10(d) of the FDI Act (described as ''well rated''); [21]
- has obtained a waiver pursuant to section 29(c) of the FDI Act; or
- does not receive an amount of reciprocal deposits that causes the total amount of reciprocal deposits held by the agent institution to be greater than the average of the total amount of reciprocal deposits held by the agent institution on the last day of each of the four calendar quarters preceding the calendar quarter in which the agent institution was found not to have a composite condition of outstanding or good or was determined to be not well capitalized.

C. Caps Applicable to Agent Institutions

Consistent with section 202, under the proposed regulation, an ''agent institution'' can except reciprocal deposits from being classified as brokered deposits up to its applicable statutory caps, as explained below.

General Cap

An agent institution may except reciprocal deposits up to the lesser of the following amounts (referred to as the *general cap*) from being classified as brokered deposits: [22]

- $5 billion or
- An amount equal to 20 percent of the agent institution's total liabilities.

Reciprocal deposits in excess of the *general cap,* as well as those reciprocal deposits that do not meet section 202's limited exception, are brokered deposits.

Special Cap

A *special cap* applies if the institution is either not well rated or not well capitalized. In this case, the institution may meet the definition of ''agent institution'' by maintaining its reciprocal deposits at or below the *special cap,* which is 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. The FDIC notes that section 202 does not provide a date by which an institution must demonstrate that its amount of reciprocal deposits are within the special cap. The FDIC is considering evaluating whether an institution's reciprocal deposits meet the special cap based on information reported in its Call Reports. For an institution that is determined to fall below well rated, the FDIC would evaluate its compliance with the special cap based on Call Report data submitted for the reporting date immediately following when the determination is made. The FDIC seeks comment on any unintended consequences this may cause to institutions.

Application of Statutory Caps

Below are descriptions of how the two statutory caps would apply to an agent institution based upon its capital and composite ratings.

1. Well capitalized and well rated. Institutions that are both well capitalized and well rated can have non-brokered reciprocal deposits up to the *general cap.* Any amount of reciprocal deposits over the *general cap* will no longer meet the limited exception and therefore that amount would be considered to be ''brokered deposits.'' Well-capitalized institutions can accept all brokered deposits, including reciprocal deposits that are brokered deposits, without any restrictions.

2. *Not well capitalized or not well rated.* Institutions that are either not well capitalized or not well rated are subject to the lesser of either the *special cap* or the *general cap.* The amount of reciprocal deposits within the institution's applicable cap would not be considered brokered deposits. In no event, however, can an institution's non-brokered reciprocal deposits exceed the *general cap.* With respect to an institution that is well capitalized but not well rated, if it received reciprocal deposits above the *special cap,* it would no longer meet the definition of ''agent institution.'' In this situation, an institution would need to decide whether to (1) retain all of its reciprocal deposits and report them as brokered deposits (assuming the institution was well capitalized [23]), 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 or adequately capitalized without a waiver would have the option to lower its reciprocal deposits to within the *special cap* by the end of the quarter for which, in the ordinary course, the change in capital status is reported, or work with its primary federal regulator to establish a supervisory plan for addressing reciprocal deposits. The FDIC requests 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 applicable provisions of section 202 so that its reciprocal deposits would be treated as non-brokered.

D. Example of Section 202's Applicability

A well rated and well capitalized community bank (''the Bank'') has a banking relationship with its local municipality. The municipality wishes to place deposits in excess of the standard maximum deposit insurance amount at the Bank. In an effort to provide insurance coverage for the entire amount of the deposit, the Bank offers the municipality the option to place its deposits through a deposit placement network at a specified interest rate.

In this case, the Bank is an ''agent institution'' because it is both well rated and well capitalized. After establishing itself as an ''agent institution,'' the Bank must next determine whether the municipal deposits that it wishes to submit into the deposit placement network are covered deposits. If the deposits are placed directly by the municipality, without any assistance of a third-party, the deposits meet the definition of a ''covered deposit.''

