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FEDERAL

12 CFR Parts 303 and 337

RIN 3064-AG38

Custodial Deposits: Implementing the 21st Century ROAD to Housing Act

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) invites public comment on a proposed rule that would amend the brokered deposit regulations to implement section 901 of the 21st Century ROAD to Housing Act related to custodial deposits.

DATES: Comments must be received no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments on the notice of proposed rulemaking, identified by RIN 3064-AG38 using any of the following methods:

- *FDIC Website: https://www.fdic.gov/federal-register-publications.* Follow the instructions for submitting comments on the agency website.
- *Email*: *Comments@fdic.gov*. Include RIN 3064-AG38 on the subject line of the message.
- *Mail*: Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments—RIN 3064-AG38, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery to FDIC*: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.
- *Public Inspection*: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/federal-register-publications*. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any

portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the proposed rule will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

This proposal, all comments received, and a summary of not more than 100 words of the proposed rule pursuant to the Providing Accountability Through Transparency Act of 2023 are available at *https://www.fdic.gov/federal-register-publications*.

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SUPPLEMENTARY INFORMATION:

I. Background and Policy Objectives

The 21st Century ROAD to Housing Act (the Housing Act) became effective on July 11, 2026.[1] Section 901 of the Housing Act amended section 29 of the Federal Deposit Insurance Act (FDI Act)[2] to: (1) provide a limited exception for an eligible institution to except a capped amount of custodial deposits from being considered brokered; and (2) restrict the interest rate that a covered insured depository institution (IDI) may pay on certain custodial deposits.

[1] Pub. L. 119–101, 140 Stat. 846 (2026).
[2] 12 U.S.C. 1831f.

Through this proposal, the FDIC would amend its brokered deposit regulations to conform with these provisions of the Housing Act.

II. Legal Framework

A. Section 29 of the FDI Act – Brokered Deposits and Interest Rate Restrictions

Section 29 of the FDI Act restricts IDIs from accepting deposits by or through a deposit broker if the institution is less than well capitalized for Prompt Corrective Action (PCA) purposes.[3] The FDIC may waive this restriction if the IDI is adequately capitalized; however, the restriction cannot be waived if the institution is undercapitalized.[4] 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," subject to certain exceptions.[5]

Section 29 of the FDI Act also imposes interest rate restrictions on IDIs that are less than well capitalized. In particular, IDIs that are less than well capitalized may not pay a rate of interest on brokered deposits accepted pursuant to a waiver, or on reciprocal deposits excluded by section 29 from being considered brokered deposits, that "significantly exceeds" (1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the national rate paid on deposits of comparable maturity, as established by the FDIC, for deposits accepted outside the institution's normal market area.[6]

The FDIC has implemented regulations governing the acceptance of brokered deposits and interest rate restrictions and related filing procedures in its regulations at 12 CFR 303.243, 337.6, and 337.7.

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[3] 12 U.S.C. 1831f(a).
[4] 12 U.S.C. 1831f(c).
[5] 12 U.S.C. 1831f(g)(1).
[6] 12 U.S.C. 1831f(e). Section 29 of the FDI Act also imposes interest rate restrictions on the solicitation of deposits by adequately capitalized IDIs, not subject to a waiver, and undercapitalized IDIs. *See* 12 U.S.C. 1831f(g)(3) and (h).

B. Section 29(j) – Limited Exception for Custodial Deposits

The Housing Act added a limited exception for custodial deposits under section 29(j) of the FDI Act. Section 29(j) provides that custodial deposits of an eligible institution shall not be considered to be brokered deposits to the extent that the total amount of such custodial deposits does not exceed 20 percent of the total liabilities of the eligible institution.[7] The exception is available only to an "eligible institution," which is defined as an IDI that accepts custodial deposits, if the IDI has less than $10 billion in total assets as reported on its Consolidated Report of Condition and Income (Call Report) and (1) when most recently examined was assigned a composite rating of 1, 2, or 3 under the Uniform Financial Institutions Rating System and is well capitalized; or (2) has obtained a waiver pursuant to 12 U.S.C. 1831f(c).[8]

The statute provides that a "custodial deposit" is:

> [A] deposit that is not deposited at an insured depository institution in return for fees paid by the insured depository institution pursuant to an agreement with a third party and that would otherwise be considered to be obtained, directly or indirectly, by or through a deposit broker, if the deposit is deposited at 1 or more insured depository institutions, for the purpose of providing or maintaining deposit insurance for the benefit of a third party, by or through any of the following, each acting in a formal custodial or fiduciary capacity for the benefit of a third party:
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> (i) An insured depository institution serving as agent, trustee, or custodian.
> (ii) A trust entity controlled by an insured depository institution serving as agent, trustee, or custodian.
> (iii) A State-chartered trust company serving as agent, trustee, or custodian.
> (iv) A plan administrator or investment advisor, acting in a formal custodial or fiduciary capacity for the benefit of a plan.

C. Section 29(k) – Restriction on Interest Paid on Certain Custodial Deposits

The Housing Act also added a restriction on the interest paid on certain custodial deposits under section 29(k) of the FDI Act. Specifically, section 29(k) prohibits a covered IDI[9] from paying a rate of interest on custodial deposits that are accepted while not well capitalized that, at

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[7] 12 U.S.C. 1831f(j)(1).
[8] 12 U.S.C. 1831f(j)(2)(B).
[9] The statute defines a "covered insured depository institution" as an IDI that, while acting as an eligible institution under section 29(j) of the FDI Act, accepts custodial deposits while not well capitalized. *See* 12 U.S.C. 1831f(k)(1)(B).

the time the funds or custodial deposits are accepted, significantly exceeds the limit on interest rates.[10] The statute provides that the limit on the rate of interest shall not be greater than (1) the rate paid on deposits of similar maturity in the normal market area of the covered IDI for deposits accepted in the normal market area of the covered IDI; or (2) the national rate paid on deposits of comparable maturity, as established by the FDIC, for deposits accepted outside the normal market area of the covered IDI.[11]

III. Overview of the Proposal

To implement the custodial deposit exception and interest rate restriction added in sections 29(j) and (k) of the FDI Act, the FDIC proposes to amend 12 CFR 303.243, 337.6, and 337.7, as discussed below.

A. Limited Exception for Qualifying Custodial Deposits

Consistent with section 29(j)(1) of the FDI Act, as amended by the Housing Act, proposed § 337.6(f)(1) would provide that certain custodial deposits, known as "qualifying custodial deposits," of an eligible institution will 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 custodial deposits does not exceed 20 percent of the total liabilities of the eligible institution. As further explained below, the FDIC proposes to use the term "qualifying custodial deposit" to distinguish deposits eligible for this exception from deposits held in other custodial arrangements. Further, under the proposal, any amount of qualifying custodial deposits exceeding the 20 percent cap would be considered funds obtained, directly or indirectly, by or through a deposit broker, with respect to the eligible institution.

Question Regarding the Limited Exception for Qualifying Custodial Deposits

Question 1: What additional clarification, if any, should be made to the proposal with respect to the determination of the amount of the 20 percent cap? What alternative determination

[10] 12 U.S.C. 1831f(k)(2).
[11] 12 U.S.C. 1831f(k)(3).

should the FDIC consider regarding an amount of qualifying custodial deposits in excess of the 20 percent cap?

B. Definitions

Proposed § 337.6(f)(2) would define relevant terms for purposes of the new exception.

