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April 5, 2009

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

RE: FDIC Part 337-Interest Rate Restrictions
Interest Rate Restrictions on Institutions That Are Less Than Well-Capitalized

Dear Mr. Feldman:

We appreciate the opportunity to comment on the Interest Rate Restrictions on Institutions that are less than Well Capitalized Note of Proposed Rulemaking (FIL-5-2009 dated January 28, 2009. Comments and feedback were sought regarding several parts of the proposed rules.

1) **Should the FDIC amend its definition of a "market area"?**
    a. **Should the FDIC add a definition of "normal market area"?**
    b. **If so, what should be the definition of an insured bank's "normal market area"?**

- No, the present definition is sufficient and should not be revised. A financial institution should be able to clearly define its market area based on the current regulatory definition. Adding another definition is only likely to add confusion as to which definition a financial institution should use when trying to determine if its interest rates significantly exceed the market rate.

2) **Should the FDIC create a presumption that the prevailing rate in any "market area" or "normal market area" is the national rate?**
    a. **If not, how should the FDIC determine the prevailing rate in a particular "market area" or "normal market area"?**

- The "National Rate" should be a default rate rather than a presumed definition of the "Prevailing Rate" for all banks. The regulation should allow each institution to calculate and defend its analysis of the "Prevailing Rates" in the bank's normal market area", or to accept the "National Rates" as the default levels.

3) Should the FDIC, in addition to publishing a "national rate" that can be used as a proxy for the "normal market area" rate, also provide a schedule that lists prevailing rates for maturities by state for those banks soliciting deposits only in those states?

- ❖ Yes, a schedule that lists interest rates by state could work; however it should include all financial institutions. The influence of credit unions on prevailing local market deposit rates offered in very many areas of this country is irrefutable. Ignoring this reality in the determination of prevailing rates can be quite problematic for banks operating in such markets, with a potential unintended consequence of increasing the probability of a liquidity crisis for a bank that is no longer deemed to be well capitalized. The brokered rules should allow for the inclusion of credit unions. It is not known how accurate a national average would be as this proposal indicates that to determine the national average, "…a simple average of rates paid by all insured depository institutions and branches for which data is available" would be used. It is not evident from the proposal how many institutions have data that is available nor is it evident which institutions would be providing the date. For example, if the only data available is from rural banks, the data would not be helpful in metro areas.

4) Should the FDIC redefine the "national rate"?

a. If so, should the FDIC define the "national rate" as "a simple average of rates paid by all insured banks and branches for which data are available"?

b. If not, how should the FDIC define the "national rate"?

- ❖ In lieu of a single "National Rate", information is clearly available to calculate more specific "Regional Rates" (i.e. by state, county, etc.). We suggest regionalizing the standard rate, if there is to be a rate calculated. Nonetheless, we would recommend allowing each bank to provide its own analysis. We would suggest not outlining specific methodologies a bank must use to calculate its own prevailing market rate. Enough flexibility should be allowed to capture the true local market rate while staying within the "spirit" of the rule.

5) Should the definition of the "national rate" be made more flexible?

a. For example, in the event of changes in market conditions, should the FDIC possess the discretion to add or remove a multiplier to the "national rate" (so that the "national rate" might be the "average or rates times 1.20" or some other multiplier)?

- ❖ No, a multiplier rate should not be used as it defeats the purpose of using simple averages. It complicates the process of determining if interest rates significantly differ from the market rate. The multiplier should not be needed since the national average is proposed to be calculated based on a simple average of rates paid by all depository institutions If the regulation allows each institution to calculate and defend its analysis of the "Prevailing Rates" in the bank's "normal market area", or to accept the "National Rates" at the default levels, a multiplier rate would not be necessary.

6) Should the FDIC set forth a specific procedure for determining average or prevailing rates?

   a. For example, should the FDIC specify that data may be obtained from one or more private companies as to the rates paid by insured banks?

- No, the FDIC should not set a specific procedure. The process for determining average interest rates should be left at the discretion of the financial institution. Banks should maintain documentation and be expected to demonstrate the interest rate offered is consistent with the rates offered in their market. The bank examiner can then determine if the process is reasonable.

