



May 6, 2019

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Federal Deposit Insurance Corporation, 12 CFR Part 337, RIN 3064–AE94
Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions

Dear Chairman McWilliams:

I would like to thank the Federal Deposit Insurance Corporation (FDIC) for the opportunity to comment on these issues of critical importance to the FDIC and community banks nationwide.

The magnitude of the potential problems inherent with the current situation cannot be overstated.

In the event of an economic downturn that leads to asset credit quality deterioration during a fed funds rate environment above 0%, the FDIC national rate cap and deposit rate restrictions as currently imagined and implemented may be the single largest liquidity risk facing community banks nationwide, creating unnecessary and easily avoidable community bank failures and losses to the FDIC deposit insurance fund (DIF).

I don't make the comment above lightly or from a theoretical or academic standpoint. My following comments are formulated from a position of over a decade of experience with this specific issue and in managing an institution that was classified as less than well-capitalized during the global financial crisis/great recession. Despite having a leverage ratio above 10% my institution was subject to FDIC imposed interest rate restrictions solely because the FDIC included a capital maintenance provision in a consent agreement at the time.

In the years subsequent to the termination of the bank's consent agreement, my institution has been subject to repeated criticism for 'high-rate' 'potentially volatile deposits' using the clearly flawed FDIC national rate caps as the measuring stick for such a determination, despite the bank being a well-capitalized institution and supposedly not subject to any interest rate restrictions or criticism based on interest rate. I see from reading other comment letters on this advance notice of proposed rulemaking and request for comment (ANPR), and from my many conversations with community bankers and community bank trade associations over the last decade across the county, that my bank is not alone in receiving such criticism under the pretense of 'concentrations' of 'high-rate' 'potentially volatile' deposits.

The FDIC makes the following requests in the ANPR:

- The FDIC seeks comment on all aspects of its regulatory approach to brokered deposits and interest rate restrictions...
- The policy objective of this ANPR is to obtain input from the public as the FDIC comprehensively reviews its brokered deposit and interest rate regulations in light of significant changes in technology, business models, the economic environment, and products since the regulations were adopted. The FDIC is inviting comment on all aspects of the brokered deposit and interest rate regulations.

I will do my best to address these requests and hope that my comments contribute in some meaningful manner to better regulation, and perhaps better legislation, for both community banks and the FDIC.

Background material

I have attached two documents which are incorporated by reference into this public comment. The documents present analysis of the current rate cap methodology and illustrate several of the many deficiencies associated with that methodology.

- Attachment 1: FDIC National Interest Rate Cap Discussion Document. September 15, 2018
- Attachment 2: My public comment letter dated April 3, 2009 for FDIC ANPR: Interest Rate Restrictions on Institutions that are Less Than Well Capitalized. (Part 337- Interest Rate Restrictions) published in the Federal Register: February 3, 2009 (Volume 74, Number 21, pages 5904-5908).

The problems associated with attempting to regulate based on interest rates

The FDIC and many stakeholders in the community banking industry are well aware of the current statutory basis for the regulation of brokered deposits and the related rate caps used to define and limit brokered deposits, so I will not rehash that background here.

Given the current legal framework within which the FDIC must operate:

The FDIC is placed in an unenviable and tenuous position of being required to define 'normal market areas', and 'prevailing market rates' in a normal market area, when the task of calculating such markets and rates is almost certainly an impossible mandate for both the FDIC and the banks it regulates.

At the time the laws were written pertaining to brokered deposits (actually 'deposit brokers') deposit products were simple and commodity like in nature.

Today the FDIC calculates rate caps for 4 types of products (Savings, Interest Checking, Money Market Accounts, and Time Deposits). It uses 8 durations for time deposits and 2 categories of size of deposit for a total of 22 product types and rate caps. In the current deposit market there are literally dozens or hundreds of different account types with thousands of permutations of requirements related to interest rate, account attributes/benefits, and capabilities.

The evolution of deposit gathering products and explosion in type and variation of these products has made it so that no single formula or set of formulas will ever be able to define a normal market interest rate for interest bearing deposit products. As community banks and new industry entrants try to differentiate what was once a commodity product the current market product diversity and pace of new product introduction will only accelerate and create even more differentiated products, making an impossible rate-based mandate and approach even more so.

Examples of the impossible nature of regulating using interest rate

There are a multitude of examples of the impossibility of using interest rate to regulate or define brokered deposits based on product differentiation and the inability to define a normal market rate across such products. I'll include a couple here for illustrative purposes. Please see Attachment 2 for additional information and examples.

Rewards Checking

Perhaps the best example of the adverse consequences to community banks of defining brokered deposits and regulating them by interest rate is rewards checking. By design, rewards checking has a set of requirements to earn a higher rate on an interest-bearing checking account with a near infinite number of permutations. This type of

account has proven to be a stable source of funding for many community banks across the nation. Under the current rate cap methodology (or likely any rate-based methodology) the nature of rewards checking is ignored, and all such accounts are simply lumped into 'Interest-Checking'. The rate cap for Interest Checking as currently calculated and enforced has no relevance to rewards checking product attributes or rates, yet nonetheless is applied to these accounts.

If a community bank using rewards checking as a material source of liquidity had an unexpected deterioration in asset quality or capital, or became subject to a capital maintenance provision for any issue unrelated to liquidity, using the current rate caps the FDIC would essentially create a liquidity issue for the bank where none existed before and unnecessarily increase the risk of failure of the institution and risk of potential loss to the DIF.

Given the innumerable permutations of rewards checking, I would never suggest the FDIC attempt to simply add a category for 'rewards checking' to a rate cap table.

New product innovation

While rewards checking has been in market for about a decade, there are a multitude of newer deposit products that present the same conundrum of product differentiation making it impossible to calculate a normal market rate. Below are just a few examples:

Beam Savings (not yet launched)

This account purports to pay a base rate of 2% interest, but an accountholder can earn up to 4% by engaging in other activities, but those activities and the payout can change at any time. From the terms of service:

You can increase the amount of your Reward Payout above 2% per annum by engaging with the App and performing certain activities, such as making referrals. Each day, the amount of the Reward Payout will reset to 2% per annum. It is possible to increase the Reward Payout to 4% per annum or more on your Rewards Balance, but we make no guarantee or representation that you will be able to do so. We reserve the right to modify, at any time, the methods for earning a Reward Payout.

Blast Account (live in market)

This account purports to pay a base rate of 2% interest, but an accountholder can earn additional interest by playing video games. From the terms of service:

Blast turns gamers into savers. Gamers connect their checking account to Blast with the option to deposit money into their high-yield Blast savings account. Money in a Blast account earns 2% Annual Percentage Yield (APY)(effective September 4th, 2018). Blast allows gamers to earn Mission Rewards (money given to gamers by Blast) by completing Missions. By completing specific objectives, such as playing a game for a certain amount of time or reaching a certain level, Blast contributes money to help gamers build their Blast savings account. Gamers can also win money by ranking in a Tier on the Leaderboard.

Sofi Money (live in market)

This transaction account purports to be neither a checking account nor a savings account and offers FDIC deposit insurance of \$1,500,000. The amount of insurance may increase or decrease at any time and funds are not insured until they 'arrive' at a partner bank. From the Sofi Money website:

The SoFi Money Annual Percentage Yield as of 2/12/2019 is 2.25% APY (2.23% interest rate). Interest rates are variable subject to change at our discretion, at any time. The cash balance in SoFi Money Accounts is swept to one or more program banks where it earns a variable rate of interest and is eligible for FDIC insurance. FDIC Insurance is not provided until the funds arrive at partner bank. There are currently six banks available to accept these deposits, making customers eligible for up to \$1,500,000 of FDIC insurance (six banks, \$250,000 per bank). If the number of available banks changes, or you elect not to use, and/or have existing assets at, one or more of the available banks, the actual amount could be higher or lower. Customers are responsible for monitoring their total assets at each of the Program Banks to determine the extent of available FDIC insurance coverage in accordance with FDIC rules.

Good Money (not yet launched)

This account purports to pay a base rate of 2% and an additional 2% in "Good Shares". "Good Shares" value is calculated by the company, the calculation can be changed at any time, and value is determined in the company's sole discretion. From the Good Money website:

"4% yield" means a cash yield of 2% and 2% of the total amount on deposit paid in Good Shares. "Shares back" means that you will earn Good Shares each time you use your Good Money debit card to purchase goods or services. Good Money will grant Good Shares to its customers. These Good Shares will represent an ownership interest in Good Money. Customers will be required to accept the terms and conditions that

relate to the Good Shares and these terms will apply to all Good Shares grants. Customers will have an opportunity to earn the Good Shares by engaging in certain activities on the platform. Good Money will be testing several variables that relate to the issuance of Good Shares prior to launch. As a result, the dollar values that appear on this page may change from one site visit to another. Good Shares will not be tradeable or transferable and their value will be determined by the Company. All projected values displayed on this page are based on estimates included in the Company's financial model. The assumptions underlying the model will be subject to adjustment over time.

These are just four examples out of many. Given the rapid pace of innovation and vast differences across products, it would be a daunting task to define and calculate a normal market rate for each new product type as new products are launched into the market, and issues associated with grouping dissimilar products into a few generic product types has already been highlighted in the rewards checking example above.

It is important to note that all of the technology enabled examples above currently advertise a base interest rate of 2.0% or greater on savings accounts. The current FDIC calculated prevailing market rate for a savings account is 0.10% with a cap of 0.85%. This disparity creates an uneven playing field and puts community banks at a material competitive disadvantage.

As one final note, one of the examples above is based on using FDIC sweep account insurance to offer what is essentially an interest-bearing checking account, and the other three examples are based on Bank-Nonbank partnerships offering consumer deposit accounts, all without any apparent regularly scheduled direct federal examination or oversight of the entity interacting with the consumer. The current regulations for federal consumer protection examination and third-party risk management (FIL 44-2008) appear to be designed for a different era and the FDIC may wish to consider reviewing those areas in its near-term proposed rulemaking in conjunction with the other Agencies. Said another way, the consumers served by new technology enabled consumer 'banking' providers are the same consumers served by community banks and credit unions, don't they deserve the same level of federal consumer protection and oversight?

IndyMac Bank

Perhaps the most compelling illustration of the difficulties and deficiencies in attempting to use interest rates to define brokered deposits is the case of IndyMac Bank, as illustrated in Attachment 2, pages 7-9 and Appendix A of Attachment 2 pages 16-18.

As conservator for IndyMac, the FDIC was required by law to abide by interest rate restrictions (brokered deposit restrictions) within 90 days after assuming control of the institution. Using the current rate cap methodology, the FDIC apparently was not able to abide by those restrictions and offered deposit rates that were above the rate caps.

As stated in the comment letter, this observation isn't a criticism of the FDIC's management of the institution, but rather it serves as a clear illustration that the rate caps were not reflective of market rates. The FDIC as conservator of the institution would clearly not pay above market rates, yet the rates it offered were above the rate cap plus buffer limitations the FDIC calculates.

If the FDIC was unable to comply with its own rate cap methodology in attracting and retaining market rate deposits, how could any community bank be expected to do so?

A comment on 'exceptions' to the national rate caps

A fallback position in defending a rate cap methodology is the ability of a community bank subject to rate caps to petition the FDIC for an exception. As illustrated in this comment letter and Attachments, the current rate cap methodology and likely any future derivation of it, are so fundamentally broken in any rate environment above a 0% fed funds rate, that petitioning for an exception would likely be the rule not the exception. It is not a fair, reasonable, or responsible approach to regulation to put any community bank in a position of needing to rely on an exception from the FDIC to the brokered deposit rate cap restrictions for the very survival of the bank.

Material deficiencies of the current rate cap methodology

With the aforementioned understanding that rate caps are an untenable way to regulate and define brokered deposits into the future, but based on current law most likely required in some form or fashion at least in the short term, below are a number of observations and considerations in setting such rates. These issues are discussed in detail in the Attachments.

- Using geographical units or metrics is inappropriate to calculate a prevailing market rate.
 - Competition for deposits is national in scope. The current methodology uses number of branches.
 - Weighting any calculation to favor mega-banks and diminish the actual impact of online only deposit competition is unfair to community banks.
- Averages are not prevailing market rates.
 - A prevailing market price (rate) is the current market clearing price (rate). A current market rate is the rate at which a reasonable depositor would select a deposit account in the current environment. Not an average of all advertised deposit rates.
- Advertised deposit rates do not reflect deposit rates paid.
 - See Arnold & Porter comment letter dated February 9, 2019, pages 18-20.
 - See Attachment 2 page 15 comparison of Savings Accounts and Money Market Accounts.
- Standard maturity time deposit terms do not reflect market time deposit terms
 - The majority of time deposit accounts attracting depositors at prevailing market rates are odd-rate maturities. Odd-rate maturities are not included in the current rate cap calculation.
- All insured depository institutions affect the prevailing market rate
 - Credit Unions are excluded from the market rate cap calculation.
- Using treasuries as a proxy for prevailing market rate is ineffective and inaccurate for deposit accounts in rising or falling interest rate environments.
 - See Attachment 2
- Same term time deposits are often incomparable. All similar term CDs are not created equal.
 - 60 month CD with 'standard' early withdrawal penalty vs.
 - 60 month CD with an immaterial early withdrawal penalty vs.
 - 60 month adjustable rate CD vs.
 - 60 month bump CD
- The selection of deposit amount tiers can dramatically impact any prevailing rate calculation
 - See Attachment A
- A fixed 'buffer' increases risk in a rising rate environment
 - A 75 bps buffer in a 0.50% fed funds rate environment is a 150% buffer
 - A 75 bps buffer in a 3.00% fed funds rate environment is a 25% buffer
- Rate caps discriminate against different business models
 - Liquidity risk reflects the possibility an institution will be unable to obtain funds, such as customer deposits or borrowed funds, at a reasonable price or within a necessary period to meet its financial obligations. Rate caps by their very nature unfairly discriminate against certain business models. Consider the impact of a rate cap on the following two legal business models:
 - A consumer-focused bank with a loss adjusted yield of 8% paying 4% for deposits
 - A bond bank with a loss adjusted yield of 4% paying 1% for deposits
 - It might be entirely reasonable for the consumer bank to pay 5% for deposits, when it would be unreasonable for the bond bank.

Why are brokered deposits bad and need to be limited?

Setting the multitude of issues related to calculating a rate cap aside for a moment, the elephant in the room is 'brokered deposits' and why restrictions exist on this classification of deposits in the first place. The Jones Day memorandum attached to the American Bankers Association comment letter does a very thorough job of walking through the history and intent of regulating deposits obtained from deposit brokers (brokered deposits).

