	Continuation of FIL-5-2009

Financial Institution Letters
FIL-5-2009
January 28, 2009

Interest Rate Restrictions on Institutions That are Less Than Well-Capitalized
Notice of Proposed Rulemaking

The Federal Deposit Insurance Corporation (FDIC) has issued the attached Notice of Proposed Rulemaking relating to the interest rate restrictions under Part 337.6 ("Brokered Deposits") of the FDIC Rules and Regulations. The proposed rule would redefine the "national rate" as "a simple average of rates paid by all insured depository institutions and branches for which data are available." The prevailing rate in all market areas would be deemed to be the "national rate" as defined by the FDIC.

Under Part 337.6, an insured depository institution that is less than well-capitalized may not pay a rate of interest that significantly exceeds the prevailing rate in the institution's market area or the prevailing rate in the market area from which the deposit is accepted. For out-of-area brokered deposits, the "national rate," currently defined as 120 percent of the current yield on similar maturity U.S. Treasury obligations, determines conformance with the regulation.

The current low yields on U.S. Treasury securities are compressing the national rate caps computed under the FDIC's regulation. Therefore, the "national rates" fall well short of the national average rates paid on certificates of deposit by depository institutions. The proposed rule would address the problem by redefining the "national rate" for deposits of similar size and maturity as "a simple average of rates paid by all insured depository institutions and branches for which data are available."

Unlinking the definition of "national rate" from Treasury yields would allow the rate cap to be calculated in a way that prevents the payment of rates that significantly exceed prevailing market rates, but would allow depository institutions to pay the prevailing "national rates." The FDIC originally chose to link the definition of the "national rate" to Treasury yields because it was difficult to obtain timely and reliable data on prevailing certificate of deposit rates. However, technological advancements and more current information now make it possible to calculate prevailing national certificate of deposit rates in a timely manner.

The proposed rule also would specify that the prevailing rate in all market areas would be the "national rate" as defined by the FDIC. This approach recognizes that, with the increasing prevalence of Internet deposits and Internet advertising of deposit rates, price competition for deposits is now more national in scope. This approach also recognizes and avoids the considerable practical difficulties in ascertaining the origin of the deposit and calculating the prevailing rates paid within that area. If the institution did not want to use the "national rate," the institution could define its market area and support its position to the FDIC that the prevailing rates in that area exceed the national average. The FDIC would assess such situations on a case-by-case basis.

In implementing the rule, the FDIC would calculate and publish a schedule of "national rates" by maturity and the associated rate caps for such deposits. The "rate cap" would be the "national rate" plus 75 basis points.

Comments on the Notice of Proposed Rulemaking are due 60 days after publication in the *Federal Register*.

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