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April 6, 2009

Federal Deposit Insurance Corporation  
Robert E. Feldman, Executive Secretary  
Attention: Comments  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Re: Part 337 – Interest Rate Restrictions

Dear Mr. Feldman:

The Independent Community Bankers of America<sup>1</sup> (ICBA) appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC's) notice of proposed rulemaking regarding interest rate restrictions that apply to insured depository institutions that are not well capitalized. Under the current regulations, determining the highest permissible interest rate for less than well capitalized institutions has been challenging, and ICBA appreciates FDIC addressing this issue. However, we believe imposing a presumption that the effective yield in all relevant markets would be the national rate is not an appropriate solution. The proposed amendments would effectively eliminate local market area rates, which vary considerably throughout the country, and are not germane to a national rate.

#### Background and Summary of FDIC Proposal

The Federal Deposit Insurance Act (Act) limits the acceptance or solicitation of deposits by insured depository institutions that are not well capitalized by prohibiting the acceptance of brokered deposits and placing certain restrictions on interest rates that may be paid. Additionally, the Act expressly provides that

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<sup>1</sup> The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

an adequately capitalized institution may accept brokered deposits if it obtains a waiver from the FDIC.<sup>2</sup>

Interest rate restrictions for brokered deposits differ based on an institution's capital category. An adequately capitalized bank must adhere to the prevailing rates in its own normal market area for both local and non-local deposits. If it receives a waiver from the FDIC, the interest rate cannot significantly exceed the prevailing rates in its own market area for local deposits and cannot significantly exceed the national rate for non-local deposits. The highest permissible interest rate an undercapitalized<sup>3</sup> bank may offer is 75 basis points above either the prevailing rate in its local market area or the national rate, whichever is lower.

FDIC is proposing to establish a presumption that the effective yield in the relevant local markets would be the national rate, unless an institution can demonstrate that the prevailing rate in the relevant market exceeds the national rate. This would impose the same interest rate restrictions for all insured depository institutions that are less than well capitalized, notwithstanding an institution's capital category.

Adequately capitalized banks would not be permitted to pay a rate of interest on brokered deposits that exceeds the national rate by 75 basis points. Similarly, undercapitalized, significantly undercapitalized, and critically undercapitalized depository institutions also would not be permitted to offer interest rates that exceed by 75 basis points the national rate.

In the absence of evidence that the local market rate differs from the national rate, an adequately capitalized institution, regardless of whether it was granted a waiver, would not be able to offer rates that significantly exceed the national rate, making an FDIC waiver inefficacious.

### ICBA's Position

The ICBA agrees that the rules should be clarified and that a clear method for determining the highest permissible interest rates for those institutions that become less than well capitalized would benefit community banks and examiners. However a simple national average of rates does not accurately reflect local rates and in some cases, could understate what the local rate really is. We believe a clear method could be developed for determining both a national rate and local rates that includes all aspects of a local market, including other depository institutions, credit unions, and Internet based banks. Further, we believe the Metropolitan Statistical Area (MSA) should be used to define a normal market area because it is a clearly defined geographical area. However, if the MSA does not apply to a bank's local competitive area, the bank should be permitted to provide evidence of its applicable market area and prevailing rates.

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<sup>2</sup> 12 U.S.C. 1831f(c).

<sup>3</sup> For purposes of this letter, the term, "undercapitalized" includes significantly undercapitalized and critically undercapitalized institutions.

Additionally, we believe adequately capitalized institutions should be permitted to adhere to the prevailing rates in its own normal market area for local deposits as they accurately reflect the local market. Local markets throughout this country have different conditions and competitive pressures, thus varying greatly with each other and with an average national rate.

A community bank that shifts to an adequately capitalized category should have the ability to remain competitive for local deposits. By restricting the interest rate to an average national rate, the bank is put at a competitive disadvantage at a time when it cannot afford to lose deposits. The inability to retain or raise local deposits at local rates increases the bank's risk and could potentially curtail liquidity significantly at otherwise healthy institutions undergoing temporary problems, which could result in the institution declining further rather than recovering.

If the FDIC finalizes these proposed rules, we believe that banks of all capital levels should be able to provide evidence that the applicable prevailing rate differs from the national rate. Additionally, banks should be able to use third-party rate surveys or private rating companies as evidence of prevailing rates in a particular local market.

If you have any questions about our letter or need additional information, please do not hesitate to contact me at 202-659-8111 or by email at [Lilly.Thomas@icba.org](mailto:Lilly.Thomas@icba.org).

Sincerely,

/s/

Lilly Thomas  
Regulatory Counsel