Additionally, it appears that in the vast majority of the analysis and criticism pertaining to brokered deposits, the deposit itself is not the issue, but that brokered deposits are a contributing enabler for the real issue that creates the problem for an institution.

While brokered deposits are perhaps highly correlated with bank failures, correlation is not causation, and had the management of those failed banks simply chosen to fund better quality assets with brokered deposits there would have been no safety and soundness issue with the brokered deposit itself.

The FDIC states in the ANPR:

*...However, the potential abuses associated with brokered deposits received relatively little attention until the failure of Penn Square Bank in 1982. This failure resulted in the largest bank payout of insured deposits in the history of the FDIC up until that time. Brokered deposits **allowed the bank to grow rapidly** from \$30 million in assets in 1977 to \$436 million in assets when it failed in 1982, with **much of the growth in high risk loans to small oil and gas producers**...*

*...In these reports, brokered deposits were most commonly cited as a contributor to problems at troubled and failed institutions, **largely by allowing institutions with concentrations in poorly underwritten and administered commercial real estate loans**, including acquisition, construction, and development loans (ADC) **or other risky assets, to grow rapidly**...*

Independent analysis affirms that it is the rapid growth of poor quality or high-risk assets that primarily leads to bank failure, not the brokered deposit. It appears that regulation and limitations of brokered deposits are being used as a proxy to directly limiting 'risky' asset growth.

In the case of regulating brokered deposits it appears that we are taking a circuitous route to regulating the real issue in problem banks via a statute defining an entity (deposit broker) that is then interpreted by the FDIC into an object (a brokered deposit) to address an issue (rapid growth of risky assets). A subplot to this issue is that when such an institution fails the assets are of nominal value and there is limited deposit franchise value in a wholesale funding model, so when the assets go bad the potential loss to the DIF from the assets can't be offset by a gain recognized on the sale of the deposit franchise.

The FDIC has a multitude of tools at its disposal to directly address the core issue of rapid growth of risky assets and has wide-latitude in defining brokered deposits. It should use those tools rather than rely on rate caps and expansive definitions of deposit brokers and brokered deposits. For example:

- FDIC FIL-104-2006 Commercial Real Estate Lending Joint Guidance, December 12, 2006.
 - This guidance effectively set limits on construction and development and non-owner occupied commercial real estate lending that severely inhibit rapid asset growth and concentrations in these potentially risky lending categories.
- Setting direct caps or limitations on asset growth for troubled institutions or institutions embarking on strategies that include rapid growth of historically, or reasonably foreseeable, risky asset classes.
- Interpretation of the forthcoming CECL reserve requirement
 - With the impending change from historical loss method to current expected current loss method for calculating the provision and allowance for loan losses, the FDIC could require any institution that is embarking on strategy of rapid growth in concentrations of risky assets to take loss provisions sufficient to cover the expected future losses of those assets in the current period. This would either serve to slow asset growth of the risky assets, or require the institution to increase capital, both of which would decrease any potential future loss to the DIF.
- The FDIC is an insurance corporation, as such it can set the premium for insurance based on the risk of the insured activity.
 - Rather than charging an insurance premium based solely on percentages of brokered deposits, the FDIC could create an insurance premium matrix based on growth rate, asset concentrations in defined risky asset categories, etc. Institutions that elected to pursue such strategies, however they are funded, would pay a premium commensurate with the risk they present to the DIF. This premium could also be scaled with the size of the institution as my understanding of the historical research appears to indicate that larger institutions engaging in such activity create much larger losses to the DIF than community banks under \$1 - \$5 billion in assets.

Brokered deposits in safe and sound banking as a force for good

It appears that since the 1990s brokered deposits have become stereotyped in the regulatory community as 'bad' by their very nature. There are multiple comment letters for this ANPR that have already been submitted illustrating that brokered deposits are a stable, economical, and efficient source of liquidity that allow community banks to serve as a force for good. Brokered deposits can be very good for community banks, communities, small businesses, and consumers. This is yet another reason supporting that the blanket stereotype and apparent institutional mentality of brokered deposits as 'bad' should perhaps be revisited. Why is a 'concentration' of brokered deposits defined as bad if they are used to efficiently reallocate capital from an area of plenty to an area of need or used in some other 'responsible' safe and sound manner?

For example:

- Supplying much needed credit to rural America
 - See Farmers Trust & Savings Bank, David Woodcock comment letter dated February 11, 2019.
- Supporting banking services in low income communities
 - See Peoples Bank, Clark Fincher comment letter dated March 7, 2019.
- Responsible use of brokered deposits in safe and sound community banking models
 - See Bank of the Prairie, Chris Donnelly comment letter dated February 21, 2019
 - See Utah Banker comment letter dated March 27, 2019
 - See WEX Bank, Tim Laukka comment letter.

In all of these instances brokered deposits enable community banks to provide credit to consumers, small businesses, and communities in a safe and sound manner. Appropriately managed brokered deposits as a funding source should not be considered guilty until proven innocent or criticized outright when they are measured, monitored, and controlled in a manner consistent with safe and sound banking.

Definition of a brokered deposit

If we must accept that for now based on statute that a brokered deposit must be defined and limited in some form or fashion for some segment of institutions, at the heart of the problem lies that the statute text included 'deposit broker' and left the definition up to the FDIC for defining what a activity made an entity a deposit broker and by extension what deposits were classified as brokered deposits.

The FDIC should revisit the expansive approach it has historically taken to defining most every avenue a deposit reaches a bank as brokered other than someone walking in the door of a branch or directly opening an account on the bank's website.

The reality is that marketing/advertising and customer acquisition has evolved dramatically since the 1990s. In the past an institution might spend money on a newspaper ad and it would be impossible to measure, or track deposit accounts opened from that ad. Today an institution can track a specific advertiser and the specific advertisement to a specific account that is opened. The institution can then pay a success fee based on that specific account opening to the advertiser. Under current regulatory interpretation, that account might be defined as brokered, while most industry participants would consider this scenario nothing more than efficient use of current marketing technology and tracking of advertising expenditures.

A better solution

Given that the FDIC and the community banking industry apparently both recognize that the current brokered deposit regulatory and legal framework is broken, a choice is presented to either attempt to fix that system by modifying it or to completely replace it.

Unfortunately, replacement of the system, which maybe the most prudent and best choice, likely requires Congressional action to replace or amend 1980s era laws with current laws reflecting the economic and technology realities of today. This process would be lengthy and progress likely be measured in years not months. The community banking industry needs immediate relief, so while a better legal framework should be the long-term

objective of both the FDIC and the industry, a short-term solution must be identified and implemented as quickly as possible.

Since replacement is not a viable immediate option, I will reluctantly focus my remaining comments on suggestions for amending the current broken system.

Modifications to interpretation and enforcement given the current legal framework

While as I stated earlier, I believe attempting to calculate national rates and rate caps that accurately reflect some sort of prevailing market rate in a normal market area is a fool's errand and impossible undertaking for the FDIC, I've included some thoughts on a number of basic principles the FDIC may wish to consider if it decides to continue with this approach or feels it is legally compelled to use this approach given the current statutes that govern its regulatory activities.

Principles

- Immediately repeal the current doctrine of classifying any institution with a capital maintenance provision in a consent agreement as less than well capitalized making it subject to rate restrictions.
 - See Office of the Comptroller of the Currency, Gary Roberts comment letter, dated April 3, 2019.
 - See Independent Bankers Association of Texas, Christopher L. Williston comment letter, dated April 17, 2019.
- Not cause greater harm than good. Do no additional harm.
 - Implementation of rate restrictions should not create a new problem where one was absent or only a minor issue existed prior to the restriction.
- The normal market area should be defined as national for all institutions.
 - Similar to the retail industry, competition for deposits is not local. It is online and national and becoming more so every year with the ease of moving money increasing every year. One needs only look at the empty malls and vacant retail strip centers to understand competition for every item that is easily transportable, and money moves electronically, is online. The competitor is Amazon and Alibaba in retail, not the store across town. The same goes for community banking and any contrary regulatory position will only serve to accelerate the decline in the number of community banks and increase the number of empty community bank buildings across the nation.
- Any deposit rate restrictions should be based on the national market clearing rate for new deposits in a given recent timeframe, not on all deposit rates advertised.
 - To put this in perspective, a consumer depositor seeking to open a new interest bearing deposit account is not going to look at the 5th page of bankrate.com account rates to identify the account they want to open, they are going to pick an institution and account from the first or second page of results, similar to someone seeking something on a search engine will seldom make it past the first or second page of a Google search, the rest of the search results are mostly irrelevant.
- Any rate cap buffer should be set with a floor amount of at least the current 75 bps at 0% fed funds rate and then be indexed to increase the buffer amount as rates increase.
 - 75 bps on 0.5% is a 150% buffer, 75 bps on 5.0% is a 15% buffer, as rates move up with a fixed number buffer the buffer diminishes, thereby increasing risk in higher rate environments.
- Rate restrictions should not discriminate based on business model
 - As noted earlier in this comment letter
- The rate required to attract new deposits should be used as the prevailing market rate
 - The interest rate required to retain existing deposits is different than, and lower than, the interest rate required to acquire new deposits.
- Present a fair and level playing field
 - Any regulatory approach should be applied evenly to all national banks, regional banks, online banks, fintech deposit product providers, credit unions, community banks, payment companies, and any other participant in the deposit market.

- Not discriminate against products
 - e.g. Rewards Checking as illustrated above
- Not unfairly stifle innovation by community banks
 - e.g. Rewards checking as illustrated above
- Recognize the market realities of current marketing technology and customer acquisition
 - As noted earlier in this comment letter
- Not restrict the efficient movement of funds, reallocation of deposits to where they are needed, and use of those funds in a manner beneficial to communities, consumers, and small businesses
 - E.g. Ag banks as illustrated above and in other comment letters
- Not use treasury rates as an index
 - See Attachment B page
- Account and allow for incomparable features between accounts
 - As noted earlier in this comment letter

Closing

In closing, I would again like to thank the FDIC for recognizing the critical nature of this issue to the community banks it regulates and insures, and for taking the proactive step to open the topic up for public comment and evaluation before a crisis emerges. Given the dated statutory framework and the current complexities and challenges that are quickly evolving that affect this issue, I sympathize for those at the FDIC charged with developing a flexible, prudent, sustainable, and fair approach to the regulation and definition of brokered deposits.

If the FDIC feels it would be of any value, I am happy to assist in any manner requested as the future approach and regulatory framework is defined.

Sincerely,



John Erik Beguin
CEO and President
Austin Capital Bank

FDIC National Interest Rate Cap

Discussion Document

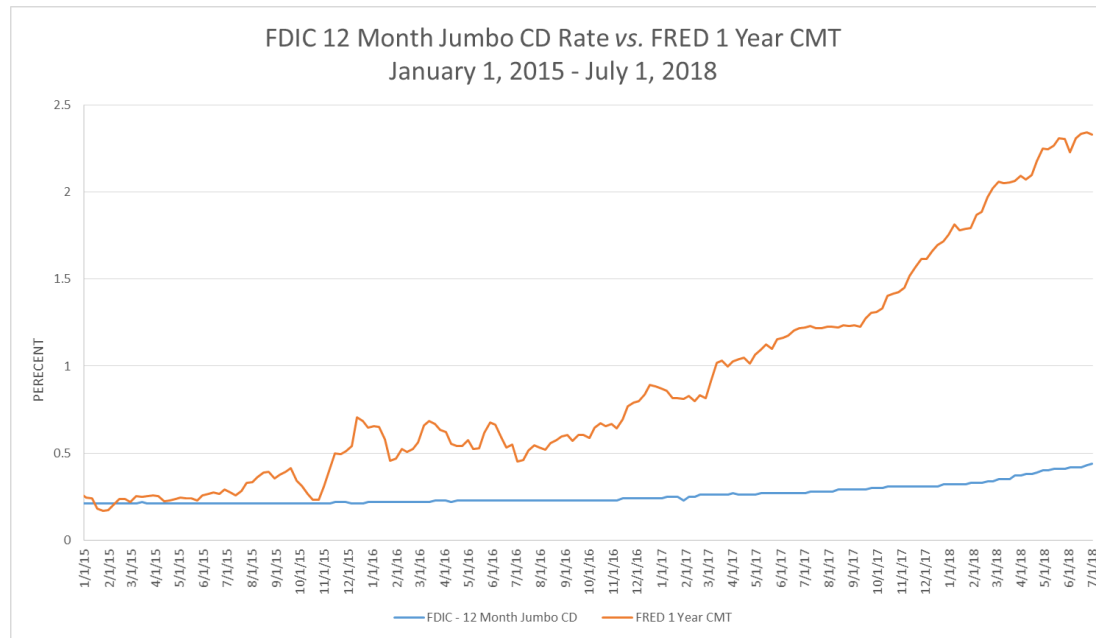


September 15, 2018

The current FDIC National Rate Cap methodology poses an immediate, grave, and unnecessary threat to community banks across the United States.

- The difference between the FDIC National Average Rate and the ‘true’ prevailing market rate may be as great as 200 bps.
- In the event of an economic downturn, the current FDIC methodology could likely create easily preventable community bank failures that harm:
 - consumers
 - communities
 - community banks; and
 - create avoidable losses to the FDIC Deposit Insurance Fund (FDIC DIF)
- The severity of this threat increases in a rising interest rate environment.

How can we explain the large and growing discrepancy between the 1 Year FRED CMT rate and the FDIC national interest rate for a 12 Month Jumbo CD?



	FDIC 12 Mo Jumbo CD	FRED 1 YR CMT	Difference
Jan 2015	21	25	4
Jul 2018	44	233	189
Change	23	208	

Possible explanations for discrepancy:

- Timing lag (1 YR CMT may be a leading indicator for 12 Mo Jumbo CD)
- Transaction cost friction
- Investor/Depositor awareness
 - Note: CMT has 100% gov't guaranty, Jumbo CD may be partially uninsured
- **The FDIC calculation methodology does not accurately reflect the prevailing market rate for 12 Mo Jumbo CD**

What is the prevailing market price of a hammer?