Next, if the municipal deposits are ''covered deposits,'' to meet the statutory definition of ''reciprocal deposits,'' the institution must receive deposits with the same maturity (if any) and in the same aggregate amount as the covered deposits it placed with other network banks. If the definitional framework set forth in section 202 is satisfied, the Bank may except an amount of the deposits it receives from

[20] *See generally,* 12 CFR part 325, subpart B or 12 CFR part 324, subpart H (FDIC); 12 CFR part 208 (Board of Governors for the Federal Reserve System); 12 CFR part 6 (Office of the Comptroller of the Currency). 12 U.S.C. 1831*o.* ''Well capitalized'' is already defined in 12 CFR 337.6(a)(3)(i).

[21] The effective date of a CAMELS composite rating is the date of written notification to the institution by its primary federal regulator or state authority of its supervisory rating. *See e.g.,* 12 CFR 327.4(f).

[22] *See* FFIEC Supplemental Instructions, Call Report Date, June 30, 2018 *https://www.fdic.gov/news/news/financial/2018/fil18039a.pdf.*

[23] 12 U.S.C. 1831f(c). Institutions that are adequately capitalized may seek a waiver from the FDIC to accept brokered deposits. Waivers under section 29(c) are only available (1) on a case-by-case basis, (2) upon application to the FDIC, (3) to adequately capitalized institutions, and (4) upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution. Less than adequately capitalized institutions (undercapitalized or significantly undercapitalized institutions) are not eligible to seek a waiver from the FDIC.

the deposit network—up to the *general cap*—from treatment as brokered deposits.

In contrast to the example described above, if the Bank places deposits obtained by or through the assistance of deposit broker into a deposit placement network, then those deposits would not meet the definition of a ''covered deposit.'' As a result, deposits that the Bank receives in exchange for its brokered deposits from other network member banks would not qualify as ''reciprocal deposits'' and therefore would not meet section 202's limited exception.

E. Conforming Assessments Amendments

The FDIC is proposing to make conforming amendments to its assessments regulations to be consistent with the statutory definition of reciprocal deposits. Prior to enactment of section 202, all reciprocal deposits as defined in the assessment regulations met the definition of brokered deposits. Because section 202 excepts certain reciprocal deposits from treatment as brokered deposits, the FDIC is proposing to replace the current definition of ''reciprocal deposits'' in section 327.8(q) with a new term, ''brokered reciprocal deposit.'' A ''brokered reciprocal deposit'' is a ''reciprocal deposit'' as defined under section 202, and proposed section 337.6(e)(2)(v), that does not meet the statute's limited exception (*e.g.,* deposits over the applicable caps discussed above). The FDIC is also proposing to make conforming amendments to sections 327.16(a)(1)(ii) and 327.16(e)(3), which reference reciprocal deposits.

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.[24] 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.[25]

The FDIC notes that the statutory definition of ''reciprocal deposit'' is substantially similar to the current regulatory definition in Part 327, with one difference. Section 202's definition of ''reciprocal deposits'' is limited to funds obtained from a deposit placement network in exchange for funds placed into the network that meet the definition of ''covered deposits,'' which excludes funds that were obtained, directly or indirectly, by or through a deposit broker before submission for placement through the deposit placement network. As such, funds that do not meet the statutory definition of ''reciprocal deposit'' because they are obtained in exchange for funds that the institution acquired by or through a deposit broker are ''brokered deposits'' and would not meet the proposed definition of ''brokered reciprocal deposits.''

The FDIC seeks comment on the extent to which institutions may be affected by the FDIC's proposal to conform the definition of reciprocal deposits for assessment purposes with the definition provided in section 202.

F. Interest Rates

Section 202 applies the statutory interest rate restrictions under section 29 to all reciprocal deposits. More specifically, section 202 amends section 29(e) of the FDI Act by ensuring that the interest rate restrictions apply to less than well capitalized banks that accept reciprocal deposits.[26] As a result, section 202 confirms that the current statutory and regulatory rate restrictions for less than well capitalized institutions continue to apply to *any* deposit, including a reciprocal deposit that is a covered deposit.[27] To ensure consistent treatment of the interest rate restrictions under section 202, the FDIC is proposing conforming amendments to section 337.6(b)(2)(ii) of its rules and regulations.