1. Qualifying Custodial Deposit

The FDIC proposes to use the term "qualifying custodial deposit" to describe deposits that meet the statutory and regulatory requirements for the new exception. The term would be defined consistent with the definition of "custodial deposit" in section 29(j)(2)(A). The FDIC believes that using this term would be helpful as a way to distinguish between those deposits that are eligible for the exception versus those that are held in other arrangements that may have "custodial" features but not otherwise satisfy the statutory criteria.[12]

Under the proposed rule, a "qualifying custodial deposit" would mean a deposit that would otherwise be considered to be obtained, directly or indirectly, by or through a deposit broker,[13] which is placed:

- At one or more IDIs for the purpose of providing or maintaining deposit insurance for the benefit of a third party who is the beneficial owner of the deposit;
- Not in return for fees paid by the IDI pursuant to an agreement with a third party; and
- By or through a qualifying entity acting in a formal custodial or fiduciary capacity for the benefit of a third party who is the beneficial owner of the deposit.

a. Relevant third parties involved in qualifying custodial deposit arrangements

To clarify the relevant third parties referred to in the statutory definition, the proposed "qualifying custodial deposit" definition would differentiate, based on contextual use in the

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[12] *See, e.g.*, *infra* Section III.D (discussing the designated business exception for deposit arrangements involving non-discretionary custodians).

[13] Under the proposed rule, a deposit that is covered by another exception to the brokered deposit definition would not meet the "qualifying custodial deposit" definition because the deposit would not meet the statutory requirement that the deposit "otherwise be considered to be obtained . . . through a deposit broker." 12 U.S.C. 1831f(j)(2)(A). Accordingly, a deposit covered by another exception would not be subject to the 20 percent cap pursuant to the exception.

statute, between a third party involved in the deposit placement arrangement and the third-party beneficial owner of the deposited funds.

The FDIC would interpret the first reference to "third party" in the statutory language – "a deposit that is not deposited at an insured depository institution in return for fees paid by the insured depository institution pursuant to an agreement with a third party" – to mean any person involved in the deposit placement arrangement (other than the IDI receiving the deposits). This would include a deposit broker, third-party intermediary, subcustodian, or any other person or entity involved in placing, assisting in placing, or facilitating the placement of the underlying beneficial owners' deposits at the receiving IDI, or maintaining an account at the receiving IDI to hold the deposits.

In contrast, the second and third usages of "third party" in the statutory language – "for the purpose of providing or maintaining deposit insurance for the benefit of a third party" and "by or through any of the following, each acting in a formal custodial or fiduciary capacity for the benefit of a third party" – would be interpreted to mean the beneficial owner of the underlying deposited funds. In particular, the "for the benefit of a third party" and "providing or maintaining deposit insurance" language support the reading that the third party is the underlying depositor whose funds are ultimately being placed at the receiving IDI and the party for which deposit insurance is being sought. Such beneficial owners of the deposited funds may not have a direct relationship with the receiving IDI or each intermediary involved in the deposit arrangement.

b. Deposits not in return for fees paid by an IDI

The statutory definition of "custodial deposit" explicitly excludes deposits that are deposited at an IDI in return for fees paid by the IDI pursuant to an agreement with a third party. Under the proposal, use of the phrase "deposited . . . in return for fees paid by the IDI" would be interpreted to refer to monetary compensation paid by the IDI to a third party for the placement, or the facilitation of the placement, of deposits.

The statutory provision refers to fees "paid" by the IDI. Based on the use of the term "paid," the FDIC would interpret the provision as contemplating monetary compensation. Thus, under the proposal, the FDIC would not consider non-monetary compensation, such as non-cash benefits like discounted banking services, to be fees that are "paid" by the IDI.

Additionally, under the proposal, fees that are based, directly or indirectly, on the amount of deposits that the third party is placing or the number of deposit accounts that the third party is opening would be considered to be fees for the placement, or facilitation of the placement, of deposits. For example, an IDI paying a third party placement or referral fees, subscription or membership fees, or any other fee for the facilitation or the placement of deposits (calculated on a fixed or volume basis), would be an impermissible fee for purposes of the qualifying custodial deposits exception.

The proposal would not preclude third parties that place, or facilitate the placement of, deposits that qualify for the exception from receiving fees that are for a purpose other than the placement of deposits—for example, a fee for recordkeeping services. Such fees would be regarded as payments separate and apart from payment "in return for" the placement, or the facilitation of the placement, of deposits.

Additionally, interest paid by an IDI would not be considered to be fees paid in return for the placement, or the facilitation of the placement, of deposits. This includes interest payments in which a third party receives an ongoing portion of interest payments made to beneficial owners of the deposits. In other contexts, the FDIC has generally,[14] but not always,[15] distinguished fees and interest. In this case, the FDIC understands that Congress's intent was not to capture interest when using the term "fees." The proposed interpretation is consistent with the statute and would not impact the FDIC's use of the terms "fees" and "interest" in other circumstances.

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[14] *See, e.g.*, 12 CFR 303.243(b)(3)(i)(B)(1); 12 CFR 303.243(b)(3)(v); 12 CFR 303.243(b)(4)(i); 12 CFR 303.243(b)(4)(v); 12 CFR 337.6(a)(5)(iii)(B); 12 CFR 337.6(a)(5)(v)(I)(1)(ii); and 12 CFR 330.1(k).
[15] *See, e.g.*, 12 CFR 331.2.

The FDIC particularly encourages comment on this provision of the proposal. The FDIC is interested in learning more about different compensation structures that exist in the market and any recommended alternative interpretations. The FDIC seeks to interpret this provision in a manner that is both principled and faithful to the plain meaning of the statute.

c. For the purpose of providing or maintaining deposit insurance

Consistent with the statute, the proposed rule would require a qualifying custodial deposit to be "for the purpose of providing or maintaining deposit insurance" for the benefit of a third party who is the beneficial owner of the deposit. Under the proposed rule, the FDIC would consider the purpose to be providing or maintaining deposit insurance if the deposits placed (by or through a qualifying entity) are limited to an amount that does not exceed the Standard Maximum Deposit Insurance Amount (SMDIA) for each beneficial owner at each IDI.[16] The FDIC is proposing to interpret this provision to apply at a program level; the deposit placement program would qualify if the third party placing deposits keeps the amount at or below the SMDIA for each beneficial owner at each IDI where it places deposits. If a third party places a beneficial owner's funds in an IDI in amounts that exceed the SMDIA, the FDIC interprets such a program as being for a purpose other than providing or maintaining deposit insurance.

d. Notice Process

In order to provide transparency to IDIs regarding entities that qualify for the custodial deposit exception, the FDIC is proposing to establish a notice process through which eligible institutions (the IDIs receiving the custodial deposits), qualifying entities, or other third parties within the deposit placement arrangement would notify the FDIC that deposits being placed pursuant to a particular deposit placement arrangement are eligible for the custodial deposit exception.

The written notice would need to include:

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[16] A minor technical or administrative error that results in the amount placed exceeding the SMDIA would not disqualify the program from being considered to be for the purpose of providing or maintaining deposit insurance.

- The name of the notice filer;
- A brief description of the deposit placement arrangement pursuant to which the deposits are being placed;
- The name of the qualifying entity in the deposit placement arrangement and identification of the qualifying entity as an IDI, a trust entity controlled by an IDI, a State-chartered trust company, or a plan administrator or investment advisor;
- A statement that the deposits placed as part of the deposit placement arrangement are limited to an amount that does not exceed the SMDIA at any IDI for any beneficial owner of the deposits; and
- A description of all agreements associated with the deposit placement arrangement that contain provisions related to fees or other compensation paid by IDIs to third parties.

