



## Interest Rate Restrictions on Institutions That are Less Than Well-Capitalized

### Notice of Proposed Rulemaking

#### Summary:

The FDIC has issued the attached proposed rule that would make certain revisions to the interest rate restrictions under Part 337.6 ("Brokered Deposits") of the FDIC Rules and Regulations. The proposal would redefine the "national rate" as a simple average of deposit rates paid by U.S. depository institutions, thereby discontinuing the use of Treasury yields - which are currently well below average deposit rates - in the definition. The proposal also would, in the absence of contrary evidence as to the rates in a particular market, specify that the prevailing rate in all market areas is deemed to be the "national rate" as defined by the FDIC. Comments on the proposed rule are due 60 days after publication in the *Federal Register*.

#### Distribution:

FDIC Insured Banks

#### Suggested Routing:

Chief Executive Officer  
Chief Operations Officer  
Compliance Officer

#### Related Topics:

Brokered Deposits  
12 C.F.R. Part 336.7

#### Attachment:

[Notice of Proposed Rulemaking - PDF \(PDF Help\)](#)

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#### Note:

FDIC financial institution letters (FILs) may be accessed  
from the FDIC's Web site  
[www.fdic.gov/news/news/financial/2009/index.html](http://www.fdic.gov/news/news/financial/2009/index.html)

To receive FILs electronically, please  
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Paper copies of FDIC financial institution letters may be  
obtained through the FDIC's Public Information Center,  
3501 Fairfax Drive, E-1002, Arlington, VA 22226 (1-877-  
275-3342 or 703- 562-2200).

#### Highlights:

- Under Part 337.6, an insured depository institution that is less than well-capitalized may not pay a rate of interest significantly exceeding the prevailing rate in the institution's market area or 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 rates" 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 to be "a simple average of rates paid by all insured depository institutions and branches for which data are available."
- Recognizing that competition for deposit pricing has become more national in scope, the proposal would establish that the prevailing rate in all markets areas would be the FDIC- defined "national rate."
- If the depository institution did not want to use the "national rate," the depository 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 calculate and publish a schedule of "national rates" by maturity and the associated national interest rate caps.

Financial Institution Letters  
FIL-5-2009  
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**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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