



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

Financial Institution Letter
FIL-69-2009
December 4, 2009

PROCESS FOR DETERMINING IF AN INSTITUTION SUBJECT TO INTEREST-RATE RESTRICTIONS IS OPERATING IN A HIGH-RATE AREA

Summary: Effective January 1, 2010, institutions subject to the interest rate restrictions under Part 337.6 of the FDIC Rules and Regulations (“restrictions”) are required to use the “national rate” to determine conformance with the restrictions. The “national rate” is defined as a simple average of rates paid by insured depository institutions and branches for which data are available. Institutions subject to the restrictions that believe they are operating in an area where the rates paid on deposits are higher than the “national rate” can use the local market to determine the prevailing rate if they seek and receive a determination from the FDIC that it is operating in a high-rate area. Regardless of the determination, institutions must use the national rate to determine conformance for all deposits outside the market area.

Distribution:

FDIC-Insured Institutions

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Related Topics:

Brokered Deposits
12 C.F.R. Section 337.6

Attachment:

Question and Answer Document

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Note:

FDIC financial institution letters (FILs) may be accessed from the FDIC’s Web site at www.fdic.gov/news/news/financial/2009/index.html.

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Highlights:

- Beginning on January 1, 2010, institutions subject to the interest rate restrictions under Part 337.6 of the FDIC Rules and Regulations (“restrictions”) are required to use the “national rate” to determine conformance with the restrictions.
- The “national rate” is a simple average of the rates paid on deposits nationally and posted weekly at <http://www.fdic.gov/regulations/resources/rates/index.html>.
- Institutions subject to the restrictions that believe they are operating in an area where rates paid on deposits are higher than the “national rate” can request a determination from the FDIC to that effect by sending a letter to the applicable FDIC regional office.
- The letter should specify the requesting institution’s market area.
- The FDIC will use standardized data—average rates by state, metropolitan statistical area, and micropolitan statistical area—to make the determination.
- Institutions that submit determination requests by December 31, 2009, will receive a response by January 30, 2010.
- Response letters sent to institutions that are not operating in high-rate areas will instruct the institutions to begin using the national rate caps for local deposits by March 1, 2010.
- The national rate caps must be used by institutions that submit determination requests after December 31, 2009, until they have received notice they are operating in a high-rate area.
- Regardless of the determination, institutions must use the national rate caps to determine conformance for all deposits outside the market area beginning January 1, 2010.
- A determination will be effective for the calendar year for which it was granted, but will be rescinded by written notice from the FDIC if the institution’s market area is no longer a high-rate area.
- This Financial Institution Letter (FIL) updates guidance previously provided in FIL-62-2009.

PROCESS FOR DETERMINING IF AN INSTITUTION SUBJECT TO INTEREST-RATE RESTRICTIONS IS OPERATING IN A HIGH-RATE AREA

Background: Section 29 of the Federal Deposit Insurance Act (FDI Act) restricts the use of brokered deposits and the rate of interest paid on deposits for insured institutions that are less than well-capitalized as defined in Section 38 of the FDI Act. Section 29 restrictions are implemented by Section 337.6 of the FDIC Rules and Regulations. The final rule making certain revisions to the interest-rate restrictions under Section 337.6 of the FDIC Rules and Regulations takes effect on January 1, 2010. 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.” In addition, the prevailing rate in all market areas is deemed to be the national rate as defined by the FDIC. Once the rule takes effect, an institution that believes it is operating in a high-rate area can determine conformance using the prevailing rates in its market area only if it has received a determination from the FDIC that it is operating in a high-rate area.

Determination Requests: Institutions can request a determination that they are operating in a high-rate area by sending a letter to the applicable FDIC regional office. The letter should state the institution is seeking a determination under Part 337.6, interest-rate restrictions. The FDIC will base its decision on average rates for the geographic area in which the institution is operating, using state(s), metropolitan statistical area(s), and micropolitan statistical area(s) data; therefore, the institution should specify its market area(s) in the determination request letter. Specific data supporting the methodology for calculating the institution’s prevailing rate for its local market area will not be considered. The process for establishing high-rate areas is detailed in the attached.

Timing of Requests: Institutions that submit determination requests by December 31, 2009, will receive a response by January 30, 2010. FDIC response letters sent to institutions that are not operating in high-rate areas will instruct the institutions to begin using the national rate caps by March 1, 2010. The national rate caps must be used by institutions that submit determination requests after December 31, 2009, until they have received notice they are operating in a high-rate area. With or without the determination, institutions must use the national rate to determine conformance for all deposits from outside the market area beginning January 1, 2010. Institutions can submit one determination request to the FDIC each quarter.

Duration of Determination: The determination received by the institution is effective for the calendar year in which it is granted, but will be rescinded by written notice from the FDIC if, during the calendar year, the institution’s market area no longer meets the requirements for being a high-rate area. Institutions operating in high-rate areas must apply for determinations annually.

Institutions subject to the interest rate restrictions not operating in a high-rate area should use the national rate posted on the FDIC Web site to determine conformance at <http://www.fdic.gov/regulations/resources/rates/index.html>. If a determination is granted, local deposit rates must not significantly exceed (no more than 75 basis points) the prevailing rate cap for the institution’s market area. The attachment provides background on calculating the prevailing rate cap for a local market. Documentation supporting conformance with the interest-rate restrictions should be available for examiner review.

An overview of the determination process is provided in the chart below.

DETERMINATION PROCESS—AN OVERVIEW	
Institutions subject to the interest rate restrictions	Less than well-capitalized institutions are subject to the interest rate restrictions. Well-capitalized institutions are not subject to the interest rate restrictions. However, a quantitatively well-capitalized bank subject to a capital maintenance provision within a formal written agreement is reclassified as adequately capitalized for Section 337.6 purposes.
The interest rate restrictions	Institutions subject to the interest rate restrictions must not pay deposit rates that exceed the national rate caps, which are posted on the FDIC Web site. An institution that believes it is operating in a high-rate area can use the prevailing rates in its market area to determine conformance only if it seeks and receives a determination from the FDIC that the institution is operating in a high-rate area. Regardless of the determination, an institution must use the national rate to determine conformance for all deposits outside the market area.
National rate caps	Institutions that submit their determination request letter to the applicable FDIC regional office by 12/31/09, will received a response by 1/30/10. Those that are determined to not be operating in a high-rate area will have until 3/1/10 to start using the national rate for local deposits. Institutions that submit a determination request after 12/31/09 must begin using the national rate on 1/1/10. Regardless of the determination, institutions must begin using the national rate for non-local deposits beginning 1/1/10.
Determining high-rate areas	The FDIC will use standardized data (average rates by state, metropolitan statistical area, and micropolitan statistical area) for the market area in which the bank is operating to determine if the institution is operating in a high-rate area. If the standardized rate data for the bank’s market area exceed the national average for a minimum of three of the four deposit products reviewed by at least 10 percent, it can be determined the institution is operating in a high-rate area. These non-jumbo (less than \$100,000) product types will be reviewed: money market deposit account, 12-month CD, 24-month CD, and 36-month CD.

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