The description of the deposit placement arrangement would need to be sufficiently detailed so that the FDIC is able to determine whether deposits held by an IDI are part of the deposit placement arrangement described in the notice. The FDIC would generally defer to the notice filer's descriptions regarding the deposit placement arrangement, including the description of any associated fees or other compensation paid by the receiving IDIs. However, the FDIC retains discretion to confirm whether such compensation does not constitute a fee paid by the eligible institution to a third party in return for the placement of deposits.

The FDIC would publish a list of qualifying custodial deposit notice submissions, no later than 30 days after receiving the notice, similar to what the FDIC does for designated business exception notices,[17] so that IDIs may more easily determine whether deposits being placed by or through certain qualifying entities satisfy this element of the definition.

[17] *See* FDIC, Banker Resource Center, Brokered Deposits, Public Report of Entities Submitting Notices for a Primary Purpose Exception (PPE) (updated monthly), available at *https://www.fdic.gov/banker-resource-center/public-report-entities-submitting-notices-primary-purpose-exception-ppe.pdf*.

The FDIC would establish an electronic process for the submission of notices, similar to that used for designated business exceptions.[18] A notice would be effective immediately upon submission, and notice filers would receive immediate acknowledgement of receipt. The FDIC could, at its discretion, and at any time, including during the supervision and examination of an IDI, require the notice filer to provide additional information to substantiate the information provided in the notice. If the FDIC learns that the purpose of placing the deposits is not for the purpose of providing or maintaining deposit insurance, that an IDI is paying "fees" as described in the proposal, or that information provided in the notice was inaccurate, the FDIC could revoke the notice filing, resulting in the loss of eligibility for the exception. Before revoking a notice, the FDIC would provide notice to the notice filer with the opportunity to respond or remedy the notice.

The notice would need to be submitted on a one-time basis and certified annually. The notice filer would be required to update the notice to the extent the information previously submitted is no longer accurate.

2. Qualifying Entity

Section 29 of the FDI Act identifies certain entities "by or through" which the deposit must be deposited in order for the deposits to be considered custodial deposits eligible for the exception. In addition, such entities must be acting in a formal custodial or fiduciary capacity for the benefit of a third party. The FDIC proposes to use the term "qualifying entity" to describe these entities. Specifically, a "qualifying entity" would mean:

- An IDI serving as agent, trustee, or custodian;
- A trust entity controlled by an IDI serving as agent, trustee, or custodian;
- A State-chartered trust company serving as agent, trustee, or custodian; or

[18] *See* FDIC, Process for Primary Purpose Exception (PPE) Notice, Application, and Reporting Instructions (last updated Mar. 8, 2021), available at *https://www.fdic.gov/resources/bankers/brokered-deposits/instructions-brokered-deposits.pdf*.

- A plan administrator or investment advisor, acting in a formal custodial or fiduciary capacity for the benefit of a plan.

Deposits placed through an arrangement that does not involve a "qualifying entity" would not meet the "qualifying custodial deposit" definition.

For purposes of the "qualifying custodial deposit" definition, the FDIC proposes to define the term "formal custodial or fiduciary capacity" to mean an arrangement that is evidenced by a contract or another writing, providing expressly that the entity placing, assisting in placing, or facilitating the placement of funds is acting in a custodial or fiduciary capacity for the benefit of a third party. This addition would clarify what it means to act in a "formal" custodial or fiduciary capacity.

3. Eligible Institution

The FDIC is proposing to define the term "eligible institution" consistent with the definition provided in section 29(j)(2)(B) of the FDI Act, with certain clarifications described below.

The proposed rule would provide that an "eligible institution" means an IDI that accepts qualifying custodial deposits, if the IDI reports less than $10 billion in total assets in any of the four preceding quarters, as reported on the Call Report and—

- When most recently examined under section 10(d) of the FDI Act was assigned a CAMELS composite rating of 1, 2, or 3 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) and is well capitalized; or
- Has obtained a waiver pursuant to § 337.6(c).

Under the proposed rule, the FDIC would interpret the statutory requirement on supervisory ratings to be met by an IDI that has most recently received a CAMELS composite

rating of 1, 2, or 3. This approach would be consistent with how the FDIC has interpreted the same language elsewhere in the FDI Act.[19]

With respect to the total asset threshold, the FDIC proposes that an IDI that reports less than $10 billion in total assets for any of the four preceding quarters would qualify as an eligible institution. In other words, an institution that reports $10 billion or more in total assets for four consecutive quarters would no longer qualify as an eligible institution. This timing provision would aid IDIs in determining their eligibility for the exception, particularly those that are approaching the $10 billion limit. In the FDIC's supervisory experience, a four-quarter approach is appropriate as some smaller IDIs may experience short periods of asset growth that could temporarily place them at or above the $10 billion threshold, which could otherwise result in an unintended cliff effect.[20]

For IDIs that no longer meet the "eligible institution" definition due to changes in CAMELS composite ratings or capital levels, the proposed rule would describe how an IDI could requalify as an "eligible institution," similar to the process for an IDI to requalify as an "agent institution" under the reciprocal deposits exception.[21]

4. Plan and Plan Administrator

Lastly, the FDIC is proposing to define the terms "plan" and "plan administrator" to have the same meanings given those terms in sections 29(j)(2)(C) and (D) of the FDI Act.

Questions Regarding Definitions

Question 2: Do the proposed definitions effectively reflect both the statute and current industry practice? Please describe any additions or revisions that would further improve the definitions. If there are additional terms the FDIC should define, please identify the term(s) and provide suggested language.

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[19] *See, e.g.*, 12 CFR 337.6(e)(2)(i)(A)(*1*); 91 FR 56022 (Sep. 1, 2026).
[20] For example, many community banks received a significant increase in deposits in connection with the Paycheck Protection Program that temporarily placed some banks over $10 billion in total assets. *See* 85 FR 77345 (Dec. 2, 2020).
[21] *See* 12 CFR 337.6(e)(3); 91 FR 56022 (Sep. 1, 2026).

Question 3: Is the approach to clarifying the references to "third party" as described in the proposed "qualifying custodial deposit" definition consistent with how custodial arrangements are structured? If not, how could the definition be further refined? Are there additional third parties in these arrangements the rule should address?

Question 4: Do commenters recommend any amendments or further clarity regarding fee arrangements that would disqualify a deposit from meeting the "qualifying custodial deposit" definition? Are there alternative interpretations of the statutory prohibition on fees that the FDIC should consider that are consistent with the plain meaning of the statute and reflect a reasonable distinction between fees and other forms of compensation? What, if any, additional characteristics of fee arrangements should the FDIC consider in the context of fees paid in return for deposits? Please describe in detail the structure of fee arrangements today, including how fees are assessed and allocated among the receiving IDI and other entities within the deposit placement arrangement, and other forms of compensation that third parties may receive from the receiving IDI.

Question 5: Under the proposal, is the FDIC's characterization of fees paid in return for the placement of deposits sufficiently distinguishable from compensation that is not for the placement or the facilitation of the placement of deposits? Is the FDIC's distinction between fees and interest reasonable and appropriate? Are there compensation arrangements that would be excluded based on the FDIC's proposal which should be included, or vice versa?

