

March 28, 2009

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:

Corus Bank, N.A. (“Corus”) appreciates the opportunity to comment on the notice of proposed rulemaking (the “Proposed Rule”) issued recently by the Federal Deposit Insurance Corporation (the “Corporation”) regarding “Interest Rate Restrictions on Institutions That Are Less Than Well-Capitalized.” Although Corus is generally supportive of the Corporation’s efforts to bring greater clarity to the application of the Part 337 rate restrictions, as well as to amend the “national rate” definition to correct the “unreasonably low” limits currently applicable to the rates that may be offered by certain less than well-capitalized institutions, Corus respectfully submits that the method of determining the “national rate” set forth in the Proposed Rule (as reflected in the sample schedule of “national rates” and “rate caps” included in the Proposed Rule) fails in certain respects to conform to the language and intent of Part 337. In addition, Corus believes that the Proposed Rule lacks an appropriate level of granularity in its treatment of different types of deposit products, particularly with respect to the significant differences in rates that are available in the market for checking, savings, and money market deposit accounts. Finally, Corus believes that the Proposed Rule would benefit from greater detail and transparency with respect to the Corporation’s data collection methods and calculation of “national rates.”

- (1) The method of determining “national rates” under the Proposed Rule fails to comport with the language and intent of Part 337 because it does not account for differences in market rates paid on deposits of varying size.**

Under the Proposed Rule (as under the current rule), an adequately capitalized institution would be prohibited from paying an effective yield on any “non-local” deposit that exceeds by more than 75 basis points “the national rate paid on deposits of comparable size and maturity.” The Corporation has proposed to replace the current method of determining the “national rate” (*i.e.*, with respect to Treasury yields) with a “simple average” of rates paid on deposits of similar size and maturity by all insured depository institutions and branches for

which data is available. However, the sample schedule of “national rates” and “rate caps” included in the Proposed Rule does not reflect any consideration of deposit account balance (*i.e.*, the “size” component of the proposed definition of “national rate”).

As the Corporation is aware, various deposit products in the market (checking, savings, money market, certificates of deposit) typically offer different rate tiers for deposits of varying size – as a general matter, higher rates are paid on higher balances. This relationship between balance size and applicable interest rate is not limited to jumbo (\$100,000 and greater) versus non-jumbo deposit products, but typically applies at many balance level thresholds: \$10,000, \$25,000, \$50,000 and so on. Thus, the Proposed Rule is not only inconsistent with the Corporation’s stated intent regarding the method of determining “national rates” under Part 337 (*i.e.*, in part as a function of deposit size), but also does not comport with how these products are priced in the market.

Corus believes that detailed rate listings by balance tier should be included in the schedule of “national rates” and “rate caps.” Failure to account in a more detailed manner for the relationship between balance size and rates paid on deposit products would not only render Part 337 inconsistent on its own terms, but as a substantive matter could exacerbate the competitive disadvantage that less than well-capitalized banks already face with respect to the rates they can offer, thereby further compromising their funding sources and increasing their liquidity risk due to the potential for migration of deposits.

(2) The method of determining “national rates” under the Proposed Rule does not sufficiently account for the differences in market rates paid on different types of deposit products.

The sample schedule of “national rates” and “rate caps” included in the Proposed Rule does not reflect an adequate level of granularity in its treatment of the different types of deposit products offered in the market. For example, under the Proposed Rule it appears that the Corporation intends to treat all non-maturity products alike for purposes of Part 337, in effect disregarding the significant differences in market rates paid on savings, checking and money market deposit accounts. As the Corporation is aware, the differences in rates paid on these products in the market are substantial, owing in part to the fact that the “non-maturity” aspect of these deposit products does not render them particularly similar such that the same “rate cap” should apply.

We also note that the sample schedule included in the Proposed Rule addresses neither odd-term certificates of deposit (*e.g.*, seven, nine, or eleven-month maturities) nor

“promotional rates” for products such as money market deposit accounts.¹ The use of these deposit products and features in the market is quite common, and Corus believes the Corporation should address how these rates will appear or otherwise be factored into the schedule of “national rates” and “rate caps.” For example, a less than well-capitalized institution subject to a “rate cap” based on a simple average of the rates paid on money market deposit accounts would clearly be placed at a greater competitive disadvantage against institutions offering “promotional rates” substantially in excess of average rates.

Corus believes, therefore, that in addition to accounting for the differences in rates paid according to deposit size, the schedule of “national rates” and “rate caps” also should incorporate more detail with respect to different maturities and different types of deposit products. Again, a failure to adopt a more granular approach than is reflected in the Proposed Rule could place certain less than well-capitalized institutions at a further competitive disadvantage with respect to the rates they can offer.

(3) The Proposed Rule lacks sufficient detail with respect to the Corporation’s data collection methods and its calculation of “national rates.”

Under the Proposed Rule, the Corporation would monitor the rates paid by insured depository institutions and use this data to calculate a schedule of “national rates” and “rate caps” that would be published on a weekly basis. However, it is not clear exactly how the Corporation plans to calculate the “national rates” or what level of detail will be available to depository institutions in order to validate and better understand the Corporation’s methods. For example, because the “national rates” would be based from week to week on “data available” to the Corporation, it seems possible that the underlying data set could vary substantially from one week to the next merely on the basis of which institutions’ data is incorporated. The Proposed Rule does not describe any particular method by which the Corporation would ensure consistency from week to week, without which the “national rates” could be subject to wide fluctuations.

Corus believes it is important that the “national rate” calculation process be as detailed and transparent as possible, and that the calculation process not cause rates to fluctuate artificially from week to week based on which institutions’ data happens to be included. To that end, it would be helpful if the Corporation could begin publishing the weekly schedule of “national rates” and “rate caps,” together with the underlying calculations, so that depository institutions can begin planning for the impact of the Proposed Rule.

¹ Although we recognize that subsection 337.6(b)(4) provides a method for calculating rate limits for odd-term deposits (*i.e.*, by interpolating between available data points), Corus believes the sample schedule itself would benefit from additional detail in this regard.

If the Corporation ultimately decides to employ a schedule of “national rates” and “rate caps” similar to that set forth in the Proposed Rule, however, the Corporation should at a minimum consider excluding outliers from its calculations. For example, institutions paying 10 basis points on a money market account are not offering a market rate and are not in any real sense competing for money market deposits. Therefore, the rates paid by such institutions should not be included in the Corporation’s calculations of “national rates.”

(4) The use of the terms “national rate” and “effective yield” in the Proposed Rule creates ambiguities in the Proposed Rule’s application.

The Proposed Rule (as is the case with the current rule) uses the concepts of “effective yield” and “national rate” in applying its restrictions. As the Corporation is aware, the effective yield on a deposit product is affected by factors such as the method of interest compounding on that product, and therefore the “effective yield” for that deposit can be quite different from that same product’s simple interest rate. The use of these two concepts therefore creates some level of ambiguity in the Proposed Rule: subsection 337.6(b)(4) uses the term “effective yield” for purposes of applying the restrictions of subsections 337.6(b)(2)(ii)(A) and (b)(3)(ii), thereby limiting interest rates paid by affected insured banks in their normal market areas by reference to the effective yields in those areas, whereas the interest rate limitations for deposits solicited outside the normal market area is determined by reference to the national rates. In Corus's view, it would be preferable to use the same concept throughout the regulation and thereby avoid any inconsistencies or computational differences in the calculation of maximum permitted interest rates.

If you have any questions regarding these comments, please do not hesitate to contact me directly. Thank you for your consideration.

Respectfully,



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