FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-25-2009
May 29, 2009

INTEREST RATE RESTRICTIONS ON INSTITUTIONS THAT ARE LESS THAN WELL CAPITALIZED
Final Rule

Summary: The FDIC has issued the attached final rule making certain revisions to the interest rate restrictions under Part 337.6 of the FDIC Rules and Regulations. Under the final rule, the "national rate" is a simple average of rates paid by U.S. depository institutions as calculated by the FDIC. When evaluating the Part 337.6 compliance of an institution that is less than Well Capitalized, the FDIC will deem the national rate to be the prevailing rate in all market areas, unless it agrees with evidence provided by the institution that it is operating in an area where prevailing deposit interest rates are higher. The final rule is effective January 1, 2010, but the FDIC does not object to the immediate use of the newly defined national rate by an insured depository institution.

Distribution:
FDIC-Insured Institutions

Suggested Routing:
Chief Executive Officer
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Related Topics:
Brokered Deposits
12 C.F.R. Part 337.6

Attachment:
Final Rule

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Note:
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Highlights:

- Because of the current low yields on U.S. Treasury securities, the national rates computed under the FDIC's Part 337.6 fall well short of the national average rates paid on deposits by depository institutions.
- The final rule redefines the national rate for deposits of similar size and maturity to be "a simple average of rates paid by all insured depository institutions and branches for which data are available."
- The FDIC will calculate and publish a weekly schedule of national rates and national interest-rate caps by maturity.
- Recognizing that competition for deposit pricing has become increasingly national in scope, the rule establishes a presumption that the prevailing rate in all market areas is the FDIC-defined national rate.
- Institutions that are less than Well Capitalized, and their supervisors, may rely upon the national rates published by the FDIC for purposes of determining compliance with Part 337.6 in lieu of any further analysis.
- An institution not choosing to use the national rate can define its market area and support its position to the FDIC that prevailing rates in that area exceed the national average.

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The Federal Deposit Insurance Corporation (FDIC) has issued the attached final rule relating to the interest rate restrictions under Part 337.6 of the FDIC Rules and Regulations. The rule redefines the national rate as "a simple average of rates paid by all insured depository institutions and branches for which data are available." The prevailing rate in all market areas is deemed to be the national rate as defined by the FDIC.

Under Part 337.6, a less than well-capitalized insured depository institution may not pay a rate of interest that significantly exceeds the prevailing rate in the institution's market area or the prevailing rate in the market area from which the deposit is accepted. For out-of-area deposits, the national rate, currently defined as 120 percent of the current yield on similar maturity U.S. Treasury obligations, determines conformance with the regulation.

The current low yields on U.S. Treasury securities are compressing the national rate caps computed under the FDIC's regulation. Therefore, the national rates fall well short of the national average rates paid on certificates of deposit by depository institutions. The rule addresses this problem by redefining the national rate, for deposits of similar size and maturity, to be "a simple average of rates paid by all insured depository institutions and branches for which data are available."

Delinking the definition of national rate from Treasury yields allows the rate cap to be calculated in a way that prevents the payment of rates that significantly exceed prevailing market rates, but allows depository institutions to pay the prevailing national rates. The FDIC originally chose to link the definition of the national rate to Treasury yields because it was difficult to obtain timely and reliable data on prevailing certificate of deposit rates. However, technological advancements and more current information now make it possible to calculate prevailing national deposit rates in a timely manner.

The final rule also allows any depository institution to use the national rate as a proxy for the prevailing rate in an institution's local market area. This approach recognizes that with the increasing prevalence of Internet deposits and Internet advertising of deposit rates, price competition for deposits is increasingly national in scope. This approach also recognizes and avoids the considerable practical difficulties in ascertaining the origin of the deposit and calculating the prevailing rates paid within that area. If the institution does not want to use the national rate as a safe harbor, the burden will be on the depository institution to define its market area and support its belief to the FDIC that the prevailing rates in that area exceed the national average. This process will be communicated in a Financial Institution Letter before the rule's January 1, 2010, implementation date.

In implementing the rule, the FDIC will monitor and publish a schedule of national rates by maturity and the rate caps for such deposits. Separate national rates and rate caps will be posted for NOW accounts, Money Market Deposit Accounts (MMDAs) and savings accounts (other than MMDAs). The rate cap will be the national rate plus 75 basis points. The national rates and national rate caps will be posted weekly and can be viewed at http://www.fdic.gov/regulations/resources/rates/index.html.

The final rule will not take effect until January 1, 2010, because the FDIC believes a delayed effective date may be necessary to enable insured depository institutions to adjust to the new rules. However, the FDIC intends to post national rates and national rate caps on its Web site immediately. These rates may assist insured depository institutions in complying with the current and new rules. Under either set of rules, the national rates likely represent the prevailing rates in many markets areas. Therefore, the FDIC would not object to the immediate use of the posted national rates and rate caps by insured depository institutions that are not well capitalized, although such use will not be mandatory.

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