From: Mary Fowler <mfowler@pbmag.com>
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To: Comments
Subject: [EXTERNAL MESSAGE] RIN 3064-AF02

September 15, 2019
To Robert E. Feldman, Executive Secretary
Attention: Comments Regarding September 4, 2019 - Interest Rate Restrictions on Institutions That Are Less Than Well Capitalized
12 CFA Part 337
Comment Request (RIN 3064–AF02)

Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429

Dear Mr. Feldman,

Thank you very much for accepting input on these very important issues. Our bank serves a low- middle-income customer base who are net borrowers, including a large proportion of minorities. These customers do not have the deposit resources to support their loan demand, so the rate cap restrictions directly affect these consumers. To be able to provide these customers with funding for their loan needs, it is necessary for us to attract deposits from non-customers and out-of-local-market customers. We also depend upon wholesale deposits for funding, and the cost of these deposits is usually less than we have to pay to keep our own customers' deposits or local non-customers' deposits. This is why it is vitally important to our customers and our bank that the rate cap be at a workable level, and not at a below-market level.

You may wonder why it matters to us, since we are well-capitalized and don't plan on falling below well-capitalized. We appreciate the clarification in the NPR that the rate caps apply only to institutions that are less than well capitalized. However, we believe that our funding and liquidity planning should include consideration of our bank falling into the less than well capitalized category. Because of that, we must consider our condition in that event, and make sure it won't cause a major disruption in our operations, or even a fatal scenario. Rate caps that are at below-market rates could cause an otherwise viable bank to fail due to a sudden, artificial liquidity crisis, so we appreciate very much the recognition of that and the efforts to fix it.

My comments are based on the following premises:

1. The prevailing rate should, by the common meaning of the word, mean the winning, prevalent, succeeding, victorious, dominant, predominant rate. These words do not describe an average of some kind. If the authors of the regulation had meant average, they would have said average instead of prevailing.
2. I agree with the interpretation of "significantly exceeds" being 75 basis points.
3. All rates available in a market should be used to determine the prevailing rate, including online rates and credit union rates.
4. The Top 10 Rates from a Listing Service are a good approximation of what prevailing rates are during most economic cycles.
5. The data that is currently being collected and used by the FDIC to calculate the rate cap is not always an accurate representation of actual rates that many banks are willing to pay and are actively paying. Not inaccurate by a small amount, but by a large amount in many cases. This is why the 95th percentile method, though it sounds good and is much better than the current calculation for CDs, still fails to produce a high enough rate cap to exceed prevailing rates (Top 10) in some economic cycles. Hopefully after making the effort

to present an ANPR and an NPR on this subject, a solution that allows all institutions to compete for deposits in all rate cycles will be found. It would be dismal if the new solution only worked during most cycles, and not all, or for the majority of, but not all banks. We would be back to 2009 and/or 2015 (and now) all over again.

6. Preventing the excessive growth of a troubled bank is the purpose of the rate cap, but the unintended consequences of the rate restrictions have created unnecessary problems, and caused the un-called-for, undeserved, death or crippling of troubled banks along with unnecessary losses to the DIF.
7. If we can arrive at rate caps that comply with the regulation and that also "do no harm", then the root problem can be addressed on case by case bases with troubled banks, using the current powers of regulators.

Question 1. Does the proposed calculation of the rate caps enable less than well capitalized institutions to compete for deposits while satisfying section 29? If not, please explain why.

Not at all. The charts in Appendix 1 present very helpful information, and show the relationship between the previous rate cap and the Top Rates from a Listing Service. The charts very clearly show that the proposed calculations would not be high enough for an institution that is subject to the rate cap to compete for deposits during many economic cycles. The data used for the Average of Top 10 Offered Rates is a good representation for what actual market rates are, and any calculation that produces a rate cap that is below those rates will be problematic. For non-maturity deposits, the charts show that the proposed rate cap is well below market rates during about two-thirds of the sample time period. This is unworkable, and creates a liquidity crisis where none should exist. The new rate cap calculation must result in a rate above the Average of Top 10 Offered Rates to solve the current problem. Something based on Fed Funds might be workable, but without seeing it on a chart I'm not sure if or how that would work.

It is very helpful to see on the CD charts where the pre-2010 rate cap would be, and the charts show that the higher of the pre-2010 or the weighted 95th percentile methodology rate cap would be workable during all cycles except from 2008-2009. To correct the calculation for cycles like 2008-2009, either the 95th percentile needs to be increased, or a cushion added to it, such as 115% or 120%, so that the result is a rate above the Average of Top 10 Offered Rates that is similar to the cushion seen on the charts for most economic cycles. If that change is made to the 95th percentile method, then using the higher of it or the pre-2010 method should cover all cycles for CD's.