\$4.00, \$4.03, or \$4.38

	Price of Hammer	# of Stores	# of Hammers Sold
Mega Hardware	\$4.00	50	50,000
Community Hardware	\$4.75	2	200

	Price of Hammer
Mega Hardware	\$4.00
Community Hardware	\$4.75
	\$8.75
Divide by 2	\$4.38

Market price based on # of choices available to consumers

	Price of Hammer	# of Stores	Extension
Mega Hardware	\$4.00	50	\$200.00
Community Hardware	\$4.75	2	\$9.50
		52	\$209.50
Divide by 52			\$4.03

Market price based on # of stores

(Current FDIC methodology)

	Price of Hammer	# of Hammers Sold	Extension
Mega Hardware	\$4.00	50,000	\$200,000
Community Hardware	\$4.75	200	\$950
		50,200	\$200,950
Divide by 50,200			\$4.00

Market price based on # of hammers sold

(FDIC reasoning, but FDIC uses # of stores due to ease of data availability)

Using the current FDIC national rate methodology:

10 banks representing only 0.2% of all banks control 1/3 of the FDIC national rate

- 45 banks representing less than 1% of all banks control 50% of the FDIC national rate
- 4,520 Community banks with less than 10 branches, which make up more than 80% of all banks in the United States, account for less than 20% of the FDIC national rate

	<u># of Banks</u>	<u>% of Banks</u>	<u># of Branches</u>	<u>% of Branches</u>
Ten Largest Banks	10	0.2%	28,950	32%
45 Largest Banks	45	0.8%	45,027	50%
Community Banks*	4,520	80.2%	15,618	17%
<hr/>				
*Community Banks:	Banks with 9 or fewer branches			
All Banks	5,634	100.0%	90,160	100%

The FDIC stated in a response letter to IBAT dated September 17, 2017, that the FDIC is using branches as a proxy for the actual number of deposit accounts. Currently 5 banks control 40% of all deposits in the United States. Should these 5 banks be able to control 40% of the FDIC national interest rate?

What is the prevailing market rate for a 12 month CD?

- A single Mega bank can intentionally or unintentionally manipulate the FDIC national rate
- Wells Fargo: 5,997 branches, 12 Mo Jumbo CD rate sheet of 0.10% (June 2018)

	<u>Branches</u>	<u>% of Branches</u>
Wells Fargo	5,997	6.7%
All Other Banks (AOB)	84,163	93.3%
	<u>90,160</u>	<u>100.0%</u>

	<u>Rate</u>
June FDIC 12 Mo Jumbo CD rate	0.420%
Wells Fargo 12 Mo CD rate sheet rate	<u>0.100%</u>
Imputed AOB 12 Mo Jumbo CD rate	0.443%

Since we know the total # of branches and # of WF branches, as well as the FDIC national rate and WF rate, we can calculate the average rate the FDIC is using for all other banks (Imputed AOB rate).

June 2018 Wells Fargo 12 Mo Jumbo CD Rate

Standard CD Rates³

[Open a Standard CD account](#)

\$2,500 minimum opening deposit

Term	Interest Rate	APY	Bonus Interest Rate	Bonus APY ⁵	Balance
3 months	0.05%	0.05%	0.10%	0.10%	\$0 - \$4,999.99
	0.05%	0.05%	0.10%	0.10%	\$5,000 - \$9,999.99
	0.05%	0.05%	0.10%	0.10%	\$10,000 - \$24,999.99
	0.05%	0.05%	0.10%	0.10%	\$25,000 - \$49,999.99
	0.05%	0.05%	0.10%	0.10%	\$50,000 - \$99,999.99
	0.05%	0.05%	0.10%	0.10%	\$100,000 +
6 months	0.05%	0.05%	0.10%	0.10%	\$0 - \$4,999.99
	0.05%	0.05%	0.10%	0.10%	\$5,000 - \$9,999.99
	0.05%	0.05%	0.10%	0.10%	\$10,000 - \$24,999.99
	0.05%	0.05%	0.10%	0.10%	\$25,000 - \$49,999.99
	0.05%	0.05%	0.10%	0.10%	\$50,000 - \$99,999.99
	0.05%	0.05%	0.10%	0.10%	\$100,000 +
1 year	0.10%	0.10%	0.15%	0.15%	\$0 - \$4,999.99
	0.10%	0.10%	0.15%	0.15%	\$5,000 - \$9,999.99
	0.10%	0.10%	0.15%	0.15%	\$10,000 - \$24,999.99
	0.10%	0.10%	0.15%	0.15%	\$25,000 - \$49,999.99
	0.10%	0.10%	0.15%	0.15%	\$50,000 - \$99,999.99
	0.10%	0.10%	0.15%	0.15%	\$100,000 +

What is the prevailing market rate for a 12 month CD?

- A single Mega bank can intentionally or unintentionally manipulate the FDIC national rate
- Wells Fargo
 - 5,997 branches
 - 0.10% 12 Mo Jumbo CD rate sheet (June 2018)
 - 2.00% 13 Mo Jumbo CD (June 2018)

Wells Fargo alone is creating a 30% variance in the FDIC 12 mo Jumbo CD rate

Wells Fargo offers NO standard term CD rate promotions (9 mo, 13 mo, 19 mo, 39 mo, and 58 mo)

	Rate	% of Branches	Extension
Wells Fargo 13 Mo CD rate sheet rate	2.000%	6.7%	0.13%
Imputed AOB 12 Mo Jumbo CD rate	0.443%	93.3%	0.41%
		100%	0.55%
	<u>Rate</u>		
Revised FDIC 12 Mo Jumbo National Rate	0.55%		
Stated FDIC 12 Mo Jumbo CD Rate	0.42%		
Difference	0.13%		
Wells Fargo Variance	30%		

Wells Fargo
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Give your money a raise. Two options to make your money work harder with Wells Fargo.

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WELCOME.WF.COM

Earn more with Wells Fargo.

Offer expires June 17th, 2018

Like Comment Share

The advertisement features a woman in a blue suit sitting at a desk with a laptop. Overlaid on the image are two boxes: a red box for a 'Platinum Savings Account' with a 1.60% interest rate for 3 months and a 0.41% Annual Percentage Yield, and a yellow box for a 'Fixed Rate CD' with a 2.00% Annual Percentage Yield for 13 months.

What is the prevailing market rate for a 12 month CD?

The FDIC advocates the use of linear interpolation to calculate the prevailing market rate for odd term CDs. Using linear interpolation does not accurately reflect the market rate for odd term CDs.

FDIC stated in a response letter to IBAT dated September 17, 2017, that the use of linear interpolation provides an accurate estimate of non-standard maturity CDs.

characteristic. Finally, at least with respect to non-standard maturities, calculating additional averages is unnecessary: the FDIC offers guidance on how to use linear interpolation to estimate, for example, the rate cap on an 11 month CD from the rates provided for 9 and 12 month CDs.⁴

⁴ See FDIC FIL-69-2009 (December 4, 2009).

Wells Fargo (June 2018)

12 Mo Jumbo CD 0.10%
 13 Mo Jumbo CD 2.00%
 19 Mo Jumbo CD 1.10%
 24 Mo Jumbo CD 0.45%

Term - Mo	Interpolated Rate	Actual Rate
12	0.10%	0.10%
13	0.13%	2.00%
14	0.16%	
15	0.19%	
16	0.22%	
17	0.25%	
18	0.28%	
19	0.30%	1.10%
20	0.33%	
21	0.36%	
22	0.39%	
23	0.42%	
24	0.45%	0.45%

What is the prevailing market rate for a 12 month CD?

The rate sheet 12 month CD rate is not reflective of the prevailing market rate for many (most?) banks, because it's an industry standard practice to offer odd term time deposit rates

What is Independent Bank's 12 Mo CD market rate, 0.60% or 2.73%? (June 2018 / 81 Branches)

Secure | https://www.independent-bank.com/home/rates.html

Independent Bank

Contact Us Locations % Rates username password

ABOUT US | PERSONAL | BUSINESS | MORTGAGE

Certificate of Deposit Minimum Balance: \$1,000

Term	Interest Rate	APY ³
30 Day	0.05%	0.05%
90 Day	0.10%	0.10%
180 Day	0.30%	0.30%
1 Year	0.60%	0.60%
2 Year	0.70%	0.70%

Secure | https://www.independent-bank.com

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ABOUT US | PERSONAL | BUSINESS | MORTGAGE

RAISING STANDARDS TOGETHER

13-MONTH PROMOTIONAL CERTIFICATE OF DEPOSIT **2.73% APY*** [Learn More >>](#)

\$1,000 MINIMUM OPENING DEPOSIT. RATES EFFECTIVE AS OF JUNE 14, 2018.

*Annual Percentage Yield (APY) assumes reinvestment of principal and interest at the original rate for one year. There is a penalty for early withdrawal on CDs. Other terms and conditions may apply.

Examples from May 2017 rate survey

	<u># of Branches</u>	<u>12 Month CD</u>	<u>13 Month CD</u>	<u>Difference</u>
Bank of the Ozarks	257	0.18%	1.30%	1.12%
Plains Capital Bank	65	0.50%	1.25%	0.75%

Does the FDIC national rate pass a common sense litmus test in Texas?

Frost Bank is recognized as having a strong deposit franchise and has a reputation for paying below market rates on its interest bearing deposits.

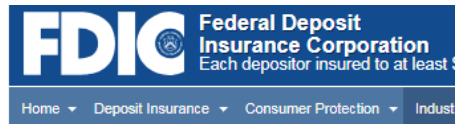
Frost is currently paying 1.30% on a 12 month jumbo CD. (July 2018)

- The FDIC national rate for a 12 month jumbo CD is 0.46%
- The FDIC national rate cap for a 12 month jumbo CD is 1.21%

Do you believe Frost is paying a rate that is 280% (2.8x) of the prevailing market rate?

All of Frost Bank's 6 mo, 12 mo, and 24 mo time deposits are considered 'potentially volatile' based on rate. Frost would not be allowed to offer these rates if subject to FDIC rate restrictions.

Frost Bank's 24 month jumbo CD is 60 bps higher than the FDIC rate cap.



Home > Regulation & Examinations > Resources > Weekly National Rates and R

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On May 29, 2009, the FDIC Board of Directors approved a final institutions under Part 337.6 of the FDIC Rules and Regulations institutions as calculated by the FDIC. The national rates and ra

For more information, see Financial Institution Letter FIL-25-201

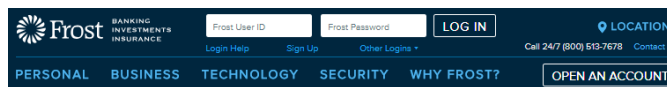
Rates updated July 16, 2018

Non-Jumbo Deposits (< \$100,000)

Deposit Products	National Rate ¹	Rate Cap ²
Savings	0.08	0.83
Interest Checking	0.05	0.80
Money Market	0.13	0.88
1 month CD	0.09	0.84
3 month CD	0.15	0.90
6 month CD	0.24	0.99
12 month CD	0.41	1.16
24 month CD	0.59	1.34
36 month CD	0.75	1.50
48 month CD	0.85	1.60
60 month CD	1.06	1.81

Jumbo Deposits (≥ \$100,000)

Deposit Products	National Rate ¹	Rate Cap ²
Savings	0.08	0.83
Interest Checking	0.05	0.80
Money Market	0.20	0.95
1 month CD	0.11	0.86
3 month CD	0.17	0.92
6 month CD	0.27	1.02
12 month CD	0.46	1.21
24 month CD	0.65	1.40
36 month CD	0.79	1.54
48 month CD	0.90	1.65
60 month CD	1.10	1.85



INTEREST RATES COMPARISON FOR \$1,000-\$99,999.99

	FROST Annual Percentage Yield	BANK OF AMERICA Annual Percentage Yield	CHASE Annual Percentage Yield	WELLS FARGO Annual Percentage Yield
90 Days	0.85%	0.03%	0.02%	0.10%
180 Days	1.10%	0.03%	0.02%	0.10%
12 Months	1.20%	0.05%	0.02%	0.15%
24 Months	1.80%	0.10%	0.45%	0.25%

INTEREST RATES COMPARISON FOR \$100,000 AND OVER

	FROST Annual Percentage Yield	BANK OF AMERICA Annual Percentage Yield	CHASE Annual Percentage Yield	WELLS FARGO Annual Percentage Yield
14 Days	0.25%	0.03%	0.02%	Not Offered
30 Days	0.25%	0.03%	0.02%	Not Offered
60 Days	0.25%	0.03%	0.02%	Not Offered
90 Days	0.95%	0.03%	0.02%	0.10%
180 Days	1.20%	0.03%	0.02%	0.10%
12 Months	1.30%	0.05%	0.05%	0.15%
24 Months	2.00%	0.10%	0.50%	0.25%

What is the prevailing market rate for a 12 month CD?

The FDIC methodology excludes credit unions. Credit Unions impact the prevailing market rate for deposits.

RBFUCU

Home Banking Loans Home Loans & Realty Business Learn

GROW YOUR MONEY. GUARANTEED.

2.38%^{APY}

18-MONTH SuperSaver Certificate

OPEN A CERTIFICATE TODAY!

RBFUCU

Home Banking Loans Home Loans & Realty Business Learn Investments Insurance

SuperSaver Certificate

Months	Amount	Dividend Rate	APY
18	\$1,000 - \$4,999	2.35%	2.38%
	\$5,000 - \$19,999	2.35%	2.38%
	\$20,000 - \$74,999	2.35%	2.38%
	\$75,000+	2.35%	2.38%

Early withdrawal penalty: 06 - 11 Month Certificate - 30 days; 12 - 23 Month Certificate - 60 days; 24 - 35 Month Certificate - 120 days; 36 - 47 Month Certificate - 180 days; 48 - 59 Month Certificate - 240 days; 60 - 71 Month Certificate - 300 days; 72 - 83 Month Certificate - 360 days; 84 Month Certificate - 420 days. The APY for certificates assumes dividends are added back to the certificate.

Certificate

Months	Amount	Dividend Rate	APY
6	\$1,000 - \$4,999	1.20%	1.21%
	\$5,000 - \$19,999	1.20%	1.21%
	\$20,000 - \$74,999	1.20%	1.21%
	\$75,000+	1.20%	1.21%
12	\$1,000 - \$4,999	2.00%	2.02%
	\$5,000 - \$19,999	2.00%	2.02%
	\$20,000 - \$74,999	2.00%	2.02%
	\$75,000+	2.00%	2.02%

RBFUCU: \$8.1 billion in assets, 55 branches, in Austin, Dallas and San Antonio, "serving members and the community"

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 Password:

 Forgot your password

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credit human

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How can we help you?

Questions? **FAST FAQ**

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Special rate

For a limited time, earn a great summer rate

Get a 2.30% APY on our flexible 12-Month Liquid Share Certificate.

Amplify is ~\$900 million in assets. Credit Human is ~\$3 billion in assets.