Question 6: Do commenters support the FDIC's proposed notice requirement? What additional information, if any, would be necessary or important to ensure that the proposed notice provides enough information for eligible institutions to rely on the qualifying custodial deposit exception? What information, if any, is not necessary and should be removed from the proposed notice content requirements? What challenges would notice filers face in providing the required information? Please describe any changes the FDIC should make to either the proposed requirements for a notice filing or to the filing process.

Question 7: Does requiring a "formal custodial or fiduciary capacity" to be by contract or other writing appropriately cover the ways in which these arrangements are established? Is it necessary, or typical, for a contract to represent a formal custodial or fiduciary capacity? What other ways could there be a formal custodial or fiduciary capacity when there is no contract or other writing?

Question 8: Are there additional considerations the FDIC should address in the proposed "formal custodial or fiduciary capacity" definition? Are the entities involved in a formal custodial or fiduciary capacity arrangement sufficiently clear? If not, how should the rule be revised to address the relevant parties? For example, are subcustodians typically involved in formal fiduciary or custodial capacity arrangements? If so, what role do they typically play?

Question 9: What additional considerations or clarifications, if any, should the rule address with respect to a plan administrator or investment advisor, acting in a formal custodial or fiduciary capacity for the benefit of a plan?

Question 10: What additional considerations or clarifications should the rule address with respect to the "eligible institution" definition? What revisions should the FDIC make with respect to the process for an IDI to requalify as an "eligible institution"? What alternatives should the FDIC consider for clarifying the asset threshold for an eligible institution other than the proposed four preceding quarters clarification? Please describe the advantages and disadvantages of alternative approaches.

C. Interest Rate Restrictions for Qualifying Custodial Deposits

Section 29(k) of the FDI Act, as added by the Housing Act, imposes interest rate restrictions on qualifying custodial deposits that are accepted by covered IDIs that are less than well capitalized. The statutory interest rate restrictions established by the Housing Act are identical to the restrictions currently in place on the acceptance of brokered deposits by less than well capitalized institutions. Accordingly, the FDIC is proposing to extend the interest rate restrictions in 12 CFR 337.7(c)(2) to qualifying custodial deposits that are accepted by a less

than well capitalized institution. The FDIC is also proposing a conforming amendment to 12 CFR 337.7(g)(2), the provision addressing the acceptance of nonmaturity deposits by a less than well capitalized institution. Additionally, in order to more precisely align with the statutory text, the FDIC is proposing a technical change to refer explicitly to less than well capitalized institutions in these provisions.

To conform with the requirements of section 29(e) of the FDI Act, the proposed rule would also amend the FDIC's interest rate restrictions to clearly cover reciprocal deposits accepted by less than well capitalized institutions.[22]

The FDIC notes that the 20 percent cap on the custodial deposits exception has no bearing on whether a deposit is subject to the interest rate restrictions in section 29(k) of the FDI Act and 12 CFR 337.7(c)(2). Qualifying custodial deposits at or below the 20 percent cap are not considered brokered but are still subject to the interest rate restrictions as qualifying custodial deposits if accepted by a less than well capitalized institution. Qualifying custodial deposits in excess of the 20 percent cap must be reported as brokered and are subject to the interest rate restrictions as brokered deposits if accepted by a less than well capitalized institution.

Question Regarding Interest Rate Restrictions for Qualifying Custodial Deposits

Question 11: Is further clarity needed regarding any aspect of the interest rate restrictions on qualifying custodial deposits? Is it clear when the restrictions apply to an institution and what deposits are covered by the restrictions? Please provide any recommended adjustments to this provision of the proposal.

D. Designated Business Exception for Arrangements Involving Non-Discretionary Custodians

The FDIC has recognized a designated business exception[23] (DBE) for certain deposit placement arrangements involving an agent or nominee that acts in a non-discretionary custodial

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[22] *See* 12 U.S.C. 1831f(e).

[23] A "designated business exception" is a brokered deposit exception available for business relationships that the FDIC has deemed to have a primary purpose other than the placement of funds with IDIs. *See* 86 FR 6742, 6756 (Jan. 22, 2021). Entities that place deposits at IDIs in connection with these business relationships are excepted from the "deposit broker" definition. *See* 12 CFR 337.6(a)(5)(v)(I)(*1*).

capacity.[24] Funds that are placed at IDIs in conformance with the DBE for non-discretionary custodians are excepted from treatment as brokered.[25] The FDIC is not proposing to alter the existing DBE for deposit placement arrangements involving non-discretionary custodians.

The DBE is meaningfully distinct from the exception for qualifying custodial deposits established by section 901 of the Housing Act.[26] In particular, the DBE is available only if the agent or nominee plays a limited role in the deposit placement arrangement. For example, in order to obtain the DBE, the agent or nominee may not exercise discretion concerning the IDI or institutions at which the funds are placed, nor may the agent or nominee negotiate the terms of the deposit account. By contrast, the statutory exception for custodial deposits does not contain these same express conditions.

The FDIC does not intend for the statutory custodial deposits exception to eliminate, narrow, or otherwise alter the existing non-discretionary custodian exception. A deposit placement arrangement that satisfies the requirements of the non-discretionary custodian DBE may continue to qualify for that exception, without regard to the new statutory exception.

Treating the two exceptions as separate and preserving the existing non-discretionary custodian exception would avoid disturbing established deposit placement arrangements while also giving effect to the specific limitations Congress adopted for qualifying custodial deposits.

Questions Regarding Designated Business Exception for Non-Discretionary Custodians

Question 12: Under the proposal, funds that qualify for the non-discretionary custodian DBE would not be considered qualifying custodial deposits and would not count towards the 20 percent cap under the statutory exception. Is this view reasonable? Is there a sounder approach to the potential interaction between the DBE—and other exceptions and exclusions from treatment as brokered deposits—and the statutory exception for custodial deposits?

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[24] 87 FR 1065 (Jan. 10, 2022).
[25] 87 FR 1066.
[26] Moreover, the FDIC discerns no Congressional intent to disturb the DBE for non-discretionary custodians. The DBE was established well before the passage of the Housing Act and neither the text of the Housing Act nor the associated legislative history suggests an intent to displace or supplant the DBE.

Question 13: Are there other exceptions under section 29 of the FDI Act or the FDIC's brokered deposit regulations that may interact or overlap with the statutory custodial deposits exception? Should the FDIC provide additional clarification about any such interaction or overlap?

E. Call Report Updates

The Housing Act became effective in the third quarter of 2026. On September 30, 2026, the FFIEC issued Supplemental Instructions as part of the September 30, 2026, Call Report Instructions.[27] These instructions explain that institutions wishing to utilize the new exception for custodial deposits should "apply the newly defined terms and other provisions of Section 901 of the Housing Act to determine whether an institution and its custodial deposits are eligible for the statutory exception."[28] The Supplemental Instructions clarify that, alternatively, institutions could report consistent with prior instructions and amend their reports, as necessary, following the FDIC's issuance of a final rule implementing the statutory exception.

In connection with this proposed rule, the FDIC recognizes that changes to the Call Report instructions may be necessary to ensure accurate and consistent reporting of brokered deposits in line with the new statutory exception for qualifying custodial deposits. The FDIC plans to work through the FFIEC to ensure the necessary changes are made. Additionally, as part of implementation, the FDIC is evaluating whether to add two reporting lines to Schedule RC-E in order to monitor institutions' use of the custodial deposits exception.

