



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, DC 20429-9990

**Financial Institution Letter**  
**FIL-62-2009**  
**November 3, 2009**

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

### **Summary:**

The FDIC Board approved a final rule on May 29, 2009, changing the way the FDIC administers its statutory restrictions on the deposit interest rates paid by banks that are less than well capitalized under Section 337.6 of the FDIC Rules and Regulations (see FIL-25-2009). The final rule redefines the national rate as "a simple average of rates paid by insured depository institutions and branches for which data are available" and deems the national rate to be the prevailing rate for all market areas. Once the final rule is effective on January 1, 2010, an institution can use the prevailing rates in its market area to determine conformance only if it seeks and receives a determination from the FDIC that it is operating in a high rate area.

### **Distribution:**

FDIC-Insured Institutions

### **Suggested Routing:**

Chief Executive Officer  
Chief Operations Officer  
Compliance Officer

### **Related Topics:**

Brokered Deposits  
12 C.F.R. Section 337.6

### **Attachment:**

[Question and Answer Document](#)

### **Contact:**

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### **Note:**

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

To receive FILs electronically, please visit <http://www.fdic.gov/about/subscriptions/fil.html>.

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:**

- The final rule, which takes effect on January 1, 2010, redefines the national rate as "a simple average of rates paid by all insured depository institutions and branches for which data are available." The final rule also deems the prevailing rate in all market areas to be the national rate.
- Once the rule takes effect, an institution that believes it is operating in a high-rate area can use the prevailing rates in its market area only if it seeks and receives a determination from the FDIC that it is operating in a high-rate area. The FDIC will issue a Financial Institution Letter explaining how banks can request such a determination in sufficient time for the FDIC to process the requests before the final rule's effective date.
- During the interim period ending January 1, 2010, to determine conformance institutions can use the national rates and rate caps posted weekly on the FDIC's Web site at <http://www.fdic.gov/regulations/resources/rates/index.html>. Institutions choosing not to use the newly defined national rate during the interim period should continue to determine conformance under the current rules.

Continuation of [FIL-62-2009](#)

## **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 a 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 requests before the final rule’s January 1, 2010, effective date.

The national rates and associated rate caps are posted weekly to the FDIC’s Web site 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. Therefore, 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 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 with 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.

Sandra L. Thompson  
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