What is the prevailing market rate for a 12 month CD?

While using # of branches for Mega banks with low standard rate sheet interest rates, the FDIC national rate methodology uses only a single branch (or a handful of branches) for internet banks that aggressively compete nationwide.

- This leads to over-weighting lower rates and under-weighting higher rates in the FDIC national rate calculation

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BY GOLDMAN SACHS*

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Open an account

MEMBER FDIC All loans and savings deposit products provided by Goldman Sachs Bank USA.

Online Savings Account
Learn more about this product

1.80%

Annual Percentage Yield

Certificate of Deposit
Learn more about these products

2.30% APY

12 month term

~\$17 billion of deposits spring of 2018

DISCOVER

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Earn peace of mind when you lock in your CD interest rate.

2.25% APY ⓘ
for a 12-month term

Start saving today
with as little as \$2,500

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High Yield Certificate of Deposit (CD)

★★★★☆ 4.4 (2118 Reviews)

Available Terms

3 mo 6 mo 9 mo 12 mo 18 mo 3 yr 5 yr

Annual Percentage Yield

2.10%

Less than \$5,000 opening deposit

2.20%

\$5,000 minimum opening deposit

2.30%

\$25,000 minimum opening deposit

What is the impact on the FDIC national rate?

IMPACT:

Based on a 2017 rate survey, the **FDIC national rate would more than double if it reflected the prevailing market rate based on choices available to consumers.**

Note: The difference would almost certainly be much greater in the current rate environment

May 2017 rate survey

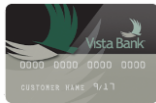
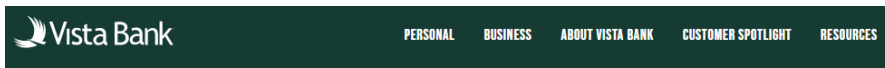
	FDIC National Rate	Austin-Round Rock MSA				
		Per Branch	Per Bank	ADD: CU	ADD: Internet	ADD: 11 & 13 mo CDs
Prevailing Market Rate for \$10,000 12 Month CD	0.25%	0.25%	0.40%	0.46%	0.56%	0.60%
Prevailing Market Rate for \$100,000 12 Month CD	0.27%	0.27%	0.43%	0.49%	0.58%	0.63%

Moving from left to right, 'Prevailing Market Rate' calculations for Central Texas in May of 2017:

- *FDIC National Rate (calculated based on # of branches)*
- *Rate based on one rate per bank*
- *Rate including Credit Unions*
- *Rate adding internet banks advertising to Central-Texas residents*
- *Rate replacing 'rate sheet' 12 mo CDs with 11 and 13 month CD promotions*

'Non-Standard' deposit account product types are ignored in the FDIC methodology

- Non-standard account types pose a challenge to calculating a average prevailing market rate, because they are intentionally structured to be difficult to compare to other accounts (i.e. differentiated)
 - IDI's are attempting to make a commodity, the traditional bank account, into differentiated products and services.
 - It's difficult or impossible to calculate a national average price for products that are not commodities or directly comparable.
- Example: Rewards Checking
 - Currently the FDIC methodology 'ignores' the product differentiation of Rewards Checking, classifying it as 'interest checking' with a national average rate of 0.05% and a rate cap of 0.80%.
 - Any community bank subjected to rate caps offering Rewards Checking would be forced to runoff the deposits
 - There are hundreds of community banks offering rewards checking with thousands of product requirement permutations – it would not be possible to calculate a national average rate for Rewards Checking



VistaSmart Checking is a high interest rate checking account designed to give you more! Earn interest with our highest interest rate, enjoy cell phone protection, and travel with peace-of-mind with roadside assistance. There are no minimum balance requirements and no monthly fees when requirements are met**, plus get a .25% per annum interest rate discount*** on consumer loans as a VistaSmart Checking customer.

Wherever life takes you, VistaSmart Checking has you covered.

[View form here](#)

*APY as of January 9, 2018

**The following requirements will need to be met in each qualification cycle in order to receive 3.51% APY on balances up to \$30,000: 30 debit card transactions, 2 direct deposits or ACH transactions, and eStatement. Balances in excess of \$30,000 receive .50% APY. Qualification Cycle means a period beginning one business day prior to the first of the current statement cycle through one business day prior to the close of the current statement cycle. If requirements are not met, account will earn .05% APY. APY is Annual Percentage Yield and it is subject to change without notice. Fees may reduce the earnings on the account. Account is for personal accounts only.

***Discount available if auto-draft is set up on consumer loan.



Texas Reward Checking

Here in Texas, everything is bigger...including the return you can earn with this interest-bearing checking account. But you don't need a big balance to start earning extra cash. In fact, balances below \$25,000 earn the best APY* this account has to offer when qualifications are met.

Summary

- High-interest checking account
 - Earn 2.53% APY* on qualifying balances of up to and including \$25,000
 - Earn a range of 0.43% to 2.53% APY* on balances over \$25,000
 - Earn 0.20% APY* on entire balance when qualifications are not met
 - Nationwide ATM fee refunds (up to \$15 per statement period)**
 - Minimum balance of \$0.01 to earn rewards interest rate
 - Avoid the \$5 monthly service charge by maintaining a \$10,000 minimum daily balance
- In order to earn the Texas-sized interest rate and ATM fee refunds, just do the following each monthly qualification cycle:
- Have at least 12 Visa® debit card transactions post and clear each statement cycle (ATM processed transactions do not count toward qualifying debit card transactions)
 - Have at least 1 direct deposit or direct debit post and clear each statement cycle
 - Receive free eStatements
 - Maintain a valid email address



Money Market and Savings Accounts

- Many banks pay a ‘relationship rate’.
 - FDIC Methodology only uses ‘standard rates’.
- The FDIC calculates a national rate for a money market and a savings account separately
 - These two accounts fulfill a substantially similar consumer need/benefit
- Many banks choose to promote either a MMA or savings account, posting a low ‘non-market’ rate for the other account type on their rate sheet
 - This creates an artificial downward bias for the calculation of an prevailing market average rate by account type
- Banks pay a promotional rate for ‘new’ money.
 - Is the ‘prevailing market rate’ the rate IDIs pay to attract new customers or the rate they pay existing accountholders that may not be monitoring their accounts? These rates can be drastically different.

Relationship rate example 0.15% vs 1.60%

Savings vs. MMA Promotion



Checking		Savings		Money Market		CDs		IRAs/ESAs	
Current Rates									
Premiere Money Market Account									
Balance to Earn Interest	Standard Rates		Relationship Rates ^[1] with Performance Checking		Relationship Rates ^[1] with Performance Select Checking				
	Interest Rate	APY ^[2]	Interest Rate	APY ^[2]	Interest Rate	APY ^[2]			
\$1.00 - \$9,999.99	0.03%	0.03%	0.55%	0.55%	1.09%	1.10%			
\$10,000.00 - \$24,999.99	0.09%	0.09%	0.55%	0.55%	1.09%	1.10%			
\$25,000.00 - \$49,999.99	0.11%	0.11%	0.60%	0.60%	1.19%	1.20%			
\$50,000.00 - \$99,999.99	0.13%	0.13%	0.60%	0.60%	1.39%	1.40%			
\$100,000.00 - \$249,999.99	0.15%	0.15%	0.65%	0.65%	1.59%	1.60%			
\$250,000.00 - \$499,999.99	0.15%	0.15%	0.65%	0.65%	1.59%	1.60%			
\$500,000.00 - \$999,999.99	0.17%	0.17%	0.65%	0.65%	1.59%	1.60%			
\$1,000,000.00 and above	0.17%	0.17%	0.65%	0.65%	1.59%	1.60%			

Dime Bank

Savings 0.05%
MMA 1.35%

NorthPoint Bank

Savings 1.95%
MMA 0.50%

Promotional Rates vs. Rate Sheet

BBVA Compass

MMA: 1.70% for 12 months on new MMA
MMA: 0.10% rate sheet (rate used by FDIC - 669 branches)



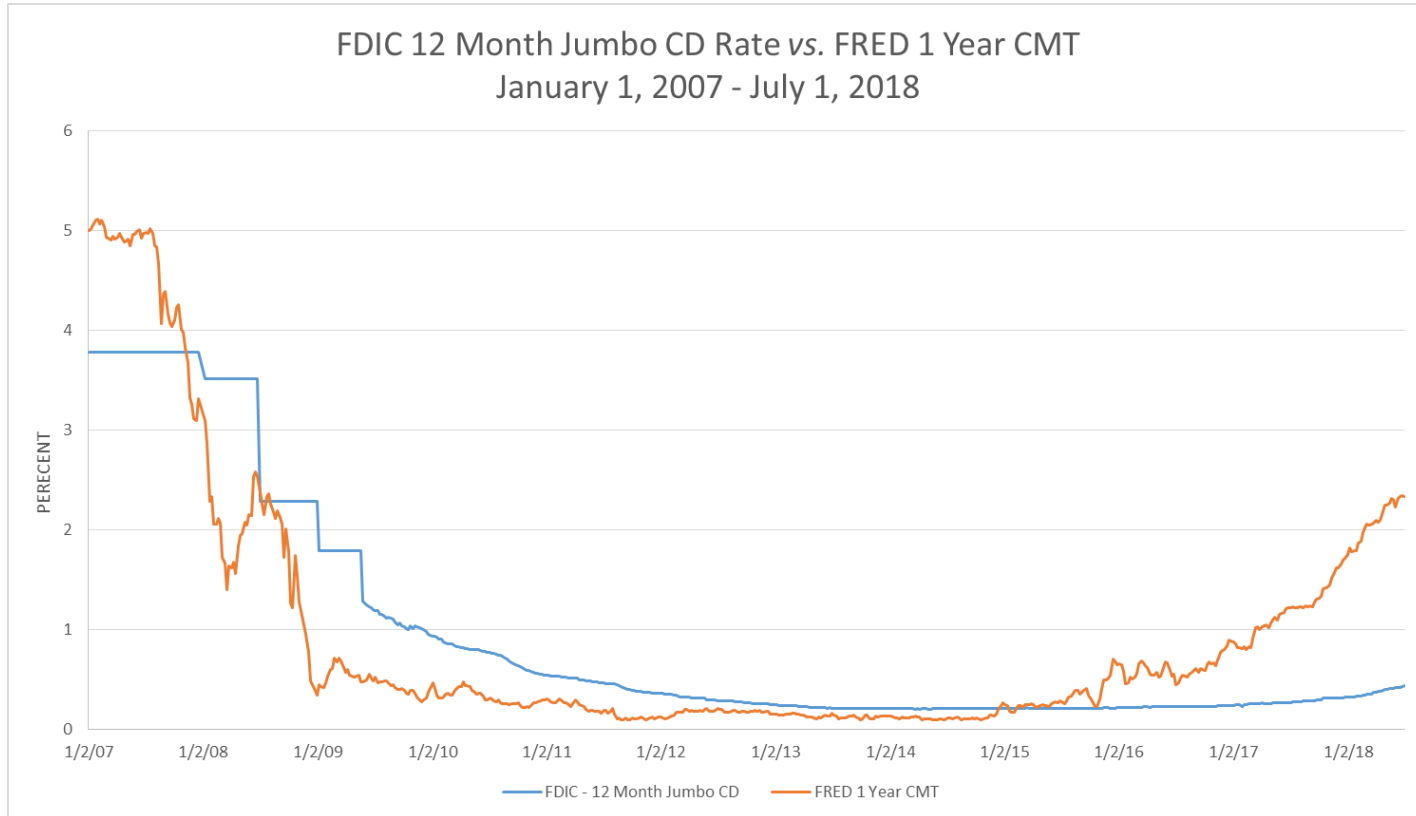
What is the impact on Community Banks and Consumers?

- The current FDIC national rate methodology likely creates an artificial regulatory liquidity risk for all community banks that use interest bearing deposits as a material funding source
- A community bank that is classified as less than well capitalized will likely be unable to compete for, or retain, interest bearing deposits in a 'normal' or rising interest rate environment
- The current FDIC national rate methodology has the potential to be a catalyst of a completely unnecessary liquidity failure of a community bank and unnecessary loss to FDIC deposit insurance fund
 - i.e. The rate cap may take a credit problem and create an 'artificial' liquidity problem if the community bank has a material use of, or reliance on, interest bearing deposits
- The FDIC rate cap can be used against well-capitalized banks to criticize deposits with interest rates exceeding the FDIC rate cap as 'potentially volatile'. An FDIC examiner may issue a criticism or regulatory action by making an examiner determination that a bank has a concentration of 'potentially volatile deposits' based solely on rate.
 - This creates a de facto national interest rate cap for well-capitalized community banks that use interest bearing deposits as a material funding source.

Additional Information and Observations

Can we simply use treasury rates for equivalent duration time deposits?

No.



Jan 2007 to May 2009 FDIC did not calculate a national rate. Bankrate 1 YR national average CD rate reported every 6 months was used as a proxy for FDIC rate.

Treasury rates and deposit account interest rates become disjointed in changing/volatile rate environments

- In current rising rate environment treasuries will likely rise faster than deposit rates
- In a falling rate environment treasuries will likely fall faster than deposit rates
- In an uncertain economic environment treasuries may act as a safekeeping method for large sums of money with rate unimportant to the owner (near 0% yields)

'Bank Accounts' are rapidly being de-commoditized.

"We are no longer talking about a format of accounts that includes a checking, savings, investment, loan, and payment service — the traditional one-institution arrangement. Instead, we should be talking about a 'financial account' that integrates the best of all of these components into an account that has no barriers and can be formatted the way a consumer wishes." <https://thefinancialbrand.com/74028/fintech-charter-comptroller-innovation-regulations-banking-competition/>

Accounts are no longer just basic bank account types easily grouped into:

- Interest Checking
- Savings
- Money Markets, and
- Time Deposits

Example: Sofi Money

- Checking and savings account combined
- Account pays 1% APY
- Deposits insured 'up-to' \$1,500,000 by FDIC
- Membership benefits include:

- Career Coaching
" \$999 value complimentary for SOFI members "

- Exclusive invite-only community events

- Unemployment Protection

- Free Financial Advice

"0% in SoFi management fees for 2018 and \$0 for unlimited personalized financial advice."

The only account you need to spend and save.

Checking accounts give you flexibility to pay. Savings accounts give you higher interest. SoFi Money gives you both.

High Interest

Earn higher interest with 1% APY!¹

Fee-Free

We don't believe in charging you fees to use your own money. Check out a full list of account fees we don't charge [here](#).