The two potential reporting lines would identify the total amount of qualifying custodial deposits (Total qualifying custodial deposits), as well as any additional qualifying custodial deposits that are nevertheless being reported as brokered because they exceed the 20 percent cap (Brokered qualifying custodial deposits). Additionally, it may be advisable to require reporting on custodial deposits only for institutions using the exception.

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[27] *See* FFIEC, Supplemental Instructions (Sep. 30, 2026), available at *https://www.ffiec.gov/sites/default/files/data/reporting-forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202609.pdf.*

[28] *Id.*

Any changes to reporting requirements applicable to the Call Reports, and their instructions, would be effectuated in coordination with the FFIEC in a separate Paperwork Reduction Act notice.

Questions Regarding Call Report Instructions

Question 14: Should the FFIEC add reporting items for qualifying custodial deposits? Alternatively, should existing Call Report items be modified or expanded instead of adding new reporting items?

Question 15: Should the proposed reporting items apply to all institutions or only to institutions that maintain qualifying custodial deposits?

Question 16: What systems, records, or processes would institutions use to identify, measure, and report qualifying custodial deposits? Would the proposed items require new systems or material modifications to existing systems? Where possible, commenters should provide estimates of the expected initial and ongoing costs associated with the proposed reporting requirements.

Question 17: Should an institution's brokered qualifying custodial deposits be reported confidentially? Why or why not?

IV. Expected Effects

The proposed rule would amend the FDIC's regulations to implement the qualifying custodial deposit exception and related interest rate restrictions consistent with section 901 of the Housing Act, which became effective on July 11, 2026.[29] This section summarizes the analysis performed by the FDIC to estimate the economic impact of the proposed rule. For this purpose, the FDIC compares estimated economic outcomes under the proposed rule to outcomes under a baseline in which the proposed rule is not promulgated. Because this proposed rule would implement the statutory requirements of the Housing Act, which are in effect currently, the FDIC's analysis focuses on the associated economic effects of proposed provisions where the

[29] Pub. L. 119–101, 140 Stat. 846 (2026).

FDIC is exercising discretion to clarify and interpret the statute for implementation.[30] The impact of such provisions is discussed below.

A. Scope of Affected Entities

Under the proposed rule, an eligible institution would be permitted to rely on the qualifying custodial deposit exception.[31] An eligible institution would be defined as an IDI with $10 billion or less in total assets that has either (1) received a CAMELS composite rating of 1, 2, or 3 and is well capitalized, or (2) received a brokered deposit waiver from the FDIC. The FDIC estimates that there are approximately 4,031 IDIs that could meet the eligible institution definition under the proposed rule. As of the quarter ending June 30, 2026, the FDIC insured 4,247 IDIs, of which 4,085 report total assets of less than $10 billion.[32] Of those 4,085 IDIs, 4,030 are currently well capitalized with a CAMELS composite rating of 1, 2, or 3, and one additional IDI meets the definition of adequately capitalized, which the FDIC extrapolates to represent an IDI eligible for a brokered deposit waiver.[33]

With respect to the 4,031 IDIs that could meet the eligible institution definition, the FDIC cannot accurately estimate, based on available information, how many of those IDIs hold brokered deposits that would be reclassified as non-brokered under the qualifying custodial deposit exception. However, the FDIC estimates that 1,629 IDIs that could potentially meet the eligible institution definition currently report positive amounts of brokered non-reciprocal deposits,[34] which the FDIC views as indicating that as many as 1,629 IDIs may be immediately affected by the proposal, if the proposal were finalized today. The number of affected IDIs is

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[30] In other words, the baseline includes the associated economic effects of the statutory provisions that are effective today absent a rule. Today, an IDI may rely on Section 901 of the Housing Act to report custodial deposits on its Call Report. *See supra* Section III.E (discussing updates to the FFIEC Supplemental Instructions as part of the September 30, 2026, Call Report Instructions).

[31] The proposed rule would also impose rate restrictions on a covered IDI, which is defined as an IDI that, while acting as an eligible institution, accepts custodial deposits while not well capitalized. Under the proposed rule, the FDIC is not exercising its discretion with respect to interpreting the rate restrictions provided under section 901 of the Housing Act.

[32] FDIC Call Report data, June 30, 2026.

[33] The FDIC may, on a case-by-case basis and upon an application by an adequately capitalized IDI, waive the prohibition on the acceptance, renewal, or rollover of brokered deposits. *See* 12 CFR 337.6(c).

[34] FDIC Call Report data, June 30, 2026.

likely to change in future periods, but the FDIC does not currently have the information necessary to estimate such changes.

In addition to affected IDIs, the FDIC anticipates the proposed rule may impact third parties that are involved in deposit placement arrangements and the third parties who are the beneficial owners of the deposits that would qualify for the qualifying custodial deposits exception. The FDIC does not currently have data to estimate the number of affected third parties.

B. Expected Benefits

If finalized, the proposed rule would make several amendments that clarify and interpret certain provisions within the Housing Act that would benefit affected IDIs and third parties.

The proposed rule would define "qualifying custodial deposit," "qualifying entity," "fees," and "formal custodial or fiduciary capacity," and clarify the relevant "third party" within eligible deposit arrangements. These definitions generally benefit IDIs that may potentially qualify for the exception because the proposed rule would provide additional clarity regarding the new exception, align the proposed rule with other existing brokered deposit regulatory provisions as appropriate, and reflect relevant business practices. The FDIC does not have information, at this time, to estimate whether, relative to the baseline, these aspects of the proposal will result in changes to the number of affected IDIs.

Under the proposed rule, the FDIC would also clarify the timing of the asset threshold for an eligible institution. Specifically, the proposed rule provides that an IDI that reports less than $10 billion in total assets for any of the four preceding quarters would satisfy the asset threshold applicable to an eligible institution. Relatedly, the proposal would establish that any IDI with reported total assets of $10 billion or above for four consecutive quarters would not meet the criteria to qualify as an eligible institution. This aspect of the proposal would generally benefit IDIs that may potentially qualify for the exception, as some smaller IDIs may experience short periods of asset growth that could temporarily place them at or above the $10 billion threshold,

which could result in an unintended cliff effect.

The proposed rule could also affect FDIC deposit insurance assessments for some IDIs that would qualify as eligible institutions. Under the FDIC's assessment regulations, IDIs with a significant concentration of brokered deposits may pay higher quarterly assessments, depending on other factors.[35] To the extent that deposits currently considered brokered would be considered non-brokered under the proposed rule, an eligible institution's assessment may decrease. The FDIC does not have the information necessary to estimate which IDIs would realize this benefit. However, the FDIC believes such effects on assessment revenue are likely to be small in the aggregate.

Lastly, the proposed rule would require eligible institutions, qualifying entities, or other third parties within the deposit arrangement to submit a written notice to the FDIC in order for the deposits to be considered qualifying custodial deposits. The notice would be effective immediately upon filing. The FDIC would also publish a list of qualifying custodial deposit notice submissions. The notice provision would benefit all parties within the deposit placement arrangement by providing transparency regarding entities that meet the requirements of the qualifying custodial deposit exception.

C. Expected Costs

As noted, the FDIC is proposing to require eligible institutions, qualifying entities, or other third parties to submit a notice to the FDIC regarding the deposit arrangement in order for the deposits to qualify as qualifying custodial deposits. The FDIC anticipates that this aspect of the proposed rule would pose small compliance costs for entities that file the notices.