7) Should the FDIC establish a procedure for disseminating information about average rates or rate caps?

   a. For example, should the FDIC post such information on its Web site for use by insured banks and examiners?

- Yes, information should be provided via the Internet website. Such a manner assures the information is readily available to users and the information can be quickly updated by the FDIC.

8) Should the FDIC establish a procedure through which an insured bank could present evidence about the prevailing or average rates in a particular market?

- At the very least, the rule should reflect the broad use of off-term CD 'Specials' in most markets when determining an estimate for the local prevailing rates. We suggest allowing for "CD Special" term ranges in addition to the standard rack rate maturities presented in the FDIC sample table (i.e. 7 months to 11 months as category between the rack rate of 6 and 12 months). At a minimum, the rack rates should be defined to encompass additional non-standard terms (i.e. 6 months to include 5 – 9 months, 12 months including 10 – 15 months). Including only traditional rack rate maturities, which most banks intentionally keep well below market rates to avoid repricing a portion of their deposit base unnecessarily, will miss measuring the terms and rates that banks must use to capture new deposit dollars. The exclusion of these rates and terms that gather the majority of new deposit dollars, will substantially reduce the calculated prevailing rates and hamper, in our opinion, the attainment of the ultimate goals of both the bank and the FDIC relating to brokered deposit regulation compliance.
- In this regard, it would also be helpful for the FDIC to disclose its methodologies and data sets in order for banks to better determine whether meaningful differences exist in a local market that may not be captured in the FDIC's national average.

9) Under the FDIC's regulations, a rate of interest "significantly exceeds" another rate, or is "significantly higher" than another rate, if the first rate exceeds the second rate by more than 75 basis points

a. **Should the FDIC change this standard?**

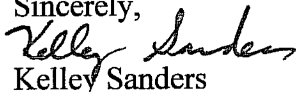
- ❖ Yes, consider increasing the 75 basis point add-on over the National/Prevailing Rate (by at least 25 bpts) as well as providing for FDIC flexibility to modify the spread based upon prevailing market conditions. We feel this way for the following reasons as well as the belief that a wider spread will increase the likelihood that banks would utilize the "National Rate" vs. incurring the costs to calculate a more bank specific prevailing local market rate.
- ❖ Many 'reported' rates are artificially low due to relationship pricing that exists in most markets. Many banks pay rates above and beyond offering rates if a customer has a checking account, multiple accounts, direct deposit, etc. It is not uncommon to be able to increase CD rates by 25-75 basis points due to relationship pricing. Additional leeway seems warranted given the abundance of relationship pricing seen throughout the industry. The same can be said for tiered pricing (different rates for same term based on deposit size) which is also prevalent in many banks. Accordingly, the FDIC survey should incorporate some "normalization" of their data for differences in pricing based upon relationships and tiers; or this should be reflected in a larger add-on spread.
- ❖ Since a fixed spread (i.e. 75 bpts) takes on a very different meaning when prevailing CD rates are at 6.00% (for example) vs. 2.00%, the FDIC should have the flexibility to widen the spread based upon prevailing market conditions.

10) Should the FDIC adopt restrictions in addition to the current restrictions based on a bank's capital category?

- ❖ No, the FDIC should not adopt restrictions in addition to the current restrictions relating to capital ratios.
- ❖ It is important to recognize that brokered deposits are an important source of deposits for a financial institution. While these types of deposits represent more risk than a traditional deposit, they can be important in helping to maintain liquidity. Additional restrictions on financial institutions may be needed; however they should be imposed only on a case-by-case basis and not applied to all financial institutions as a whole.
- ❖ Consider allowing (without a waiver) adequately capitalized banks to replace maturing brokered CDs for a period of time (i.e. 6 months) without increasing the balance of the position, while working on a plan to reduce the level of brokered deposits. This would lower the potential risk of a liquidity crisis, without increasing FDIC liability should the institution fail. This would benefit the bank, it's local competitors and the FDIC given the goals described above.

Thank you for your time in reading these comments. I appreciate your serious consideration of these thoughts and recommendations. I would be happy to discuss this letter with you.

Sincerely,



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