Free ATMs

Use any ATM (even internationally), and we'll cover the cost up to six times per month.²

Membership

Access to complimentary career coaching, community resources, swag, and much more.

1 The balance in the SoFi Money account is swept to an FDIC-insured account at one or more Program Banks where it earns a variable rate of interest. The Annual Percentage Yield (APY) for SoFi Money accounts, effective as of 8/1/18, is 1% for all balances in all states. Interest rates are variable and subject to change based on FFIEC...

3 The SoFi Money Account's uninvested cash balance is swept to one or more program banks where it earns a variable rate of interest and is eligible for FDIC insurance. FDIC Insurance is not provided until the funds arrive at partner bank. There are currently six banks available to accept these deposits, making customers eligible for \$1,500,000 of FDIC insurance (six banks, \$250,000 per bank). If the number of available banks changes, or you elect not to use, and/or have existing assets at, one or more of the available banks, the actual amount could be higher or lower. For more information on FDIC insurance coverage, please visit www.FDIC.gov Customers are responsible for monitoring their total assets at each of the Program Banks to determine the extent of available FDIC insurance coverage in accordance with FDIC rules. Refer to the FDIC-Insured Cash (Core) Disclosure Statement and list of eligible Program Banks for details. The deposits in SoFi Money or at Program Banks are not covered by SIPC.

There are literally dozens of fintech start-ups with business models that make calculating a prevailing market interest rate more complicated if not untenable.

Beam boosts interest rate for referrals and app activity.

Blast pays rewards (interest) based on gaming activity.

- Wells Fargo savings account rate sheet is 0.01% APY – Wells Fargo Blast savings account is 1.00% (June 2018)

What exactly is Beam? Is Beam a bank account or an investment account? Is my money FDIC-insured?

In technical terms, your Beam funds are held in a Demand Deposit Account (DDA). It is not an investment account. Your money will be placed at a FDIC-insured bank with decades of operating history serving deposit customers just like you. Beam opens FDIC-insured accounts using Synapse Financial Technologies, Inc., a third-party banking software provider and agent of Evolve Bank & Trust, Member FDIC. Beam itself is not a bank nor an FDIC-insured financial institution. Funds are FDIC-insured by Evolve Bank & Trust, subject to any limitations applicable to the account. For further details, please refer to Beam's [Terms of Service](#).

Can you clarify how the 2%–4% will work?

The base reward for your Beam account is 2% a year, compounded and paid by Beam daily. You can boost the rate up to 4% or more through collecting free "boosts" (a "Billie" in Beam's lingo) that arrive daily between 6 and 7PM local time. Claiming the reward is free, easy and string-free.

For more information about the details of the reward payouts paid by Beam, please refer to Beam's [Terms of Service](#) under "Beam Reward".

Who is Beam's bank sponsor?

For its initial limited-feature private beta release, Beam is working with Synapse Financial Technologies, a third-party banking software provider and agent of Evolve Bank & Trust, Member FDIC. The funds each Beam customer transfers into Beam platform are deposited directly at Evolve Bank & Trust and are FDIC-insured. Additional information can be found in the [Evolve Bank & Trust Deposit Agreement](#), [Truth in Savings Disclosure and Privacy Policy](#), and [Synapse's Terms of Service and Privacy Policy](#).

<https://ptmoney.com/beam-review/>

About Blast General

Blast helps you save, invest, and in some cases earn money while playing games. Money is saved (i.e., Blast initiates a withdrawal from your designated depository financial institution (your "Bank Account") and deposits the funds into a FDIC-insured savings account with Wells Fargo & Company, that we create on your behalf that is associated with your Blast Account (the "Blast Savings Account") when users trigger certain predetermined events in our partner games (e.g., collect coins, play for certain predetermined periods of time) or initiate "boosts," which are transfers from users' Bank Accounts into their Blast Savings Accounts. There is no fee for creating a Blast Savings Account. Money can be earned, for example, by completing Missions (i.e., discrete tasks within our partner games, such as "earn 100 coins") (referred to in the Services as "Mission Dividends"), as well as by placing high enough in the Blast leaderboard each week. Blast Accounts may also earn interest, as further described on the Website and in the Application.

How Does The Blast App Work?

Blast is an app that allows gamers to micro-save money and earn real cash dividends by playing top games. After linking your personal checking account, you are given a free FDIC-insured savings account. The more you game, the more you save and earn.

What Is The Difference Between Money That You Save Vs. Earn?

Money that you save comes from your linked bank account and is transferred to your Blast savings account. Money that you earn is called a dividend and is given to you by Blast as a reward for completing Missions.

How Do I Save And Earn Money?

Simply put, you auto-save money for each minute you play games. You can set how much you want to save per minute by adjusting your Time Trigger in Settings within the Navigation screen. You also earn real cash dividends for completing in-game objectives called Missions.

*The current APY is 1% as of 6/1/18

Savings Rates		
Wells Fargo Way2Save® Savings		
Open a Way2Save® Savings account		
(\$25 minimum opening deposit)		
Balance	Interest Rate	APY
\$0 or more	0.01%	0.01%



There are literally dozens of fintech start-ups with business models that make calculating a prevailing market interest rate more complicated if not untenable.

Mango Prepaid Card issued by Metropolitan Commercial Bank has a ‘Savings Account’ feature that pays 6.00% on up to \$5,000 with a direct deposit of \$800 or more.

mango The fresh way to manage money™

Sign In | Contact Us | English | Español

What is Mango? | Adding Money | Mobile | Simple Fees | Sign Up

The fresh way to manage money
Flexible, secure, simple, and no hidden fees*

Mango Card
The Mango Card has no activation fee, and requires no credit check because this is not a credit card. [Learn More](#)

Mobile
Mobile-enabled cardholder portal. [Learn More](#)

Savings
It's easy to get a high yield savings account. [Learn More](#)

Secure
Peace of mind for your wallet. [Learn More](#)

The Mango Prepaid Mastercard®
Expect more for your money™

Mango is the safe and convenient way to manage and access your money when and where you need it.

Card Benefits
You can use your Mango Card everywhere Debit Mastercard is accepted.

[Simple Fees](#) [Help](#)

Earn up to 6.00%* Annual Percentage Yield with Mango Savings™**

No need to wait to start saving. Once you activate and load your Mango Card, you can open a Savings Account with as little as \$1 and get up to 6.00% Annual Percentage Yield. You can enjoy up to 6 transfers out each month. A net direct deposit of \$800.00 or more monthly and a minimum balance of \$1.00 at the end of the month is needed to qualify for the 6.00%. You may only have one Savings Account.

Every Mango Cardholder is invited to Save

All active Mango Cardholders are able to open a Mango Savings Account. We encourage you to enroll in Direct Deposit and make regular transfers to your Savings Account.

How can we afford it?

Basically, we've shifted a big chunk of our marketing budget to paying our good customers instead of advertising channels – no TV or print ads. We think word of mouth is much better.

Why we drop it to 0.10% over \$5,000

We believe that the amazing 6.00% is our contribution to improving our customers' finances, and building a better America. Once customers have savings in excess of \$5k, they have the tools and have established the right habits.

- > We may change the interest rate on your Savings Account at any time.
- > We offer a fall-back Annual Percentage Yield of 2.00% for those accounts not meeting the minimum \$800 net direct deposit threshold.

See Savings Account [Terms and Conditions](#) for additional details.

What is the average price of a drill?

130 years ago it was easy to calculate the average price of a drill, because there was only the hand drill.

Then came innovation:

- Hand drill
- Electric Drill
- Drill press
- Cordless Drill
 - 14v
 - 18v
- Multi-tool with drilling capability
- High pressure water drill
- Laser drill

And then different features for each drill type:

- Forward only / Forward-Reverse
- Keyed Chuck / Keyless Chuck
- Drill bit types
 - Auger
 - Paddle
 - Twist
 - Self-Feed
 - Hole saw
- No warranty / Limited warranty / Unlimited lifetime warranty

What is the average price of a drill today?

Attempting to calculate a national average rate is an unwinnable arms race against innovation.

- It is only possible to calculate an average rate for something that is a commodity or is substantially similar
- Innovation has made calculating an average national rate impossible for bank accounts
- Banks and fintechs are both attempting to differentiate depository products and services at an ever increasing pace

What's the average interest rate for a time deposit?

- Standard term maturity
- Odd term maturity
- Step rate interest rate
- Variable interest rate
- Ability to add to the balance
- Ability to make withdrawals before maturity
- Relationship rate pricing
- Linked account pricing
- 'New Money' pricing

What's the average interest rate for an interest bearing checking account?

- Traditional interest bearing account with rate tiers
- Rewards checking (with thousands of permutations)
- Relationship pricing (with unlimited variations of requirements)
- Account features with any combination of the following
 - OD protection
 - Free checks or purchase checks
 - Internal account to account transfers
 - External bank account transfers (free or for a fee)
 - International remittance transfers (free or for a fee)
 - Person to Person payments (free or for a fee)
 - Credit score provided
 - Credit monitoring provided
- Discounts at retailers
- Exclusive access to events
- Micro investing feature
- Earn additional interest for any of these activities:
 - Referrals
 - App activity
 - Playing games
 - Future: ???

Asking the FDIC or a Community Bank to calculate a national average rate is asking it to do the impossible.

Recommendation

A new simple and strong alternative approach to the issue:

- I am an advocate of simple and strong regulation.
- Making the interest rate calculation increasingly complex or more localized to try to account for the modern market complexities is a losing battle for both the FDIC and Community Banks. In the time it would take the FDIC to propose, receive comment, and pass a new calculation methodology that methodology would likely already become obsolete because of new depository product models that haven't yet been created.
- The ultimate objective of the national rate cap is to prevent a bank that is less than well capitalized (by ratio or consent agreement) from rapidly growing risky assets with potentially volatile funding. The FDIC interest rate cap is essentially a proxy for the primary objectives of limiting asset growth of risky assets and the associated potential loss to the FDIC DIF.
- A simple and elegant solution that Community Banks, the FDIC, and Congress could likely agree on is a direct [Annual Asset Growth Cap](#) for less than well-capitalized banks, eliminating interest rate calculations all together.

What might this look like?

A simple and strong alternative approach to the issue: Asset Growth Caps for Less than Well-Capitalized Banks

Asset Size	Annual Growth Limit
\$0 to \$49 mil	\$20 mil
\$50 to \$99 mil	\$15 mil
\$100 mil to \$149 mil	\$10 mil
\$150 mil to \$249 mil	10.0%
\$250 mil to \$999 mil	5.0%
\$1 bil to \$4.9 bil	2.5%
\$5 bil+	1.0%

A bank can be classified as ‘Less Than Well-Capitalized’ for two different reasons:

- A. Capital ratio is less than regulatory definition of ‘Well-Capitalized’
- B. Bank is subject to a consent agreement that includes a capital maintenance provision, regardless of the bank’s capital ratios

Scenario A:

A bank classified as Less Than Well-Capitalized due to ratio would not be allowed to grow, unless their capital ratio increased above the regulatory definitions of Less Than Well-Capitalized, which would require injecting new capital via earnings or capital contributions. This is a desirable outcome for the FDIC, because the additional capital would reduce the potential for failure and mitigate potential losses to the FDIC DIF.

Scenario B:

A bank classified as Less Than Well-Capitalized only due to a capital maintenance provision in a consent agreement would be allowed to grow up to the lesser of:

- A. Their capital ratio going below the ratio required in the consent agreement.
- B. The annual growth limit shown above

Note:

I used absolute dollar amounts for assets under \$150 mil, because %s calculated on a small basis are not meaningful, and the eventual solution for a tiny bank will likely include growing to enhance earnings once internal issues are resolved. A % cap on a tiny base would not allow a tiny bank to achieve ‘escape velocity’ for its earnings to enhance capital protection. A larger bank does not necessarily need to grow to create positive earnings.

A simple and strong alternative approach to the issue:

Ratio	Well Capitalized	C&D Capital Maint. Provision	Bank Ratios Q2 2008	Bank Ratios Q1 2010
Tier 1 Leverage	5.0%	10.0%	10.6%	15.7%
Tier 1 Risked Based	8.0%	12.0%	13.4%	28.3%
Total Risked Based	10.0%	14.0%	14.7%	29.6%
			Classified: Less than well capitalized	Classified: Less than well capitalized

A Real World Example:

- The Community Bank illustrated above was classified as “Less-Than-Well-Capitalized” by the FDIC and subject to interest rate restrictions despite having a Tier 1 leverage ratio of almost 16% and Risk Based ratios of almost 30%, simply because it had a capital maintenance provision.
- This community bank would not be subject to any interest rate caps and would be allowed to grow until it reached the annual growth cap for its asset size or it’s capital ratios decreased to the minimum level required in its Consent Agreement.

Why did I create this presentation?

In 2006 we received approval for a de novo community bank. Unfortunately, we opened our bank in January 2006 on the cusp of the global financial crisis and like many of our class of 2006 de novo bank classmates, we faced extremely challenging circumstances in the first few years of our community bank's life.

Fortunately we made it through and are flourishing today, but in the midst of the crisis we received a Cease and Desist Order from the FDIC (aka Consent Agreement) that included a 'capital maintenance provision'. Even though our Tier 1 capital ratios were always well above the regulatory definition of 'less than well-capitalized' I was surprised to learn that by simply having a capital maintenance provision included in a Consent Agreement a community bank instantly becomes classified as 'less than well-capitalized', regardless of its capital ratios. For that reason, I understand the importance of the FDIC rate caps and the severity to which they can impact a community bank, so I have continued to monitor the FDIC's actions on this issue.

In January of 2009 the FDIC published a request for comment: Interest Rate Restrictions On Institutions That Are Less Than Well-capitalized: Notice of Proposed Rulemaking: <https://www.fdic.gov/news/news/financial/2009/fil09005.pdf>

While reviewing the FDIC's proposed rules, I identified several material items that had the potential to unjustly and materially harm community banks and the communities they serve. I submitted a comment letter to the FDIC which can be found at: <https://www.fdic.gov/regulations/laws/federal/2009/09c15ad41.pdf> that identified these issues. Unfortunately the FDIC moved ahead with its proposed rule with little modification.

For most of the last decade I have advocated for community banks behind the scenes on this issue to little avail. It is only recently that the rising rate environment has exposed many of the critical flaws I first outlined in my comment letter almost a decade ago, that the FDIC has now moved to reconsider the rule it adopted.

I created this presentation so that community bankers and Congressmen and the communities they both serve, can gain an understanding of this issue in a simple and understandable way and effectively advocate for, or legislate, a better solution,

because even one unnecessary community bank failure is one too many.