IV. Expected Effects

As noted previously, section 202 of the Act took effect upon enactment, and the proposed rule would conform part 337 with the legislation and align the assessment rules with the statute's definition of ''reciprocal deposits.'' The proposed rule applies to all FDIC-insured depository institutions. As of March 31, 2018, there were 5,616 FDIC-insured institutions. Of these, 2,528 institutions report having brokered deposits, which totaled $980 billion. Of the institutions reporting brokered deposits, 1,185 institutions also report having reciprocal deposits, totaling $48 billion.

Benefits

The proposed rule could affect deposit insurance assessments for a small number of FDIC-insured institutions. As discussed in Section II: Background, the brokered deposit ratio is one of the financial measures used to determine assessment rates for established small banks. The brokered deposit ratio may increase assessment rates for established small banks with brokered deposits greater than 10 percent of total assets.[28] Among these banks, those that are well capitalized and well rated can already deduct reciprocal deposits from brokered deposits and generally would not be affected by the proposed rule, for assessment purposes.[29] Furthermore, the proposed rule would not affect the assessment rates of banks that do not have reciprocal deposits or whose brokered deposits comprise less than 10 percent of total assets. The FDIC estimates that fewer than ten (0.178 percent) small FDIC-insured institutions that are either not well capitalized or not well rated (or both) could have a lower assessment rate under the proposed rule if their reciprocal deposits are excepted from brokered deposits.[30] For large institutions, generally insured depository institutions with greater than $10 billion in total assets, the proposed rule may alter the core deposit ratio, resulting in a change in the bank's assessment.[31] The FDIC estimates that 20 (0.356 percent) FDIC-insured institutions could have a lower assessment due to the effect of the proposed rule on their core deposit ratio, if their reciprocal deposits are excepted from treatment as brokered. Based on data as of March 31, 2018, the FDIC estimates that no more than 30 institutions would have reduced assessment rates, all else equal, and the FDIC's aggregate assessment revenue

[24] The brokered deposit ratio may increase assessment rates for established small banks with brokered deposits greater than 10 percent of total assets. Since 2009, when the ratio was first used as one of the financial measures used to determine an established small bank's assessment rate, the ratio has excluded reciprocal deposits from brokered deposits if the bank is well capitalized and well rated. *See* 12 CFR 327.16(a)(1)(ii).

[25] The brokered deposit adjustment applies to all new small institutions in Risk Categories II, III, and IV, and all large and all highly complex institutions, except large and highly complex institutions (including new large and new highly complex institutions) that are well capitalized and have a CAMELS composite rating of 1 or 2. The brokered deposit adjustment can increase assessments for institutions that have brokered deposits in excess of 10 percent of domestic deposits. *See* 12 CFR 327.16(e)(3).

[26] 12 U.S.C. 1831f(h).

[27] 12 U.S.C. 1831f(g)(3) and (e).

[28] All else equal, a higher brokered deposit ratio will result in a higher assessment rate.

[29] *See* 12 CFR 327.16(a)(1)(ii).

[30] FDIC Call Report, March 31, 2018.

[31] The core deposit ratio applies to large and highly-complex institutions and is measured as domestic deposits, excluding brokered deposits and uninsured non-brokered time deposits, divided by total liabilities. Reciprocal deposits that are brokered reciprocal deposits will continue to be excluded from the ratio. *See* 12 CFR 327.16(b) and Appendix B.

would be reduced by an estimated $4.3 million annually.

Adequately capitalized institutions may also benefit from the proposed rule through a reduction in administrative costs. Under existing regulations, these institutions must seek and receive a regulatory waiver from the FDIC in order to accept brokered deposits.[32] The proposed rule would allow these institutions that previously accepted reciprocal deposits to continue to receive reciprocal deposits up to the lesser of the *general* or *special cap* without requesting a waiver. This allowance results in a de minimis savings of administrative expenses for affected institutions. The number of institutions that may benefit from this potential reduction in administrative costs is difficult to accurately estimate with available data because it depends on the specific financial conditions of each bank, fluctuating market conditions for reciprocal deposits, and future management decisions.