The FDIC estimates that eligible institutions, qualifying entities, and other third parties that submit a notice for deposits to qualify as qualifying custodial deposits would spend approximately four hours of labor time per initial submission and one hour per year to certify its

[35] *See* 12 CFR part 327.

qualifying custodial deposit arrangements. Using a wage rate of $112.12 per hour,[36] the FDIC estimates that a qualifying entity would incur approximately $450 in labor costs to submit a notice and $112 per year to certify its qualifying custodial deposit arrangements. These estimates do not capture all costs associated with producing and submitting a notice. The FDIC does not currently have information to estimate additional compliance costs. While such costs may be significant for some entities, the FDIC anticipates such costs to be small in the aggregate.

Nonetheless, some entities may not have all the required information in their possession and could incur costs in obtaining the information from other sources. The FDIC anticipates, however, that marginal compliance costs associated with the notice process would likely decline over time as some notice filers could utilize the published list of qualifying custodial deposit notice submissions to more efficiently prepare their notice submissions.

As previously discussed, the FDIC is evaluating whether to add, in coordination with the FFIEC, two potential line items to the Call Report related to the new exception. The FDIC anticipates that any costs associated with such changes will be de minimis as eligible institutions are likely to maintain and keep records supporting their reliance on the qualifying custodial deposits exception given the 20 percent cap.

D. Conclusion

Given the economic effects discussed in section IV.A through IV.C of this Supplemental Information, the FDIC expects that the benefits of the proposed rule would justify its costs. The FDIC invites comments on all aspects of the supporting information provided in the Expected Effects section. The FDIC is particularly interested in comments on any material economic

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[36] The FDIC estimates that the labor for this compliance burden would be allocated as follows: financial analysts - 40 percent; IT specialists – 30 percent; clerical workers and compliance officers – 10 percent each; lawyers and executives & managers – 5 percent each. The FDIC uses the following sources and methodology to estimate an hourly wage and incorporate the cost of non-monetary benefits: Bureau of Labor Statistics: 'National Industry-Specific Occupational Employment and Wage Estimates: Industry: Credit Intermediation and Related Activities (5221 And 5223 only)' (May 2025), Employer Cost of Employee Compensation (March 2025), and Employment Cost Index (March 2025 and June 2026). Standard Occupational Classification (SOC) Codes: Exec. And Mgr = 11-0000 Management Occupations; Lawyer = 23-0000 Legal Occupations; Compl. Ofc. = 13-1040 Compliance Officers; IT = 15-0000 Computer and Mathematical Occupations; Fin. Anlst. = 13-2051 Financial and Investment Analysts; Clerical = 43-0000 Office and Administrative Support Occupations.

effects that the agency has not identified.

V. Administrative Law Matters

A. Paperwork Reduction Act

This notice of proposed rulemaking has been reviewed for compliance with the Paperwork Reduction Act of 1995 (PRA).[37] In accordance with the PRA, the FDIC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has reviewed the notice of proposed rulemaking and determined that it would introduce new information collection requirements pursuant to the PRA and necessitate clarification of the instructions for depository institutions.

The FDIC is seeking a new control number for these information collection requirements and will submit them to OMB for review and approval.

Proposed Information Collection

Title: Notice of Qualifying Custodial Deposit Arrangements.

OMB Control No.: 3064-[NEW].

Type of Review: Regular.

Affected Public: IDIs and Qualifying Entities.

Description: The proposed rule would establish a notice process through which eligible institutions, qualifying entities, or other third parties within the deposit placement arrangement would notify the FDIC that deposits being placed pursuant to a particular deposit placement arrangement are eligible for the qualifying custodial deposit exception. The notice would identify the notice filer and qualifying entity, specify the type of qualifying entity, describe the deposit placement arrangement in sufficient detail to enable the FDIC to identify whether deposits held by an IDI are part of the deposit placement arrangement described in the notice, state that the

[37] 44 U.S.C. 3501 *et seq.*

deposits are limited to an amount that does not exceed the SMDIA for each beneficial owner at each IDI, and describe all agreements associated with the deposit placement arrangement that contain provisions related to fees or other compensation paid by receiving IDIs to third parties. The FDIC would publish a list of notice submissions to assist IDIs in determining whether deposits being placed by or through certain qualifying entities satisfy this element of the definition.

Summary of Estimated Annual Burden (OMB No. 3064-NEW)

Information Collection (IC) (Obligation to Respond)	Type of Burden (Frequency of Response)	Number of Respondents	Annual Number of Responses per Respondent	Time per Response (HH:MM)	Annual Burden (Hours)
1. Notice of Qualifying Custodial Deposit Arrangements (Required to Obtain Benefit)	Recordkeeping (On Occasion)	54	1	4:00	216
2. Ongoing Certification for Qualifying Custodial Deposit Arrangements (Required to Obtain Benefit)	Reporting (Annual)	162	1	1:00	162
Total Annual Burden (Hours): 378					
Note: The estimated annual information collection time burden is the product, rounded to the nearest hour, of the estimated annual number of responses and the estimated time per response for a given IC. The estimated annual number of responses is the product, rounded to the nearest whole number, of the estimated annual number of respondents and the estimated annual number of responses per respondent. This methodology ensures the estimated annual burdens in the table are consistent with the values recorded in OMB's consolidated information system.					

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 the proposed rule on small entities.[38] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule, if promulgated, 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 $850 million.[39] Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. The FDIC does not believe that the proposed rule, if adopted, will have a significant economic effect on a substantial number of small entities. However, some expected effects of the proposed rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included an Initial Regulatory Flexibility Act Analysis in this section.

Objective and Reasons for the Action

The proposed rule would implement section 901 of the Housing Act, which became effective on July 11, 2026,[40] by providing additional clarity to eligible institutions that intend to rely on the exception, particularly with respect to key definitions. For additional discussion on the reasons and objectives of the proposal, please refer to Section I of this notice, "Background and Policy Objectives."

Description of the Action and Legal Basis

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[38] 5 U.S.C. 601 *et seq.*

[39] The SBA defines a small banking organization as having $850 million or less in assets, where an organization'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 by 87 FR 69118, effective Dec. 19, 2022). In its determination, the "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 an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is "small" for the purposes of RFA.

[40] Pub. L. 119–101, 140 Stat. 846 (2026).

Section 29 of the FDI Act restricts IDIs from accepting deposits by or through a deposit broker if the institution is less than well capitalized for PCA purposes and also imposes interest rate restrictions on IDIs that are less than well capitalized.[41] The proposal would amend the FDIC's regulations to implement the qualifying custodial deposit exception and related rate restrictions consistent with section 901 of the Housing Act. Section II of this notice, "Legal Framework" and Section III, "Overview of the Proposal" provide additional information on the proposal and its legal basis.

Number of Small Entities Affected

Under the proposed rule, an eligible institution would be permitted to rely on the qualifying custodial deposit exception. The FDIC estimates that approximately 2,857 IDIs that are considered small entities could meet the eligible institution definition under the proposed rule. As of the quarter ending June 30, 2026, the FDIC insured 4,247 IDIs, of which 2,984 are considered small entities for the purposes of the RFA. All 2,984 small entities report total assets of less than $10 billion.[42] Of those 2,984 small entities, 2,856 are currently well capitalized with a CAMELS composite rating of 1, 2, or 3, and one additional small entity meets the definition of adequately capitalized, which the FDIC extrapolates to represent an IDI eligible for a brokered deposit waiver.[43]

With respect to the 2,857 small entities that could meet the eligible institution definition, the FDIC cannot accurately estimate, based on available information, how many of those small entities currently hold brokered deposits that would be reclassified as non-brokered under the qualifying custodial deposit exception. However, the FDIC estimates that 960 small entities currently report positive amounts of brokered non-reciprocal deposits,[44] which the FDIC views as indicating that as many as 960 small entities may be immediately affected by the proposal, if

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[41] 12 U.S.C. 1831f(a).
[42] FDIC Call Report data, June 30, 2026.
[43] *See supra* footnote 38.
[44] FDIC Call Report data, June 30, 2026.

the proposal were finalized today. The number of affected small entities is likely to change in future periods, but the FDIC does not currently have the information necessary to estimate such changes.