April 3, 2009

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

Re: Public Comments FDIC Part 337 - Interest Rate Restrictions

Dear Mr. Feldman,

I am writing in response to the Notice of Proposed Rulemaking - Interest Rate Restrictions on Institutions that are Less Than Well Capitalized. (Part 337- Interest Rate Restrictions) published in the Federal Register: February 3, 2009 (Volume 74, Number 21, pages 5904-5908).

While I strongly support the FDIC's efforts to bring much needed clarity and concreteness to the aforementioned limits, after reviewing the proposed rulemaking I am very concerned about the simplistic deposit interest rate analysis presented to support the proposed rule, the conclusions drawn from that analysis, and the methodology of using "a simple average of rates paid by all insured depository institutions and branches for which data are available," for calculating the proposed "national rate" as a proxy for the 'prevailing market rate'.

In its desire for simplicity and concreteness, the FDIC should not rush to adopt and implement a rule that will have significant unintended negative consequences.

Adopting the proposed rule as written will have significant negative unintended consequences, not be consistent with the original intent of the United States Congress in enacting 12 USC 1831 - Sec. 1831(f) Brokered Deposits / Section 29 of the Federal Deposit Insurance Act, and will unnecessarily and artificially increase the risk to, and ultimate losses incurred by, the FDIC Deposit Insurance Fund.

Personal Background

I am an executive of a financial institution that is currently subject to Part 337.6 rate restrictions. While the institution I work for has capital ratios that would easily classify the institution as well capitalized if measured by those ratios, the institution previously consented to a written agreement with the FDIC that included a capital maintenance provision, and it is therefore classified as 'adequately capitalized' regardless of its capital ratios, and is therefore subject to Part 337.6 rate restrictions.

As of January 31, 2009, the bank's capital ratios were:

	<u>Bank's Ratios</u>	<u>Required ratio to be 'well capitalized'</u>
Core capital (leverage) ratio	15.7%	5.0% or greater
Tier 1 risk-based capital ratio	22.3%	6.0% or greater
Total risk-based capital ratio	23.5%	10.0% or greater

As an institution subject to Part 337.6 rate caps I am very familiar with the difficulties and ambiguities involved in attempting to calculate and comply with the Part 337.6 rate cap regulations as derived from Section 29 of the Federal Deposit Insurance Act and the underlying 12 USC 1831 - Sec. 1831(f).

In our initial attempts at calculating a prevailing rate in our normal market area, we utilized a 'Rateline' service, but quickly realized that the service did not accurately reflect the prevailing rates offered in our normal market area. We subsequently established procedures to do a manual survey of rates at least monthly and more frequently during times of high rate volatility. Our rate methodology has been reviewed multiple times by our FDIC Regional Office. Our FDIC Regional Office took the additional step to create its own rate survey for our market area and compare it to the bank's rate survey, presumably because it apparently believed we were offering rates that might be 'substantially above the prevailing deposit rates offered in our normal market area'. In the end, after extensive time and resources were expended by both the Bank and our FDIC Regional Office, the result was that the FDIC derived rate survey differed from the bank's rate survey by only a few immaterial basis points, both higher and lower.

It is the express intent of the bank to comply with Part 337.6 and we are pleased to see the FDIC take this opportunity to openly and publicly discuss the issues related to Part 337.6 rate cap calculations in an effort to streamline and simplify both compliance and verification of compliance with the rate restrictions.

Based on my personal experience in attempting to have a bank comply with Part 337.6 Regulations and the intent of the law, I offer the following observations and recommendations on the proposed methodology and put forth several questions for consideration before the proposed rules become final.

Definition of 'Brokered Deposits'

The Law and FDI Act set forth clear definitions for most brokered deposits. For the most part it is a straight forward process for both a financial institution and its regulators to determine if a deposit is 'brokered'. As the Memo points out, the difficulty in complying with and verifying compliance with the Law, FDI Act, and Part 337.6 regulations (Regulations) is centered on determining a clear and easily measurable definition of "rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions". To establish a clear and easily measurable metric for such rates, the FDIC has set forth its proposed methodology in the Memo. Unfortunately, the FDIC's analysis and methodology does not reflect the realities in the marketplace for deposits nor the advances in technology since the Law was originally enacted in 1989.

Memo 'Analysis and Conclusion'

On page 3 of the January 22, 2009 Memo to the FDIC Board of Directors, the FDIC sets forth the following analysis and conclusion:

"The uncertainty in the FDIC's regulation has made it difficult for banks and regulators to administer the regulation and appears to have resulted in higher rates being paid by less than well capitalized banks as compared to other banks. For example, based on the most recent information currently available, the average 1-year certificate of deposit rate paid by less than well capitalized banks was 2.87 while the average 1-year certificate of deposit rate paid by all insured banks and branches over the same period for which the FDIC had data was 2.18 percent."

This analysis is faulty. Using "a simple average of rates paid by all insured depository institutions and branches for which data are available" to draw such a sweeping conclusion is potentially very misleading and dangerous. As I will illustrate below, **simple averages for standard maturity time deposits do not reflect the true "prevailing rates of interest" in any market**, and therefore should not be used as a proxy for the 'prevailing market rate' absent an appropriate adjustment factor.

While I can appreciate the FDIC's desire for simplicity and concreteness in deriving rate caps, further refinement and modification is necessary to the proposed rule to avoid a potentially dramatic unintended consequence of the proposed rule and the associated compounded losses to the FDIC Deposit Insurance Fund that are completely avoidable absent adoption and implementation of the proposed rule change.

Methodology Analysis

As with any analysis, the conclusion and methodology to derive that conclusion should be compared to current 'real-world' data to verify and confirm their veracity (and should also usually be back-tested

against historical data to augment such an analysis). Data and analysis relevant to the proposed rule is presented below.

Odd Term Maturities

The current regulations establish a methodology for an institution offering ‘odd term’ maturities. Part 337.6 states that:

An effective yield on a deposit with an odd maturity violates paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other insured depository institutions on deposits of the next longer and shorter maturities offered in the market.

The proposed new regulations do not contemplate odd rate maturities, and if a rate was interpolated between the “national rate” standard duration maturity CD rates as proposed, it would be well below the “prevailing rates” in the market. This is a critical flaw in the proposed rate limitation calculation.

When the Law and Regulations were originally contemplated, odd rate maturities were the exception not the rule. Today most financial institutions offer below market interest rates on standard term/maturity fixed-rate time deposits, while offering much more attractive interest rates on odd-term time deposits. Financial institutions do this to match their funding to their liquidity needs and projections, but also as a marketing tactic to make it difficult to directly compare one institution’s time-deposit offerings to another institution’s (and in this case making it difficult, if not impossible, for both banks and the FDIC to use simple averages calculated from ‘standard term maturity’ time deposit data to determine prevailing market interest rates).

For example, on February 6 & 7, 2009 the following time deposit terms and rates were being offered by financial institutions in our local area:

Wells Fargo

9 Month Standard CD	1.30% APY	\$5,000 minimum balance
12 Month Standard CD	1.10% APY	\$10,000 minimum balance
24 Month Standard CD	1.25% APY	\$5,000 minimum balance
25 Month Standard CD	2.25% APY	\$5,000 minimum balance

Bank of America

7 Month Standard CD	1.85% APY	\$5,000 minimum balance
12 Month Standard CD	1.26% APY	Less than \$10,000 minimum balance
24 Month Standard CD	1.50% APY	Less than \$10,000 minimum balance

Wachovia

9 Month Standard CD	1.40% APY	\$5,000 minimum balance
12 Month Standard CD	0.85% APY	\$1,000 to \$9,999 balance
17 Month Standard CD	2.00% APY	\$5,000 minimum balance
24 Month Standard CD	0.95% APY	\$1,000 to \$9,999 balance

Using simple averages of the above three institutions’ 12 and 24 month rates would provide the following:

- 12 month rate: 1.07% APY
- 24 month rate: 1.23% APY

Clearly these simple averages for standard term maturity time deposits are not indicative of the “prevailing interest rates” in the market as no rational depositor would select either of these terms and rates given the other odd-term options provided by the same institutions. For example, any rational depositor would select the 25 month 2.25% CD from Wells Fargo yielding 100bps higher than the standard term maturity 1.25% 24 month CD.

Weighting of Sample Selection

The FDIC states that the national average rate would be calculated by:

“...a simple average of rates paid by all insured depository institutions and branches for which data are available.”

During the FDIC Board meeting on January 27, 2009, Mr. Bervid stated that the data source the FDIC used to calculate its simple national averages has 80,000 institutions/branches.

As illustrated in the preceding section, many banks post artificially low standard maturity term rates which are not reflective of the ‘prevailing rate’ being paid in the market for deposits. Does the FDIC propose to take the ‘artificially low’ standard maturity 12 and 24 month term rates of these financial institutions and then multiply them by the number of branches of each institution to determine an average national rate? For example, multiply Bank of America’s standard term maturity rates by ~6,100 and Wells Fargo by ~6,000? Using this approach would obviously distort the “average national rate” to a rate much lower than the actual prevailing market rate being paid for deposits in any market area.

The FDIC might consider simply adding each institution’s rate only once to the sample and dividing by the total number of institutions in the sample to determine a national average rate to minimize this distortion. This approach is supported by the FDIC’s own assertions. On page 4 of the Memo presented to the FDIC Board of Directors, the logic is presented that the proposed approach: *“...recognizes that with the increasing prevalence of Internet deposits and Internet advertising of deposit rates, competition for deposit pricing has become more national in scope.”*

Additionally, in the original memo posted to FDIC.gov for the January 27, 2009 FDIC Board meeting, the use of online deposit interest rate comparison services by consumers (e.g. Bankrate.com and similar) make the use of one rate per institution more appropriate. The original Memo stated on Page 19, *“Today, a consumer can compare interest rates around the country simply by checking certain Web sites.”* A simple use of any of these services will clearly illustrate that only one rate for each institution is presented to the user, i.e. the search results screen of a simple rate search does not return 6,000+ Bank of America or Wells Fargo rates, it returns one rate for the desired size deposit and maturity. Accordingly, multiplying an artificially low rate by the number of branches of an institution inappropriately biases the calculation of a simple national average.

Another way to consider this same issue is that consumer rate selection is a binary choice. If Bank A offers 3% and Bank B offers 2.75% on similar deposit products, according to the rationale being used to support a national rate, it does not make a material difference to the consumer if Bank A has 1 branch and Bank B has 20,000 branches. The consumer evaluating rates on the internet is choosing only between 3% or 2.75%, not between 3% and 20,000 individual 2.75% rates.

Differing Delivery Channels (Technology)

Comparing similar duration time deposits today is not as straight-forward as it may seem. For example, Bank of America offers the following:

Bank of America

12 Month Standard CD	1.26% APY	Less than \$10,000 minimum balance
12 Month ‘High Yield’ CD	2.01% APY	\$5,000 minimum balance

The Bank of America ‘High Yield’ CD must be opened via the Internet. Which interest rate would the FDIC use in determining its ‘national average’? Again, a rational depositor would always opt for the higher interest rate on the same duration CD from the same institution and given the ubiquitous nature of Internet accessibility today, would it not be most logical to select the higher rate for the average national interest rate sample?

Time Deposit Attributes (Technology)

To further complicate the use of simple averages, is the introduction of time-deposits with complex attributes, which include; ‘variable rate’, ‘callable’, ‘liquid’, ‘step-rate’, and ‘ready access’ time deposits. These time deposits may or may not have lower rates than ‘traditional fixed rate’ CDs of similar size and duration, and may provide other benefits such as, no penalties for early withdrawal, rates that can adjust up later (but not down), etc.

Again using Bank of America as just one example of this issue, it offers the following:

Bank of America

9 Month Standard CD	1.00% APY	Less than \$10,000 minimum balance
9 Month 'Risk Free' CD	1.75% APY*	\$5,000 minimum balance

* Rate is increased by 0.25% APY if \$10,000 is added to deposit from a source outside of Bank of America. No penalty for early withdrawal.

Would the 'standard' CD rate be used to determine a national average, or would the highest rate offered for a particular size and maturity be used to determine the actual prevailing rates in the market? What if the rate can be adjusted upward after origination, how would this be accounted for in the rate determination? If a 12 month time deposit has no penalty for early withdrawal, is it really a 12 month time deposit, or is it a non-maturity deposit since it can be readily withdrawn at any time without penalty?

Size of Deposit

The Memo indicates that a national rate would be established for each size and maturity set forth in the national rate table. **The selection of the rate tiers for these "national rates" would be a critical element.** For example, defining a deposit size tier of \$75,000 to \$100,000 might generate an "average national rate" materially different from a tier of \$50,000 to \$95,000 or \$90,000 to \$99,000. What would be the rate tiers for the proposed national rates and caps? What would be the FDIC's methodology to handle the fact that in the deposit market the institutions it surveys to determine the "national rate" will not have rate tiers that align exactly with the rate tiers the FDIC establishes? Will the FDIC always choose the highest rate to avoid downward bias on the "national rate"?

Exclusion of Credit Unions

Currently as an institution subject to Part 337.6 we have been instructed by the FDIC to exclude local Credit Unions in determining a prevailing average interest rate in our market. Credit Unions today have expanded both their scope of product offerings and their fields of membership. Clearly banks compete against Credit Unions with large geographic based fields of membership for deposits and the rates these Credit Unions offer affect the prevailing rates that are offered for deposits by banks.

Part 337.6 states:

(4) For purposes of the restriction contained in paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section, the effective yields in the relevant markets are the average of effective yields offered by other insured depository institutions in the market area in which deposits are being solicited. A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area

From NCUA.gov

The National Credit Union Administration (NCUA) is the federal agency that administers the National Credit Union Share Insurance Fund (NCUSIF). The NCUSIF, like the FDIC's Deposit Insurance Fund, is a federal insurance fund backed by the full faith and credit of the U.S. Government.

The NCUSIF insures member savings in federally insured credit unions, which account for approximately 98 percent of all credit unions. All federal credit unions and the vast majority of state-chartered credit unions are covered by NCUSIF insurance protection.

Based on the Law, Act, and Regulations, a Credit Union with an open or large geographic field of membership would appear to meet both the definition of an "insured depository institution" and the interest rates offered by such Credit Unions clearly "may affect the rates offered by other insured depository institutions". The case for including Credit Unions is further strengthened because the text "having the same type of charter" was stricken from the original Law in 1994.