I would also prefer substituting the Average of Top-payers as described in the Alternatives section, in the place of the 95th percentile method. If that were used, there would need to be a cushion added for "significantly exceeds", which I would suggest should be 75 bp. The NPR states that this method would be "simple to administer". One of the FDIC's concerns about this method is that it may not be consistent "with the FDIC's historical interpretation" of what makes up the "prevailing rate". Maybe the historical interpretation of prevailing rate should be reconsidered. I don't think the historical interpretation makes sense when you are trying to come up with a market interest rate that can actually succeed in attracting and retaining deposits.

Question 2. The FDIC proposes to update the national rate cap information every month, with discretion to update the rate cap more or less frequently. Currently, the FDIC updates this information on a weekly basis. Should national rate calculations be provided more or less frequently than every month, as proposed?

I agree with the proposed updates.

Question 3. U.S. Treasury securities do not have maturities that are comparable to non-maturity deposit products (e.g., money market or interest checking). If the FDIC were to use U.S. Treasury securities in its calculation for the national rate cap, is there a fixed income product that could be used in place of U.S. Treasury securities as a proxy for the national rate cap for non-maturity deposit products?

Some suggestions: FHLB overnight funds, one month Treasuries, Fed Funds, listing services.

Question 4. The proposed national rate and rate cap are weighted by deposit share, which gives relatively more influence to internet-only institutions that have large deposit shares than the current all-branch approach. Is this weighting system appropriate?

The weighting system is better than the per-branch system, but we are still working with misleading data. (See Premise 5 above)

Question 5. To address potential downward volatility in the national rate cap, the FDIC is proposing that, for institutions that are subject to the interest rate restrictions, any subsequent published national rate cap, that is lower than the previously published national rate cap, take effect 3 days after publication. In certain circumstances, the FDIC would also have discretion to delay the date on which a national rate cap takes effect. Is this a reasonable approach to address the effects of potential downward volatility in the national rate cap? Are there other ways to address or reduce the effect of potential volatility on less than well capitalized institutions that are subject to the interest rate restrictions?

Having the discretion to delay harmful effects is good. Having a rate cap which is actually 75 bp above prevailing rates (see Premise 1) should protect institutions subject to the rate cap.

Question 6. Data limitations do not allow consistent means to include certain special promotions, like cash bonuses, to be included in the proposed national rate calculations. Is it appropriate to incorporate specials and promotions? Is there another way to capture these promotions or deposit products that pay interest based upon an index or are triggered at some future date (e.g., step-up rates)?

Data limitations already do not allow the true market rates to be included. Banks report their posted rate, which in most cases isn't even close to the actual rate they pay. An example from my market a few months ago: the reported 12 month CD rate was 0.18% and the actual rate being paid was 2.50%. When you have such a common, profound difference in reported rates versus actual rates, a few cash bonuses and gimmicks aren't going to matter. It would however, help make the rates closer to reality if off-tenor specials were used in place of the next-closest on-tenor terms.

Question 7. The proposed national rate plus 75 basis points is being proposed as an option for products whose rates converge, as seen with a few deposit products. While this appears to be a useful alternative for a few products in the current rate environment, it might be less appropriate in other rate environments. For example, this alternative could yield a rate cap that does not ''significantly exceed'' the prevailing rate in a high rate environment. Are there better options for setting a proxy to determine what it means to ''significantly exceed'' a prevailing market rate when rates converge?

If true prevailing rates are used (Premise 1), the 75 bp should be enough to allow restricted institutions to compete.

Question 8. Should the local rate be exclusively limited to institutions with a smaller geographical footprint? If so, how should eligibility be determined?

No comment for now.

Question 9. If there is significant movement downwards in the national rate cap from one publication period to the next, do institutions need additional time to lower interest rates on particular products in an effort to be in compliance with the rate caps? If so, what is an appropriate amount of time?

It should be as long as possible.

Question 10. Internet institutions are not included in the local deposit rate calculation. Is this a reasonable approach? If the FDIC allowed institutions to use internet competitors in their local rate calculations, how would they choose such competitors and which ones should be chosen?

Rates from internet institutions definitely should be included in the local deposit rate calculation. Every bank in the country competes against internet institutions. In calculating the local rate, institutions should be able to use any internet competitor that is able to take deposits from that local market.

Question 11. For purposes of the rate restrictions, the FDIC is considering an interpretation under which balances in non-maturity deposit accounts at the time the institution becomes less than well capitalized are not subject to the interest rate restrictions, but the balance would be if new funds were deposited into such accounts. Is this interpretation appropriate? Would there be substantial operational difficulties for institutions to monitor additions to these existing accounts in order to determine when they would be subject to the interest rate restrictions?

I would think that the difficulty would be substantial, but with the technology available, I think it would be doable if the institution had that option and they decided the expense would be worth the benefit.

Thank you again for the opportunity to comment.

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