Effects on Small Entities

Generally, the proposed rule would implement the statutory requirements of the Housing Act, which are in effect currently. However, there are certain provisions of the proposal where the FDIC is exercising discretion to clarify and interpret the statute for implementation. The impact of such provisions on small entities is discussed below.

The FDIC proposes to make several amendments that clarify and interpret certain provisions within the statute. These definitions generally benefit small entities that may qualify for the exception because they would clarify key aspects of the new exception, align the proposed rule with other existing brokered deposit regulatory provisions as appropriate, and reflect relevant business practices and participants associated with qualifying custodial deposits. Relative to the baseline, these clarifications and interpretations may marginally increase the number of affected small entities that would meet the eligible institution definition and rely on the qualifying custodial deposit exception; however, the FDIC does not have information, at this time, to estimate such changes.

The proposed rule could also affect FDIC deposit insurance assessments for some small entities that would qualify as eligible institutions. Under the FDIC's assessment regulations, IDIs with a significant concentration of brokered deposits may pay higher quarterly assessments, depending on other factors.[45] To the extent that deposits currently considered brokered would be considered non-brokered under the proposed rule, an eligible small entity's assessment may decrease. The FDIC does not have the information necessary to estimate which small entities would realize this benefit. However, the FDIC believes such effects on assessment revenue are likely to be small in the aggregate.

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[45] *See* 12 CFR part 327.

As noted previously, the proposal may pose some compliance costs for notice filers. The FDIC estimates that small entities that are eligible institutions and qualifying entities that submit a notice for deposits to qualify as qualifying custodial deposits would spend approximately four hours of labor time per initial submission and one hour per year to certify its qualifying custodial deposit arrangements. Using a wage rate of $112.12 per hour,[46] the FDIC estimates that these small entities would incur approximately $450 in labor costs to submit a notice and $112 per year to certify its qualifying custodial deposit arrangements. These estimates do not capture all costs associated with producing and submitting a notice. The FDIC does not currently have information to estimate additional compliance costs. While such costs may be significant for some small entities, the FDIC anticipates such costs to be small in the aggregate.

The FDIC anticipates any such effects are likely to be small for small entities that are notice filers.

For additional discussion of the expected effects of the proposal, please refer to Section IV of this notice, "Expected Effects."

Other Rules

The FDIC is not aware of any duplicative, overlapping, or conflicting Federal rules.[47]

Alternatives Considered

The FDIC considered not promulgating the rulemaking to implement the custodial deposit exception and interest rate restriction added in sections 29(j) and (k) of the FDI Act. However, the FDIC has determined that the proposed rule is necessary to fully effectuate the

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[46] The FDIC estimates that the labor for this compliance burden would be allocated as follows: financial analysts - 40 percent; IT specialists – 30 percent; clerical workers and compliance officers – 10 percent each; lawyers and executives & managers – 5 percent each. The FDIC uses the following sources and methodology to estimate an hourly wage and incorporate the cost of non-monetary benefits: Bureau of Labor Statistics: 'National Industry-Specific Occupational Employment and Wage Estimates: Industry: Credit Intermediation and Related Activities (5221 And 5223 only)' (May 2025), Employer Cost of Employee Compensation (March 2025), and Employment Cost Index (March 2025 and June 2026). Standard Occupational Classification (SOC) Codes: Exec. And Mgr = 11-0000 Management Occupations; Lawyer = 23-0000 Legal Occupations; Compl. Ofc. = 13-1040 Compliance Officers; IT = 15-0000 Computer and Mathematical Occupations; Fin. Anlst. = 13-2051 Financial and Investment Analysts; Clerical = 43-0000 Office and Administrative Support Occupations.

[47] *See supra* Section III.D (distinguishing the proposed qualifying custodial deposit exception from the DBE for non-discretionary custodians).

amendments to section 29 of the FDI Act made by section 901 of the Housing Act and provide clarity.

The FDIC welcomes comments on any aspect of the information presented in the Regulatory Flexibility Act section and requests comment on whether the proposed rule has a significant effect on a substantial number of small entities.

C. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994,[48] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the FDIC will consider, consistent with principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rule. The FDIC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the FDIC should consider in determining the effective date and administrative compliance requirements for a final rule.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[49] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the *Federal Register* after January 1, 2000. The FDIC invites your comments on how to make this proposed rule easier to understand, including the following:

- *Question 18*: Has the FDIC organized the material to suit your needs? If not, how could the proposed rule be more clearly stated?

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[48] 12 U.S.C. 4802(a).

[49] Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

- *Question 19*: Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- *Question 20*: Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?
- *Question 21*: Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- *Question 22*: What else could the FDIC do to make the proposed rule easier to understand?

E. Executive Orders 12866 (as Amended)

Executive Order 12866, titled "Regulatory Planning and Review," as amended, requires the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget to determine whether a proposed rule is a "significant regulatory action" prior to the disclosure of the proposed rule to the public. If OIRA finds the proposed rule to be a "significant regulatory action," Executive Order 12866 requires an agency to conduct a cost-benefit analysis of the proposed rule. Executive Order 12866 defines "significant regulatory action" to mean a regulatory action that is likely to: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has determined that this proposed rule is not a significant regulatory action under section 3(f)(1) of Executive Order 12866 and, therefore, is not subject to review under Executive Order 12866.

F. Executive Order 14192

Executive Order 14192, titled ‘‘Unleashing Prosperity through Deregulation,’’ requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.

VI. Request for Comment

The FDIC seeks comment on all aspects of the proposed rule.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation’s Board of Directors proposes to amend 12 CFR parts 303 and 337 as follows:

PART 303—FILING PROCEDURES

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a), (Seventh and Tenth),

1820, 1823, 1828, 1831a, 1831e, 1831f, 1831o, 1831p-1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415 and 15 U.S.C. 1601-1607.

2. Amend § 303.243 by adding a new paragraph (c) to read as follows:

§ 303.243 Brokered deposits.

* * * * *

(c) *Qualifying custodial deposits exception notices —*

(1) *Scope.* This section sets forth a process for a notice filer to notify the FDIC regarding the placement of qualifying custodial deposits under § 337.6(f) of this chapter.

(2) *Definitions.* For purposes of this paragraph (c):

(i) *Eligible institution* has the same meaning given the term in § 337.6(f)(2)(i) of this chapter.

(ii) *Notice filer* means an eligible institution, a qualifying entity, or another third party within the deposit placement arrangement that will rely upon the limited exception for qualifying custodial deposits described in § 337.6(f) of this chapter.

(iii) *Qualifying entity* has the same meaning given the term in § 337.6(f)(2)(vi) of this chapter.

(3) *Notice requirement for qualifying custodial deposits*. A deposit is not a qualifying custodial deposit, as defined in § 337.6(f)(2)(v) of this chapter, unless a notice filer has submitted a written notice to the FDIC containing the information required by this section with respect to such deposits.