If the purpose of the “national rate” is to determine the prevailing interest rates offered in the market by insured depository institutions and the deposit rates Credit Unions offer affects the rates offered by other depository institutions, why are Credit Unions excluded from the current and proposed determination of the “prevailing rates paid on deposits”?

Non-Maturity Products

As stated earlier, the purpose of Section 29 of the Federal Deposit Insurance Act is to limit or prohibit institutions that are classified as less than well capitalized from accepting ***Brokered*** deposits, not to prohibit them from accepting ***ANY or ALL*** deposits. Brokered deposits are defined in the Act and include rates offered by financial institutions themselves that “are *significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.*”

The proposed rule makes no differentiation between account types for non-maturity deposit products. **This is a critical issue, as this rate cap methodology would essentially eliminate the ability of a financial institution subject to part 337.6 to obtain or retain savings, money market, NOW, or interest-bearing non-maturity deposits.**

By lumping together all non-maturity transaction accounts into one category, the posted “average national rate” and “rate cap” would effectively prevent a bank subject to Part 337.6 from offering an average market rate, much less a prevailing market rate for certain categories of deposit bearing non-maturity deposit accounts. For the purpose of determining prevailing market rates, deposit products such as savings accounts, online savings accounts, money market accounts, online money market accounts, and rewards checking accounts should be grouped according to accounts with similar attributes and restrictions to determine a prevailing market rate or “average national rate” and a rate cap should be applied to each group based on size of the deposit relationship.

This point is best illustrated through a ‘real-world’ example.

Example: IndyMac FSB (under FDIC Conservatorship)

As an example of the potential impact of the proposed rule, let's examine IndyMac FSB under conservatorship of the FDIC ('FDIC IndyMac').

First let me explicitly state that the purpose of this empirical example is not to raise the question as to whether the deposit rates IndyMac Bank under the conservatorship of the FDIC was offering in January of 2009 were in excess of rate caps as calculated under Part 337.6 of the FDIC Rules and Regulations. Rather it is to use the rates being offered by an institution under FDIC conservatorship as a barometer of the prevailing market rates and then compare them to the proposed methodology as a measurement of how accurately the proposed 'average national rate' rate calculation reflects true prevailing market rates.

For this analysis, I will assume the following to be true:

1. The FDIC as Conservator of IndyMac Bank would not offer interest rates on deposits substantially above the prevailing market rates
2. The deposit rates offered by the FDIC in January 2009 as Conservator of IndyMac Bank would be indicative of prevailing market rates at that time

These assumptions are supported by articles generally reported in the media, for example:

"...almost immediately after the agency took over IndyMac last July, it sent over two of its top officials, chief operating officer John Bovenzi and Dallas-based assistant director Rick Hoffman, to Pasadena, Calif., to run the bank. Bovenzi became IndyMac's CEO. Hoffman took on the role of president. For Bovenzi and Hoffman, cost-cutting was high on their agenda. They slashed the rate the bank was paying on certificates of deposit..."

Source: Time Magazine, Time.com, Nationalized Banks: Why They Might Work
By Stephen Gandel Friday, March 6, 2009

Additionally, the FDIC has stated that while it did continue to offer 'above market rates' to existing IndyMac depositors at the time it became Conservator of IndyMac Bank to retain the bank's franchise value, the FDIC has also stated that those rates were only offered to existing customers to retain them, and that new customers were offered rates more in line with prevailing market rates. As such, the rates used in this analysis include only those rates publicly available to new customers in January of 2009 (6 months after the FDIC became conservator of IndyMac FSB). So it is reasonable to assume the interest rates being offered by FDIC IndyMac in January of 2009 are reflective of prevailing market rates and not significantly above prevailing market rates.

In addition to these assumptions, it appears that IndyMac Bank is a financial institution that is both less than well capitalized and an institution that has been under the conservatorship of the FDIC for over 90 days, therefore it may not accept, renew or rollover any brokered deposit. Accordingly the interest rates it offered in January of 2009 must be within the restrictions of Part 337.6 of the regulations.

On July 11, 2008, IndyMac Bank, F.S.B., Pasadena, CA was closed by the Office of Thrift Supervision (OTS) and the FDIC was named Conservator.

Per part 337.6 (Regulations based on the Law and FDI Act)

(d) Exclusion for institutions in FDIC conservatorship. No insured depository institution for which the FDIC has been appointed conservator shall be subject to the prohibition on the acceptance, renewal or rollover of brokered deposits contained in the § 337.6 or section 29 of the Federal Deposit Insurance Act for 90 days after the date on which the institution was placed in conservatorship. During this 90-day period, the institution shall, nevertheless, be subject to the restriction on the payment of interest contained in paragraph (b)(2)(ii) of the section. After such 90-day period, the institution may not accept, renew or roll over any brokered deposit.

Per the FDIC.gov website, on December 31, 2008 FDIC IndyMac Bank had the following capital ratios:

	<u>FDIC IndyMac</u>	<u>Required ratio to be 'well capitalized'</u>
Core capital (leverage) ratio	-23.83%	5.0% or greater
Tier 1 risk-based capital ratio	-58.49%	6.0% or greater
Total risk-based capital ratio	-58.49%	10.0% or greater

FDIC IndyMac Time Deposits

On January 5, 2009 FDIC IndyMac was offering a 12 month CD with a 2.90% APY. Logically, the FDIC would not be offering interest rates that *“are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions”* or accepting ‘brokered deposits’ as defined by the Part 337.6 interest rate caps, yet the rate FDIC IndyMac was offering on its 12 month CD was 95 bps higher than the “national average rate” on January 4, 2009 as presented in the Memo and 20 bps higher than the proposed rate cap.

This is a clear indicator that the prevailing market rate for deposits is higher than what the proposed average “national rate” and “rate cap” methodology would indicate.

This is also true for the 6 month certificate of deposit offered by FDIC IndyMac at 2.55% APY on January 5, 2009. The 2.55% APY rate offered by FDIC IndyMac on 6 month time deposits was 100 bps higher than the “national average” rate of 1.55% shown in the Memo, and 25 bps higher than the proposed rate cap.

Memo ‘Analysis and Conclusion’: FDIC IndyMac

As stated earlier in this comment, on page 3 of the January 22, 2009 Memo to the FDIC Board of Directors, the FDIC sets forth the following analysis and conclusion:

“The uncertainty in the FDIC’s regulation has made it difficult for banks and regulators to administer the regulation **and appears to have resulted in higher rates being paid by less than well capitalized banks as compared to other banks. For example, based on the most recent information currently available, the average 1-year certificate of deposit rate paid by less than well capitalized banks was 2.87 while the average 1-year certificate of deposit rate paid by all insured banks and branches over the same period for which the FDIC had data was 2.18 percent.”**

To further support the assertion, that **simple averages for standard maturity time deposits do not reflect the true “prevailing rates of interest” in any market**, please review the table below. Assuming that FDIC IndyMac is paying ‘prevailing rates’ of interest on deposits and not paying rates of interest on deposits ‘substantially higher than prevailing rates’, FDIC IndyMac’s rate should be a reasonable approximation of ‘true’ prevailing rates in the market. While it is evident the data used to draw the FDIC conclusion presented above was from a time when ‘average rates’ were higher than the January 4, 2009 calculated rates presented in the rate cap table in the Memo, the 1 -year CD offered by FDIC IndyMac on January 5, 2009 still far exceeded the ‘average national rate’ and was also higher than the average rate paid by Less Than Well Capitalized banks.

1-Year CD Rates	Rate	Source
FDIC IndyMac Rate	2.90	January 5, 2009 imb.com
Ave. Rate Paid by ‘Less than Well Capitalized’ FI	2.87	Memo: Analysis & Conclusion, date not incld
‘National Ave. Rate’	2.18	Memo: Analysis & Conclusion, date not incld
‘National Ave. Rate’	1.95	Memo: January 4, 2009

While I can appreciate the FDIC’s desire for simplicity and concreteness as a Regulator, clearly the ‘average national rate’ calculated as proposed in the Memo is not a good proxy for ‘prevailing market rates’ as it far underestimates ‘true’ prevailing market rates.

FDIC IndyMac Non-Maturity Deposits

A survey of FDIC IndyMac's posted rates for non-maturity deposit products on January 29, 2009 reveals the following as compared to the proposed Part 337.6 national rate caps (see **APPENDIX A** for complete rate information):

Non-Maturity Product	APY Cap or Top Rate	In Compliance with Proposed Part 337.6 Cap?
National Average as Calculated for Memo	0.60%	
Proposed Rate Cap	1.35%	
FDIC IndyMac Starter Savings	1.75%	NO
FDIC IndyMac Super Savings	1.75%	NO
FDIC IndyMac Money Market	1.75%	NO
FDIC IndyMac E Money Market	2.25%	NO
FDIC IndyMac Premium Checking	1.25%	YES
FDIC IndyMac Ultimate Checking	1.50%	NO
FDIC IndyMac Online Retirement Money Market	1.75%	NO
FDIC IndyMac Online Retirement Top Tier MM	1.75%	NO
FDIC IndyMac Online Retirement Super Savings	1.75%	NO

Note: Under the proposed methodology set forth in the Memo, the rate cap for all non-maturity products on January 4, 2009 would have been 1.35%. For the table above, FDIC IndyMac rates from January 29, 2009 are compared to the limits included in the Memo as of January 4, 2009. As illustrated in the Federal Reserve Board Certificate of Deposit rate information below, deposit interest rates declined between January 4, 2009 and January 29, 2009, so the level of Part 337.6 non-compliance would likely increase if the proposed 'National Rate' and 'Rate cap' as calculated for the Memo were updated to January 29, 2009.

Date	Average Interest Rate
Jan 2, 2009	1.74%
Jan 30, 2009	1.56%

Source: Federal Reserve Board: Data on 6 month certificate of deposit rates

A review of the rates offered by FDIC IndyMac on the above non-maturity deposits products illustrates that almost every non-maturity interest bearing deposit product offered by FDIC IndyMac would be above the non-maturity product rate cap under the proposed methodology (8 out of 9 accounts) and substantially above the "national average" for non-maturity deposit accounts as calculated using the methodology proposed in the Memo. Clearly FDIC IndyMac, even under the conservatorship of the FDIC and the FDIC's associated implicit guaranty of all deposits in the bank, would see significant deposit outflows and have extreme difficulty in attracting core deposits and maintaining liquidity if it had to set its non-maturity deposit rates in accordance with the proposed rate cap methodology as this would effectively eliminate its ability to compete for these low cost core deposits at prevailing market rates.

Implementing the proposed rule as written would raise both the risk and ultimate cost to the FDIC Deposit Insurance Fund as it would likely push otherwise stable financial institutions towards liquidity failure or liquidity crisis events by putting unwarranted restrictions on their ability to pay a prevailing market rate on specific categories of non-maturity deposits to attract and retain adequate liquidity in the form of low-cost relationship core deposit accounts.

This rate survey also highlights that the difficulties in determining prevailing market rates for non-maturity deposits have many similarities to the difficulties in determining the prevailing market rates for time deposits. For example, a FDIC IndyMac E-Money Market account offers a 2.25% APY, while a FDIC IndyMac 'standard' money market account offers only 1.75% APY.

'Rewards Checking'

Rewards checking accounts are a technology enabled non-maturity account type that has been actively used for several years by banks and credit unions. Currently there are over 500 federally insured financial institutions offering rewards checking accounts. Rewards checking accounts 'reward' accountholders with a favorable interest rate on their deposits when they meet specific criteria each statement cycle. They also provide additional benefits such as free online banking and Bill Payment, ATM transaction fee refunds, etc. to these depositors.

An example of the specific account criteria to qualify for the 'Rewards' interest rate might include:

- 1) The accountholder must elect to receive electronic statements
- 2) The account holder must have one direct deposit or one ach withdrawal from the account each statement cycle
- 3) The account holder must make 10 debit card transactions per statement cycle

For each account cycle the accountholder meets the criteria, their Rewards checking account might pay the following interest rates:

- 3.50% APY on balances up to and including \$25,000
- 1.00% APY on balances over \$25,000

If they did not meet all the criteria in a statement cycle, their account might pay the following rate:

- 0.50% APY

While the top tier of interest rate earned on such an account might be 3.50% on a portion of a bank's deposits, the average interest rate paid on an institutions total portfolio of Rewards Checking accounts would typically be closer to 1.0% to 1.5% in this scenario based on the ratio of qualifying accounts to non-qualifying accounts and average balances held in accounts each statement cycle. These accounts are mutually beneficial to both the depositor and the bank as they provide the depositor with a favorable interest rate and additional benefits in statement cycles they qualify and beneficial to banks in that they provide stable, low-cost, relationship based deposits, reduce expenses (e.g. E-Statements) and increase revenues (e.g. interchange revenues).

In applying Part 337 restrictions to this type of account it has been our bank's approach to compare the interest rate tiers and qualifying criteria that are being offered by other insured institutions in the bank's normal market area to our own Rewards Checking account. Thus determining the 'prevailing market rate' for this type of account and calculating a rate cap for each tier accordingly.

Recently the FDIC has indicated that it may consider the bank's 'Rewards Checking' accounts as brokered deposits, even though the rates at every tier offered by the bank are within the rate caps as calculated in comparison to the average rates offered by other insured depository institutions offering Rewards Checking in the bank's normal market area (the prevailing rates for this type of non-maturity depository product).

This is an example of the Regulations not keeping pace with technology, as clearly when taken as a whole, these are low-cost relationship core deposits and not brokered deposits and it was not Congress' intent to restrict these types of deposits.

Is it the FDIC's official position to pronounce that all Reward Checking accounts are brokered deposits, even those Reward Checking accounts with rates and terms similar to or below the prevailing rates and terms offered by other institutions for similar or substantially the same Rewards Checking accounts in an institutions normal market area? If yes, why?

Questions and Responses

- 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”?**

Yes. The FDIC should allow for three different definitions for normal market area: 1) National, 2) State, 3) Metropolitan Statistical Area (MSA). These are three readily identifiable and measureable market areas. In the event a bank is not located partially or wholly within a MSA, it could define a local market area and provide its rationale to the FDIC. A bank would be allowed to select its market area/normal market area from these three sets of rates when accepting deposits subject to 337.6.

- 2. Should the FDIC create a presumption that the prevailing rate in any “market area” or “normal market area” is the national rate? If not, how should the FDIC determine the prevailing rate in a particular “market area” or “normal market area”?**

No. As stated in the response to question 1, the FDIC should allow for three different definitions for normal market area: 1) National, 2) State, 3) Metropolitan Statistical Area (MSA). These are three readily identifiable and measureable market areas. In the event a bank is not located partially or wholly within a MSA, it could define a local market area and provide its rationale to the FDIC. A bank would be allowed to select its market area/normal market area from these three sets of rates when accepting deposits subject to 337.6.

