



March 17, 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:

Thank you for the opportunity to provide feedback on the *Interest Rate Restrictions on Institutions that are less than Well Capitalized Note of Proposed Rulemaking* (FIL-5-2009 dated January 28, 2009). We appreciate the opportunity of assisting in the process of updating Part 337.6 (Brokered Deposits). Comments and feedback were sought regarding the following areas of the proposal:

1. *Should the FDIC amend its definition of a “market area”? Should the FDIC add a definition of “normal market area”? If so, what should be the definition of an insured depository institution’s “normal market area”?*

No, the market area definition of “...any readily defined geographical area in which the rates offered by any one institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area”¹ 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?*

Yes, the FDIC should presume that the prevailing rate in the “market area” or “normal market area” is the national rate; however, a financial institution should have the ability to

¹ 12 CFR 337.6(b)(4)

use data from the local markets in which it competes if that information is deemed to be more accurate.

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 institutions soliciting deposits only in those states?*

Yes, a schedule that lists interest rates by state could work; however, it should include all financial institutions (i.e. credit unions and non-banking entities such as Morgan Stanley or AIG) in order to more accurately represent interest rates offered in the marketplace. 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 data. For example, if the only data available is from rural banks, the data would not be helpful in urbanized areas like Los Angeles or New York.

4. *Should the FDIC redefine the “national rate”? If so, should the FDIC define the “national rate” as “a simple average of rates paid by all insured depository institutions and branches for which data are available”? If not, how should the FDIC define the “national rate”?*

Yes, there is no doubt that the national average needs to be redefined from its current definition; however, the revised manner is flawed. Utilizing a simple average is going to be skewed because it includes data from depository institutions that are in very competitive as well as data from non-competitive markets. The rates from the non-competitive markets will reduce the overall average and result in the interest rates in areas like New York or Los Angeles being less than the true market rate. Utilizing data by state would give a more accurate rate, but may also be similarly skewed on a smaller scale.

Financial institutions should have the flexibility of using the national average or using a local average, which may include non-banking entities and credit unions.

5. *Should the definition of the “national rate” be made more flexible?*

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. A financial institution should either use the national average provided or obtain its own data and demonstrate why the interest rates offered are consistent with the going market rate.

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

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

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 employed is reasonable.

7. *Should the FDIC establish a procedure for disseminating information about average rates or rate caps? For example, should the FDIC post such information on its Web site for use by insured depository institutions and examiners?*

Yes, information should be disseminated 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 depository institution could present evidence about the prevailing or average rates in a particular market?*

Yes, as having an alternate approach to setting interest rates is important because an average national rate might not be truly representative of a competitive market interest rate.

In addition to having a defined procedure, the FDIC should also have service levels as to when a formal decision will be provided to ensure depository institutions receive prompt decisions to their requests. Interest rates can change frequently and it is important that a financial institution be able to respond to the market changes in a timely manner.

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. Should the FDIC change this standard?*

No, the 75 basis points spread is reasonable.

10. *Should the FDIC adopt restrictions in addition to the current restrictions based on a depository institution'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.

In conclusion, a national average could potentially result in deposit rates that incorrectly represent the local market. Depository institutions should have the flexibility in using either the national average or data from the local market based on their ability to justify competitor rates that differ from the national average. A national average should include interest rates from non-banking competitors such as Morgan Stanley or AIG as well as credit unions. All of these institutions represent a significant source of competition in the marketplace.

Any restrictions on brokered deposits should be addressed by regulators with financial institutions when an application to solicit brokered deposits is received. These restrictions should be imposed on a case-by-case basis and not applied to all financial institutions that are less than well capitalized.

Respectfully,

Shannon Millard
President Retail Banking