(i) *Contents of notice.* The notice must include:

(A) The name of the notice filer;

(B) A brief description of the deposit placement arrangement pursuant to which the deposits are being placed;

(C) The name of the qualifying entity in the deposit placement arrangement and identification of the qualifying entity as an insured depository institution, a trust entity controlled

by an insured depository institution, a State-chartered trust company, or a plan administrator or investment advisor;

(D) A statement that the deposits placed as part of the deposit placement arrangement are limited to an amount that does not exceed the Standard Maximum Deposit Insurance Amount at any insured depository institution for any beneficial owner of the deposits; and

(E) A description of all agreements associated with the deposit placement arrangement that contain provisions related to fees or other compensation paid by receiving insured depository institutions to third parties.

(ii) *Additional information for notices.* The FDIC may request additional information from the notice filer in connection with the notice.

(iii) *Subsequent notices.* A notice filer that previously submitted a notice under this section shall submit a subsequent updated notice to the FDIC if, at any point, the contents of the original notice submission are no longer accurate.

(iv) *Ongoing requirements for notice filers.* Notice filers that submit a qualifying custodial deposit exception notice must provide an annual certification to the FDIC that the deposits continue to qualify as qualifying custodial deposits.

(v) *Revocation of notice.* The FDIC may, with prior written notice and a 30-day opportunity to cure, revoke a notice filing if:

(A) The deposits no longer qualify as qualifying custodial deposits; or

(B) The notice is inaccurate.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

3. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463, 1464, 1468, 1816, 1818(a), 1818(b), 1819, 1820(d), 1821(f), 1828(j)(2), 1831, 1831f, 1831g, 5412.

4. Amend § 337.6 by adding a new paragraph (f) to read as follows:

§ 337.6 Brokered deposits.

* * * * *

(f) *Limited exception for qualifying custodial deposits —*

(1) *In general.* Qualifying custodial deposits of an eligible 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 custodial deposits does not exceed an amount equal to 20 percent of the total liabilities of the eligible institution. Any amount of qualifying custodial deposits in excess of an amount equal to 20 percent of the total liabilities of the eligible institution shall be considered funds obtained, directly or indirectly, by or through a deposit broker with respect to the eligible institution.

(2) *Additional definitions that apply to the limited exception for qualifying custodial deposits —*

(i) *Eligible institution* means an insured depository institution that accepts qualifying custodial deposits, if the insured depository institution has less than $10,000,000,000 in total assets, as described in paragraph (f)(2)(i)(C) of this section, and—

(A)(*1*) When most recently examined under section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) was assigned a CAMELS composite rating of 1, 2, or 3 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system); and

(*2*) Is well capitalized; or

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

(C) For purposes of paragraph (f)(2)(i) of this section, an insured depository institution is considered to have less than $10,000,000,000 in total assets if the institution has reported less than $10,000,000,000 in total assets in any of the four preceding quarters, as reported on the Consolidated Report of Condition and Income.

(D) For purpose of paragraph (f)(2)(i) of this section:

(*1*) The effective date of a CAMELS composite rating is the date of written notification to the insured depository institution by its appropriate Federal banking agency of its supervisory rating; and

(*2*) The effective date of a change in capital categories is the date described in paragraph (a)(3) of this section.

(ii) *Formal custodial or fiduciary capacity* means an arrangement that is evidenced by contract or another writing, providing expressly the entity placing, assisting in placing, or facilitating the placement of the deposited funds is acting in a custodial or fiduciary capacity for the benefit of a third party.

(iii) *Plan* has the same meaning given the term in 29 U.S.C. 1002(3).

(iv) *Plan administrator* has the same meaning given the term "administrator" in 29 U.S.C. 1002(16)(A).

(v) *Qualifying custodial deposit* means a deposit that would otherwise be considered to be obtained, directly or indirectly, by or through a deposit broker, which is placed:

(A) At one or more insured depository institutions for the purpose of providing or maintaining deposit insurance for the benefit of a third party who is the beneficial owner of the deposit;

(B) Not in return for fees paid by the insured depository institution pursuant to an agreement with a third party; and

(C) By or through a qualifying entity acting in a formal custodial or fiduciary capacity for the benefit of a third party who is the beneficial owner of the deposit.

(vi) *Qualifying entity* means any of the following:

(A) An insured depository institution serving as agent, trustee, or custodian;

(B) A trust entity controlled by an insured depository institution serving as agent, trustee, or custodian;

(C) A State-chartered trust company serving as agent, trustee, or custodian; or

(D) A plan administrator or investment advisor, acting in a formal custodial or fiduciary capacity for the benefit of a plan.

(3) *The purpose of providing or maintaining deposit insurance.* A deposit placement arrangement will be considered to be arranged for the purpose of providing or maintaining deposit insurance for purposes of paragraph (f) of this section if deposits are placed (by or through a qualifying entity) in amounts that do not exceed the Standard Maximum Deposit Insurance Amount for each beneficial owner at each insured depository institution.

(4) *Deposits in return for fees paid by the insured depository institution.* For purposes of paragraph (f) of this section, a deposit placed at an insured depository institution is considered to be a deposit in return for fees paid by the insured depository institution if the insured depository institution pays monetary compensation to a third party for the placement, or the facilitation of the placement, of deposits.

(i) *Fees for the placement or the facilitation of the placement of deposits.* Fees that are based, directly or indirectly, on the amount of deposits that the third party is placing or the number of deposit accounts that the third party is opening, are considered to be fees for the placement, or facilitation of the placement, of deposits.

(ii) *Compensation that does not constitute fees for the placement or the facilitation of the placement of deposits.* The following are not fees in return for the placement, or the facilitation of the placement, of deposits:

(A) Non-monetary compensation.

(B) Interest payments paid by an insured depository institution.

(C) Fees for a purpose other than the placement, or facilitation of the placement, of deposits.

5. Amend § 337.7 by revising paragraphs (c)(2) and (g)(2) to read as follows:

§ 337.7 Interest rate restrictions.

* * * * *

(c) * * *

(2) *Institutions that are not well capitalized.* An institution that is not well capitalized may not: solicit deposits by offering a rate of interest that exceeds the applicable rate cap; or, where an institution that is not well capitalized has accepted brokered deposits, qualifying custodial deposits, or reciprocal deposits, pay a rate of interest that, at the time such deposit is accepted, exceeds the applicable rate cap. For purposes of this section, the applicable rate cap is the national rate cap or, if the institution has provided the notice and evidence described in paragraph (d) of this section, the local market rate cap for deposits gathered in the institution's local market area. If an institution gathers deposits from more than one local area, it may seek to pay a rate of interest up to its local market rate cap for deposits gathered in each respective local market area.

* * * * *

(g) * * *

(2) *Acceptance of certain nonmaturity deposits.* A less than well capitalized institution that accepts nonmaturity brokered deposits, qualifying custodial deposits, or reciprocal deposits, with respect to a particular deposit broker, may not pay interest in excess of the applicable rate cap on:

(i) Any new nonmaturity accounts opened by or through that particular deposit broker;

(ii) An amount of funds that exceeds the amount(s) in the account(s) that, at the time the institution fell to less than well capitalized, had been opened by or through the particular deposit broker; or

(iii) For agency or nominee accounts, any funds for a new depositor credited to a nonmaturity account or accounts.

Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on November 17, 2026.
Jennifer M. Jones,
Deputy Executive Secretary.

BILLING CODE 6714-01-P

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