- 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. As stated in the response to question 1, the FDIC should allow for three different definitions for normal market area: 1) National, 2) State, 3) Metropolitan Statistical Area (MSA). These are three readily identifiable and measureable market areas. In the event a bank is not located partially or wholly within a MSA, it could define a local market area and provide its rationale to the FDIC. A bank would be allowed to select its market area/normal market area from these three sets of rates when accepting deposits subject to 337.6.

- 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 the FDIC should redefine the ‘national rate’.

No the FDIC should not define the ‘national rate’ as “a simple average of rates paid by all insured depository institutions and branches for which data is available.” As illustrated above, this methodology generates a ‘national rate’ that is not reflective of the ‘prevailing rates’ offered in any market, which is the objective of the rule.

This is the most difficult, yet most critical issue for the FDIC to resolve. Unfortunately there is no simple answer. I can only offer the following recommendations:

- The FDIC should determine the highest interest rate offered at each maturity term for each institution regardless of channel of offering and include that rate in its survey (as any logical depositor would select the highest rate for the same maturity time deposit).
- If an institution offers both an ‘in branch’ and ‘online’ rate for the same size and maturity deposit, the FDIC should use the higher of the two rates in its sample (as a logical depositor would choose the higher rate and therefore the higher rate is more indicative of the ‘prevailing market rate’).

- The FDIC should include the highest rate for each size and maturity regardless of the time deposit type (i.e. standard 'fixed-rate', 'variable rate', 'callable', 'liquid', 'step-rate', 'ready access', or other time deposit variations) and the FDIC should use the maximum attainable rate for its sample.
- The FDIC should use only one rate per institution per measured category (and specifically not use one rate per branch to prevent a distortion of the national average rate by institutions with large branch networks that price 'standard' maturity CDs much lower than prevailing market deposit rates while actively promoting 'odd maturity' time deposits).
- The FDIC should segment non-maturity deposits into the following categories with similar attributes (or other categories as appropriate) and measure the average national rate based on size of the deposit relationship for its rate survey
 - Savings accounts
 - Money market accounts
 - Interest bearing checking accounts
 - E-Accounts (whether savings or money market)
 - Rewards checking accounts
- The FDIC should include the rates offered by Credit Unions with large geographic fields of membership in its rate survey.
- I do not have a firm recommendation on how to address the 'odd-term' time deposit issues at this time, perhaps allowing banks to at least match any public odd term time deposit being offered or an FDIC statement of policy that it will not criticize an institution for matching odd-term maturity rate and terms being offered in the market?

Alternatively, using a subset of the total population or sample set data could reduce the undue influence of odd-term maturity pricing on the calculated 'national average rate' as contemplated in the response to question 9 below.

5. Should the definition of the "national rate" be made more flexible? For example, in the event of changes in market conditions, should the FDIC possess the discretion to add or remove a multiplier to the "national rate" (so that the "national rate" might be the "average of rates times 1.20" or some other multiplier)?

No. Changing the multiplier, and hence changing the 'rules of the game', could have critical ramifications on an institution's liquidity and liquidity planning if they were using one set of regulations to plan by and then those regulations were changed after action had already been taken based on the current multiplier.

It should be noted that changing the multiplier or modifying the rate cap based on the sample size of data used to calculate the 'national average rate' essentially have the same effect. It is my opinion that using a subset of the rate data to calculate the 'national average rate' would lead to a 'national average rate' more reflective of the 'prevailing market rate' and therefore I propose that approach vs. an approach that would modify the multiplier. Please see my response to Question 9.

If the FDIC determines it would prefer to use the 'multiplier' approach, it should change the multiplier only with advanced public notice or comment. For example, if the FDIC was required to provide 6 or 12 months advanced notice, a public comment period, or something of that nature.

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?

Yes. This part of setting rate caps is critical. It may be OK to use a data service that provides rate data that generates a 'national average rate' that the FDIC acknowledges is below prevailing market

rates if it is simple to calculate and administer, but, then the FDIC should take the step contemplated in Question 9 and increase the rate cap accordingly (or adjust the 'national rate' with a multiplier as proposed in Question 5). In reality, this may be the best and simplest solution for both the FDIC and financial institutions.

For example, if 'Data Source A' provides an efficient and cost effective means for the FDIC to gather standard term maturity time deposit information, but it is recognized that these rates when aggregated and averaged reflect an average rate that is below prevailing market rates paid on deposits for all the reasons mentioned earlier in this comment, it may be appropriate to use Data Source A, but to increase the rate cap accordingly. An alternative to this approach would be to use a modification of the methodology put forth by the Conference of State Bank Supervisors as detailed in the December 17, 2009 letter to Chairman Bair from Neil Milner, President and CEO of the Conference of State Bank Supervisors RE: Brokered Deposit Rule, Part 337.6 (excerpt below and attached as **Appendix B**)

"Second, institutions need greater latitude in the pricing of deposits from the local market. The current rule sets an upper limit of 75 basis points above the average of other banks operating in the area. We recommend the limitation be the average of the top five ratepayers of all firms soliciting in the market area. Banks not seeking deposits for a given maturity will have artificially low pricing, pulling down the average. This makes it very difficult for a bank to price deposits competitively. The average should also include national companies which may not have a physical presence in the market but actively solicit deposits. Limiting the calculation to other local institutions does not fully capture the competitive landscape in a given market."

The recommendation to select only the top 5 rate payers in any given market was put forth before the FDIC publicly contemplated using a national rate; however the concept behind this recommendation is valid for use with the proposed national rate methodology and will be illustrated in the response to Question 9.

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. The FDIC should post the rates weekly on FDIC Connect.

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.

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?

Possibly. If as contemplated in the answer presented to Question 6 above, it is determined that the simplest solution for both financial institutions and the FDIC to comply with and measure compliance with the Law and FDI Act is to use data that is readily available, but that both the FDIC and financial institutions acknowledge the proposed methodology generates an ‘average national rate’ that is substantially below prevailing market rates, it would be appropriate to increase the adjustment rate accordingly (or add a multiplier as contemplated in Question 5 above). Alternatively, using only a subset of the sample data may make it appropriate to leave the rate cap as is or decrease it. For example:

Simple Average of Deposit Rates	Rate Cap Adjustment
All Financial Institutions x branches	+ 125 bps
All Financial Institutions	+ 100 bps
Top 75% FI Rates	+ 75 bps
Top 50% FI Rates	+ 50 bps
Top 25% FI Rates	+ 25 bps

Using a subset of the depository institutions offering a rate for any given standard rate maturity time deposit should theoretically serve to eliminate downward bias on the sample average from financial institutions that offer artificially low standard maturity deposit rates because they offer odd-term maturities as their regular practice. This would provide an average rate much closer to the true prevailing market rate, accordingly, as lower rate institutions in the sample are removed, the average rate generated by the sample would be more reflective of the true prevailing market rate and accordingly the cap limit over that rate could be decreased to prevent less than well capitalized institutions from offering rates ‘substantially higher than prevailing market rates’. The sample composition and rate caps above are presented as an example only, and any final determination should compare the final proposed rate caps to actual market conditions to ensure they reflect the reality of the market and the rate caps should be back-tested against historical data to ensure that the proposed methodology will stand the test of time.

10. Should the FDIC adopt restrictions in addition to the current restrictions based on a depository institution’s capital category?

No. Today the FDIC can place an institution under Part 337.6 restrictions simply by entering into a written agreement with an institution regardless of the institution’s capitalization or risk based capital ratios.

Additional thoughts:

The FDIC should consider a less restrictive set of regulations for institutions that would otherwise be considered well-capitalized, minus a written agreement with a capital maintenance provision. For example, an automatic waiver for the acceptance of Reciprocal deposits unless the FDIC shows good cause why the acceptance of such deposits would be an unsafe and unsound banking practice (essentially reversing the burden of proof from the institution to the FDIC for these low-cost relationship based deposits that are ‘brokered’ in technical definition only). As an example, my institution recently had to decline accepting a \$1,000,000 12-month CD at 1.55% APY from a long-time relationship customer because they wished to place the funds through the CDARS reciprocal deposit program (the prevailing market rate for a similar size and maturity deposit in our market was ~2.50% and the rate being offered by FDIC IndyMac was 2.90% at the time). While the bank could apply for a waiver for this transaction, doing so is impractical because the nature of a reciprocal deposit is relationship based. Our Bank has been advised that submitting a brokered deposit waiver could take up to 60 days to process. It is an impossibility to ask a relationship based customer to wait up to 60 days for the bank to provide a response on whether or not it can accept such a deposit and the rate it can pay. This impediment to accepting these low-cost relationship deposits is contrary to both Banks’ and the FDIC’s best interests.

Thank you for taking the time to review and consider these comments.

Sincerely,



Erik Beguin
CEO
Libertad Bank SSB

Appendix A

FDIC IndyMac Bank deposit interest rates as listed on www.imb.com on January 29, 2009 for non-maturity deposit accounts. Rates above the proposed rate cap are shaded in Red. These rates would not be in compliance with the rate caps under the proposed new methodology.

Starter Savings

Balance (\$)	Interest Rate (%)	APY (%)
1 - 999	0.75	0.75
1,000 - 9,999	0.75	0.75
10,000 - 24,999	1.00	1.00
25,000 - 49,999	1.24	1.25
50,000 - 74,999	1.49	1.50
75,000 - 99,999	1.49	1.50
100,000 - 249,999	1.73	1.75
250,000 +	1.73	1.75

Super Savings

Balance (\$)	Interest Rate (%)	APY (%)
1 - 999	0.75	0.75
1,000 - 9,999	0.75	0.75
10,000 - 24,999	1.00	1.00
25,000 - 49,999	1.24	1.25
50,000 - 74,999	1.49	1.50
75,000 - 99,999	1.49	1.50
100,000 - 249,999	1.73	1.75
250,000 +	1.73	1.75

Money Market Savings

Balance (\$)	Interest Rate (%)	APY (%)
1,000 - 9,999	0.75	0.75
10,000 - 24,999	1.00	1.00
25,000 - 49,999	1.24	1.25
50,000 - 74,999	1.49	1.50
75,000 - 99,999	1.49	1.50
100,000 - 249,999	1.73	1.75
250,000 +	1.73	1.75

E-Money Market

Balance (\$)	Interest Rate (%)	APY (%)
1,000 - 9,999	2.23	2.25
10,000 - 24,999	2.23	2.25
25,000 - 49,999	2.23	2.25
50,000 - 74,999	2.23	2.25
75,000 - 99,000	2.23	2.25
100,000 - 249,999	2.23	2.25
250,000 +	2.23	2.25

Premium Checking

Balance (\$)	Interest Rate (%)	APY (%)
1,000 – 4,999	0.50	0.50
5,000 – 9,999	0.75	0.75
10,000 – 24,999	1.00	1.00
25,000+	1.24	1.25

Ultimate Checking

Balance (\$)	Interest Rate (%)	APY (%)
1,000 – 9,999	0.50	0.50
10,000 – 24,999	0.75	0.75
25,000+	1.49	1.50

Online Retirement Money Market Rates

Balance (\$)	Interest Rate (%)	APY (%)
1,000 - 9,999	0.75	0.75
10,000 - 24,999	1.00	1.00
25,000 - 49,999	1.24	1.25
50,000 - 74,999	1.49	1.50
75,000 - 99,999	1.49	1.50
100,000+	1.73	1.75

Online Retirement Top Tier Money Market Rates

Balance (\$)	Interest Rate (%)	APY (%)
1,000 - 9,999	0.75	0.75
10,000 - 24,999	1.00	1.00
25,000 - 49,999	1.24	1.25
50,000 - 74,999	1.49	1.50

75,000 - 99,999	1.49	1.50
100,000+	1.73	1.75

Online Retirement Super Savings Rates

Balance (\$)	Interest Rate (%)	APY (%)
1,000 - 9,999	0.75	0.75
10,000 - 24,999	1.00	1.00
25,000 - 49,999	1.24	1.25
50,000 - 74,999	1.49	1.50
75,000 - 99,999	1.49	1.50
100,000 - 249,999	1.73	1.75
250,000 +	1.73	1.75

Appendix B



December 17, 2008

Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Brokered Deposit Rule, Part 337.6

Dear Chairman Bair:

Over the last several months, state bank regulators have been concerned with the stringent provisions of Part 337.6 of the FDIC's Rules and Regulations as it pertains to brokered deposits. We understand the FDIC has a legal mandate to apply restrictions on the acceptance of brokered deposits when a bank drops below well capitalized. However, we believe the FDIC can make changes to its current rule which will meet the legal requirement while lowering the bank's risk profile in a more orderly manner.

First, we believe institutions falling below well capitalized should be allowed time to reduce their dependence on brokered funds. Absent a waiver from the FDIC, institutions are required to totally stop accepting or renewing brokered deposits. This unnecessarily creates a liquidity problem for the institution and deters management's focus from other safety and soundness issues which may need to be addressed. We recommend banks be given 12 months to unwind the positions, reducing the balances each month by 1/12 of the amount as of the determination date. This will allow the bank to reduce its dependence on brokered deposits over time, helping to ensure adequate liquidity as the bank works to enhance capital and reduce its risk profile.

Second, institutions need greater latitude in the pricing of deposits from the local market. The current rule sets an upper limit of 75 basis points above the average of other banks operating in the area. We recommend the limitation be the average of the top five rate-payers of all firms soliciting in the market area. Banks not seeking deposits for a given maturity will have artificially low pricing, pulling down the average. This makes it very difficult for a bank to price deposits competitively. The average should also include national companies which may not have a physical presence in the market but actively solicit deposits. Limiting the calculation to other local institutions does not fully capture the competitive landscape in a given market.

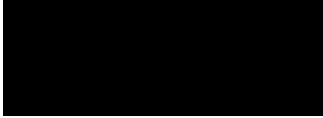
We believe these changes will give institutions an opportunity to gradually and safely reduce their use of brokered deposits, while allowing the FDIC to meet your statutory requirements and supervisory needs.

CONFERENCE OF STATE BANK SUPERVISORS

1155 Connecticut Ave., NW, 5th Floor • Washington DC 20036-4306 • (202) 296-2840 • Fax: (202) 296-1928

Thank you for your time and consideration. Please feel free to contact me if you would like to discuss this further.

Best personal regards,



Neil Milner
President and CEO