Undercapitalized institutions may also benefit from the proposed rule by accepting reciprocal deposits up to the lesser of either the *general* or *special cap,* even though they are otherwise prohibited from receiving brokered deposits.[33] Under existing regulations, undercapitalized institutions cannot solicit or accept any reciprocal deposits because all reciprocal deposits are treated as brokered deposits. Because the proposed rule excepts a certain amount of reciprocal deposits from treatment as brokered, undercapitalized institutions that, when better capitalized, previously accepted reciprocal deposits may now be allowed to receive reciprocal deposits up to the lesser of the *general* or *special cap* despite being undercapitalized. If undercapitalized institutions can receive reciprocal deposits, the result may be increased utilization of reciprocal deposits in the future. However, this effect is difficult to estimate with available data because the decision to receive reciprocal deposits depends on the specific financial conditions of each bank, fluctuating market conditions for reciprocal deposits, and future management decisions.

There are 2,528 (45 percent) institutions that report holding some amount of brokered deposits and 1,185 (21 percent) that report holding some amount of reciprocal deposits. The changes could affect some metrics that rely on the amount of brokered deposits reported on the Call Report, such as:

- Net Noncore Funding Dependence Ratio
- Brokered Deposits Maturing in less than year to Brokered Deposits Ratio
- Brokered Deposits to Deposits Ratio
- Listing Service and Brokered Deposits to Deposits Ratio
- Reciprocal Brokered Deposits to Total Brokered Deposits Ratio

Cost

With regards to the difference in the current regulatory definition of ''reciprocal deposits'' for assessment purposes, which was added pursuant to the FDIC's assessment authority under section 7 of the FDI Act, and the statutory definition of reciprocal deposits that was added to section 29 of the FDI Act, the FDIC notes that banks do not report data on the amount (if any) of deposits that were obtained, directly or indirectly, by or through a deposit brokered before submission for placement through the deposit placement network. As a result, the FDIC cannot estimate whether this change to align the assessment regulation definition of ''reciprocal deposits'' with the statutory definition of that term in section 29 of the FDI Act would affect the amount of reciprocal deposits that a bank would report or whether it would affect any bank's assessment rate.

With regards to costs to the Deposit Insurance Fund, the FDIC estimates that, assuming all currently reported reciprocals align with the statutory definition, all else equal, the FDIC's aggregate assessment revenue would be reduced by an estimated $4.3 million annually. Additional reduced assessment revenue could occur if institutions shift their funding mix away from funding sources that affect assessment rates, such as brokered deposits, towards reciprocal deposits. Historically, when resolving failed institutions, the FDIC has found that potential acquiring institutions have generally been unwilling to pay a premium for reciprocal deposits, typically treating them consistent with other brokered deposits. It is not clear whether reciprocal deposits that are no longer considered brokered as a result of section 202 would be viewed by potential acquiring institutions as more akin to traditional retail deposits for purposes of warranting a premium. As a result, the FDIC requests comment on whether these non-brokered reciprocal deposits would be considered differently in the failing bank context. Additionally, the proposed rule could pose some additional regulatory costs associated with changes to internal systems or processes, or changes to reporting requirements.

V. Alternatives

The FDIC considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option. In particular, the FDIC considered whether a rulemaking implementing section 202 was necessary or appropriate. Section 202's amendments to section 29 became effective upon the Act's enactment on May 24, 2018, so one view considered was whether a rulemaking was necessary to implement the amendments. However, the FDIC believes that conforming section 337.6 with section 202's amendments will remove confusion that might arise if interested parties only consult section 337.6 for requirements related to brokered deposits.

Section 202 did not address the assessment rules in part 327 with respect to reciprocal deposits. However, the definition of ''reciprocal deposits'' in part 327 varies with the definition of that term in section 202. As an alternative, the FDIC considered whether it should continue to use the existing definition of ''reciprocal deposits'' for assessment purposes. However, the FDIC is concerned that having two different definitions of ''reciprocal deposits'' could cause confusion as well as undue burden in the industry, particularly for reporting purposes.

VI. Request for Comment

The FDIC seeks comment on its proposal to conform its current regulations that implement brokered deposit and interest rate restrictions with recent changes to section 29 made by section 202 of the Act. As noted earlier, this notice of proposed rulemaking is the first part of a two-part effort to revisit the brokered deposit rules. The FDIC is currently working on the second part, which is planned for later this year and which will seek comment on the brokered deposit regulations more generally. We encourage comments not related to the implementation of section 202 to be submitted as part of the broader rulemaking effort. The FDIC seeks comment on all aspects of this proposed rule and in particular the following questions that were provided in previous sections of this proposal.

