

Determining Conformance With Interest Rate Restrictions for Less Than Well Capitalized Institutions

On May 29, 2009, the FDIC Board of Directors approved a final rule making certain revisions to the interest rate restrictions under Section 337.6 of the FDIC Rules and Regulations (see FIL-25-2009). The rule redefines the national rate as “a simple average of rates paid by all insured depository institutions and branches for which data are available.” In addition, the prevailing rate in all market areas is deemed to be the national rate as defined by the FDIC. The final rule takes effect on January 1, 2010.

Once the rule takes effect, an institution that believes it is operating in a high-rate area can determine conformance using the prevailing rates in its market area only if it seeks and receives determination from the FDIC that it is operating in a high-rate area. The FDIC will issue a Financial Institution Letter on how insured institutions can file such a request in sufficient time for the FDIC to process the request before the final rule’s January 1, 2010, effective date.

The national rates and associated rate caps are posted weekly on the FDIC website at <http://www.fdic.gov/regulations/resources/rates/index.html>. These rates may assist insured depository institutions in complying with the current and new rules. Under either set of rules, the national rates likely represent the prevailing rates in many market areas. The FDIC would not object to the immediate use of the posted national rates and rate caps by insured depository institutions that are not well capitalized, although such use is not mandatory. During the interim period ending on January 1, 2010, the institution can use the newly defined national rate to determine conformance for all deposits or for deposits outside the institution’s market area. Institutions choosing not to use the newly defined national rate during the interim period should continue to determine conformance under the current rules. The interest rate restrictions and guidance for determining conformance under the interest rate restrictions are outlined in [the attached](#).

Institutions already subject to the Section 337.6 restrictions or close to falling below well capitalized should strongly consider revising their funding strategies to place less reliance on brokered and high-cost deposits.

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