February 23, 2009

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Part 337—Interest Rate Restrictions

Dear Mr. Feldman,

Thank you for the opportunity to provide comments regarding the proposed "Interest Rate Restrictions on Institutions That Are Less Than Well-capitalized", issued on January 27, 2009.

This letter contains comments and suggestions relevant to one specific area of the proposed rule change, which will help Institutions and FDIC Examiners validate Market Areas and subsequent Prevailing Rates.

The Proposed-Rule-Change document (from here on referred to as Document) clearly identifies and adequately describes the current challenges in establishing a Market Area. As stated in the Document, "These rules and definitions in section 337.6 have been difficult for insured depository institutions and examiners to apply… Under these circumstances, institutions and examiners have struggled to determine 'normal market areas'."

In effect, the challenge in establishing "Normal Market Area" is not in the definition, but rather in the absence of a standard measurement tool. In other words, institution "A" may measure "Normal Market Area" differently than Institution "B", making it very difficult for FDIC Examiners to validate the Prevailing Rate. As the Document states, "The problem with defining 'normal market area' can be illustrated by an example. Two insured depository institutions might maintain offices in the same area but have vastly different deposit gathering strategies. The first institution might concentrate on obtaining deposits from the local area; in contrast, the second institution might focus on a much wider area and each would tailor its rates to the deposits being solicited."

Our recommendation for establishing a standard measurement for defining "Normal Market Area" is simple, scientifically-based, and easy to validate. Moreover, it follows

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the FDIC guideline for establishing a "Normal Market Area" based on the two key elements outlined in Rule 337.6.

Section 337.6 defines "market area" as follows: "A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area **may affect the rates** offered by other insured depository institutions operating in the same area." 12 CFR 337.6(b)(4). In adopting this definition, the FDIC offered the following explanation: "Under the final rule, the market area will be determined pragmatically, on a case-by-case basis, based on the **evident or likely impact** of a depository institution's solicitation of deposits in a particular area, taking into account the means and media used and volume and sources of deposits resulting from such solicitation." 57 FR at 23939.

The two key phrases in this definition are:
1. May affect the rates…
2. Evident of likely impact…

Based on these two specific conditions, we propose the following standard measurement of "Normal Market Area":

Standard Measurement

<u>Foundation</u>
The foundation of the Standard Measurement derives from the definition of competition. In our case (banks), competition exists **only** when two or more institutions compete for deposits in such a way that the competitive action (rates) **may affect** the others, and the competitive action is **likely to impact** the outcome (balances) of the others.

<u>Measuring "May affect"</u>
A simple correlation analysis of the competitive rates in the geographic area (city, county or DMA) can point out which competitors' rates correlate to the rate of the testing inductions. When there is some degree of correlation (and significance) between the testing institution and competitors, the outcome points to the fact that the involved institutions are competing because they make rate changes in some degree of correlation (positive or negative).

Therefore, we can determine that the testing institution competes only with the correlated competitors because the absence of correlation simply means that the institutions are not reacting (randomly or causally) to rate fluctuation – thus they do not **affect** the rates of the testing institution.

<u>Measuring "Likely impact"</u>
A simple regression analysis of the competitive rates and the balance of the testing institution can establish the likelihood of impact that the competitive rates may have on the balances of the testing institution.

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The regression analysis will be conducted only on the correlated competitors (if there is no correlation – there is no linear relationship), and the outcome will establish the competitive set that is **likely to impact** the balance of the testing institution.

Moreover, the regression analysis will also point out the degree of **impact** in which each of the competitors has the balance of the testing institution, as well as the collective impact that this group of competitors has on the balances of the testing institution. For example, the findings of the regression analysis will show that the rates of a group of competitors impact the balances of the testing institution to the degree of 95%.

Based on the outcome of the regression analysis, the testing insanitation now has a list of competitors, in each of its markets that have shown to have **an effect** on their rates, and are **likely to impact** their balances when rate changes occur. This list of competitors will constitute the competitive set in the "Normal Market Area," and will be used to determine the Prevailing Rate for pricing purposes.

Validating "Normal Market Area"

The Standard Measurement will also make it easy and simple for the FDIC Examiner to validate. Since the measurement was done using acceptable-statistical analysis, there is no room for "interpretation" of the findings. Banks that are required to submit their "Normal Market Area" for examination can provide the FDIC Examiner with the correlation and regression analysis that they conducted, thus eliminating the need to "justify" why some competitors were included and some not.

All in all, I believe that the practice of this simple measurement by institutions and FDIC Examiners will clear the confusion surrounding the issue of "Normal Market Area," and will eliminate most of the disputes over the selection of the competing institutions in each of the markets. Moreover, institutions and FDIC Examiners will drastically reduce the time and cost associated with reviewing and establishing an acceptable "Normal Market Area".

I appreciate your consideration of these comments and suggestions, and I will be happy to discuss this issue with more details with the appropriate people at the FDIC.

Regards,

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