- As indicated above, for an institution that is determined to not be well rated and can only meet the ''agent institution'' definition by maintaining its reciprocal deposits at or below the special cap, the FDIC is considering

[32] 12 U.S.C. 1831f(c); 12 CFR 337.6(c).

[33] 12 CFR 337.6(b).

evaluating this issue based on Call Report Data submitted for the reporting date immediately following 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 applicable provisions of section 202's 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 proposal to conform the definition of reciprocal deposits for assessment purposes with the definition provided in section 202.
- The FDIC requests comment on whether reciprocal deposits that are no longer considered brokered deposits as a result of section 202 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.*

VII. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this revised proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[34] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[35]

As of March 31, 2018, there were 5,616 FDIC-insured institutions, of which 4,177 are considered small entities for the purposes of RFA.[36]

The proposed rule could affect deposit insurance assessments for a small number of FDIC-insured, small entities. As discussed in Section II: Background, the brokered deposit ratio is one of the financial measures used to determine assessment rates for established small banks. The brokered deposit ratio may increase assessment rates for established small banks with brokered deposits greater than 10 percent of total assets.[37] Among these banks, those that are well capitalized and well rated can already deduct reciprocal deposits from brokered deposits and generally would not be affected by the proposed rule, for assessment purposes.[38]

Furthermore, the proposed rule would not affect the assessment rates of small banks that do not have reciprocal deposits or whose brokered deposits comprise less than 10 percent of total assets. The FDIC estimates that seven (0.2 percent) small, FDIC-insured entities that are either not well capitalized or not well rated (or both) could have a lower assessment rate under the proposed rule if their reciprocal deposits are excepted from brokered deposits.[39]

There are 611 (14.6 percent) small entities that report holding some amount of reciprocal deposits and 1,499 (35.9 percent) that report holding some amount of brokered deposits. These changes could affect some metrics that rely on the amount of brokered deposits reported on the Call Report, such as:

- Net Noncore Funding Dependence Ratio
- Brokered Deposits Maturing in less than year to Brokered Deposits Ratio
- Brokered Deposits to Deposits Ratio
- Listing Service and Brokered Deposits to Deposits Ratio
- Reciprocal Brokered Deposits to Total Brokered Deposits Ratio

Based on available information, it is difficult to determine whether additional regulatory costs or costs to the Deposit Insurance Fund could result. Nonetheless, the proposed rule could pose some additional regulatory costs associated with changes to internal systems or processes, or changes to reporting requirements. Based on the information above, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

IX. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has reviewed the proposed rule and determined that it revises certain reporting requirements that have been previously cleared by the OMB under various control numbers.[40]

On May 24, 2018, EGRRCPA amended various statutes administered by the Agencies and affected regulations issued

[34] 5 U.S.C. 601 *et seq.*

[35] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[36] FDIC Call Report, March 31, 2018.

[37] All else equal, a higher brokered deposit ratio will result in a higher assessment rate.

[38] *See* 12 CFR 327.16(a)(1)(ii).

[39] FDIC Call Report, March 31, 2018.

[40] The reporting requirements are found in the three Consolidated Reports of Condition and Income (Call Reports) promulgated by the Federal Financial Institutions Examination Council (FFIEC). The Call Reports are designated FFIEC 031 (Consolidated Report of Condition and Income for a Bank with Domestic and Foreign Offices); FFIEC 041 (Consolidated Report of Condition and Income for a Bank with Domestic Offices Only); and FFIEC 051 (Consolidated Report of Condition and Income for a Bank with Domestic Only and Total Assets of Less than $1 Billion). The FFIEC constituent bank regulatory agencies (the Board of Governors of the Federal Reserve System (the Board), the Office of the Comptroller of the Currency (the OCC) and the FDIC) (the Agencies) have each obtained information collection clearances from OMB under the following Control Numbers: 7100–0036 (Board); 1557–0081 (OCC); and 3064–0052 (FDIC).

by the Agencies.[41] As described above, certain amendments made by EGRRCPA took effect on the day of EGRRCPA's enactment and immediately impacted institutions' regulatory reports. In response to emergency review requests, the Agencies received approval from OMB to revise the reporting of information in the Call Reports including the reciprocal deposits provisions described in this proposed rule. As a result of OMB's emergency approval of revisions to the information collections affected by the above statutory changes, the expiration date of these collections has been revised to February 28, 2019. The Agencies are now undertaking the regular PRA process for revising and extending these information collections for three years and plan to publish the required 60-day notice in the **Federal Register**.

X. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4701, requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[42] In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The changes relating to ''reciprocal deposits'' and section 29 were effective upon enactment of section 202, and as described previously, institutions have already begun reporting reciprocal deposits as per the new law. The FDIC anticipates that any final rule relating to the amendments to part 337 of the FDIC's regulations would be effective 30 days after publication in the **Federal Register**. However, the proposed rule also includes changes to conform section 202's statutory definition of ''reciprocal deposit'' with the current definition of ''reciprocal deposit'' in the FDIC's assessments regulations in part 327. The FDIC is inviting comment on any administrative burdens that the proposed changes would place on depository institutions, including small depository institutions, and customers of depository institutions. The FDIC will consider these comments in connection with determining an effective date for the proposed rule. Consistent with RCDRIA, the FDIC anticipates that any changes to the assessment rule would be effective on the first day of a calendar quarter that begins after the date on which a final rule is published.

List of Subjects

12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the FDIC hereby proposes to amend parts 327 and 337 as follows:

PART 327—ASSESSMENTS

■ 1. The authority for 12 CFR part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

■ 2. Amend § 327.8 by revising paragraph (q) to read as follows:

§ 327.8 Definitions.

* * * * *

(q) *Brokered reciprocal deposits*—Reciprocal deposits as defined in § 337.6(e)(2)(v) that are not excepted from the institution's brokered deposits pursuant to § 337.6(e).

* * * * *

§ 327.16 [Amended]

■ 3. Amend § 327.16, by removing ''reciprocal deposit'' and adding in its place ''brokered reciprocal deposit as defined in section 327.8(q)'' in paragraph (a)(1)(ii) and by removing ''reciprocal deposits as defined in § 327.8(p)'' and adding in its place ''brokered reciprocal deposits as defined in section 327.8(q)'' in paragraph (e)(3).

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 4. The authority for 12 CFR part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1),1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

■ 5. Amend § 337.6 by revising paragraph (b)(2)(ii) introductory text, redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

§ 337.6 Brokered deposits.

* * * * *

(b) * * *

(2) * * *

(ii) Any adequately capitalized insured depository institution that has been granted a waiver to accept, renew or roll over a brokered deposit, or is an agent institution that receives a reciprocal deposit (under § 337.6(e)(2)(i)(C)), may not pay an effective yield on any such deposit which, at the time that such deposit is accepted, renewed or rolled over, exceeds by more than 75 basis points:

* * * * *

(e) *Limited exception for reciprocal deposits.* (1) *Limited exception.* Reciprocal deposits of an agent institution shall not be considered to be funds obtained, directly or indirectly, by or through a deposit broker to the extent that the total amount of such reciprocal deposits does not exceed the lesser of:

(i) $5,000,000,000; or

(ii) An amount equal to 20 percent of the total liabilities of the agent institution.

(2) *Additional definitions that apply to the limited exception for reciprocal deposits*—(i) *Agent institution* means an insured depository institution that places a covered deposit through a deposit placement network at other insured depository institutions in amounts that are less than or equal to the standard maximum deposit insurance amount, specifying the interest rate to be paid for such amounts, if the insured depository institution:

(A)(*1*) When most recently examined under section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) was found to have a composite condition of outstanding or good; and

(*2*) Is well capitalized;

(B) Has obtained a waiver pursuant to paragraph (c) of this section; or

(C) Does not receive an amount of reciprocal deposits that causes the total amount of reciprocal deposits held by the agent institution to be greater than the average of the total amount of reciprocal deposits held by the agent institution on the last day of each of the four calendar quarters preceding the calendar quarter in which the agent institution was found not to have a composite condition of outstanding or good or was determined to be not well capitalized.

(ii) *Covered deposit* means a deposit that:

[41] Public Law 115–174, 132 Stat. 1296 (2018).

[42] 12 U.S.C. 4802.

(A) Is submitted for placement through a deposit placement network by an agent institution; and

(B) Does not consist of funds that were obtained for the agent institution, directly or indirectly, by or through a deposit broker before submission for placement through a deposit placement network.

(iii) *Deposit placement network* means a network in which an insured depository institution participates, together with other insured depository institutions, for the processing and receipt of reciprocal deposits.

(iv) *Network member bank* means an insured depository institution that is a member of a deposit placement network.

(v) *Reciprocal deposits* means 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.

Dated at Washington, DC, on September 12, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–20303 Filed 9–25–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1271

RIN 2590–AA99

Miscellaneous Federal Home Loan Bank Operations and Authorities—Financing Corporation Assessments

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend its regulations pertaining to the operation of the Financing Corporation (FICO), a vehicle established by one of FHFA's predecessors to issue bonds, the proceeds of which were used to help fund the resolution of failed savings and loan associations during the 1980s. The last of those FICO bonds will mature in September 2019. By statute, FICO obtains the monies to pay the interest on those bonds by assessing depository institutions (FICO assessments) that are insured by the Federal Deposit Insurance Corporation (FDIC). The proposed rule addresses the manner in which FICO would conduct the 2019 FICO assessments, which are expected to be the last of those assessments. Specifically, the proposed rule would provide that all payments made by FDIC-insured depository institutions during 2019 will be final, and that no adjustments to prior FICO assessments would be permitted after March 26, 2019, the projected date as of which the FDIC will finalize the amounts of the final collection for the 2019 FICO assessments.

DATES: FHFA must receive written comments on or before October 26, 2018.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA99 by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comments to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@FHFA.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AA99'' in the subject line of the message.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA99, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA99, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Louis M. Scalza, Associate Director, Examinations, Office of Safety & Soundness Examinations, *Louis.Scalza@fhfa.gov,* (202) 649–3710; Winston Sale, Assistant General Counsel, *Winston.Sale@fhfa.gov,* (202) 649–3081; or Neil R. Crowley, Deputy General Counsel, *Neil.Crowley@fhfa.gov,* (202) 649–3055 (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comment on all aspects of the proposed rulemaking, which FHFA is publishing with a 30-day comment period. After considering the comments, FHFA will develop a final regulation. Copies of all comments received will be posted without change on the FHFA website at *http://www.fhfa.gov,* and will include any personal information you provide, such as your name, address, email address, and telephone number.

II. Background

FHFA is an independent agency of the federal government established to regulate and oversee the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (Banks), and the Bank System's Office of Finance.[1] FHFA also is responsible for overseeing FICO. The Competitive Equality Banking Act of 1987 [2] amended the Federal Home Loan Bank Act (Bank Act) and authorized FHFA's predecessor to establish FICO, and authorizes the FHFA Director to select the two Bank presidents that serve on its directorate, to prescribe such regulations as are necessary to carry out the statutory provisions relating to FICO, and to oversee the dissolution of FICO.[3]

FICO is a mixed-ownership, tax-exempt government corporation, chartered in 1987 by the former Federal Home Loan Bank Board, one of FHFA's predecessor agencies, pursuant to the Federal Savings and Loan Insurance Corporation (FSLIC) Recapitalization Act of 1987, as amended (Recapitalization Act).[4] The Recapitalization Act's purpose was to recapitalize the FSLIC insurance fund, which had been significantly depleted by a wave of savings and loan (S&L) failures during the S&L crisis of the 1980s. FICO's mission was to provide funding for FSLIC (and later for the FSLIC Resolution Fund after FSLIC's insolvency and later abolishment by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)) by selling bonds to the public. FICO's operations are managed by a directorate composed of the Director of the Office of Finance and two Bank presidents

[1] 12 U.S.C. 4511.

[2] Public Law 100–86, 101 Stat. 552.

[3] *See* 12 U.S.C. 1441(a) (establishment of FICO), (b)(1)(B) (selection of directors), (i) (dissolution, and authority for FHFA to exercise any FICO powers, needed to conclude its affairs), and (j) (authority to prescribe regulations).

[4] *See* 12 U.S.C. 1441(a).