

**SECTION 337.6 BROKERED DEPOSIT RESTRICTIONS  
AND DEPOSIT RATE LIMITS  
Questions and Answers (Last Updated November 3, 2009)**

**Restrictions Under Section 337.6**

**What does Section 337.6 restrict?**

Section 337.6 restricts the use of brokered deposits and limits rates paid on interest-bearing deposits solicited by less than well capitalized FDIC-insured institutions. Institutions that are adequately capitalized must seek a waiver from the FDIC to continue to accept, renew or roll over brokered deposits. Institutions that are undercapitalized are not allowed to accept, renew or roll over any brokered deposits. Deposits solicited by less than well capitalized institutions cannot significantly exceed the prevailing rates in the applicable market area. The FDIC has implemented by regulation the statutory language “significantly exceeds” as meaning more than 75 basis points.

**How does the final rule change Section 337.6?**

The final rule, **effective 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.” In addition, the prevailing rate in all markets areas is deemed to be the national rate. Once the rule is effective, an institution that believes it is operating in a high-rate area will be able to 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. With or without the determination, institutions must use the national rate to determine conformance for all deposits outside the market 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. The final rule does not change the brokered deposit restrictions.

**Why was the rule revised?**

The revisions bring the restrictions in line with the regulation’s intent and simplify the process for determining conformance. In addition, 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. Given the increasing prevalence of Internet deposits and Internet advertising of deposit rates, the final rule also addresses the considerable practical difficulties in ascertaining the origin of the deposit and calculating the prevailing rates paid within that area.

**Interest Rate Restrictions—Determining Conformance**

**Can the new national rate and associated rate caps be used to determine conformance before the January 1, 2010, implementation date?**

During the **interim period ending January 1, 2010**, institutions can use the newly defined national rate to determine conformance for all deposits or for deposits outside an

institution's market area. The national rates and national rate caps are posted weekly 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.

### **How is the prevailing rate calculated for a local market area?**

After the new rule takes effect, the newly defined national rate should be used to determine conformance unless the bank has requested and received a determination from the FDIC that it is operating in a high-rate area. The local market approach can be used for determining conformance **until the new rule's January 1, 2010, effective date and subsequently if an institution receives the determination letter from the FDIC.**

The prevailing rate or effective yield in the market area is the average of rates offered by other FDIC-insured depository institutions and branches in the geographic market area in which the deposits are being solicited. Rates offered by credit unions can be included in this calculation if an institution can support that it is competing directly with the credit union for deposits.

For example, a bank's market area has seven banks and branches offering these rates for a 1-year CD.

Bank A	= 1.15%
Branch of Bank A	= 1.15%
Your Bank	= 1.35%
Bank B	= 1.50%
Bank C	= 1.55%
Bank D	= 1.20%
Bank E	= 1.25%
Branch of Bank E	= 1.30%

The effective yield on a 1-year CDs for the subject bank's market area is:

$$(1.15 + 1.15 + 1.50 + 1.55 + 1.20 + 1.25 + 1.30) / 7 = 1.30\%$$

Note: The average excludes the rate offered by your bank.

In this case the maximum allowable rate, or rate cap, for the market area is:

$$1.30\% + 0.75\% = 2.05\%$$

### **Why are branches of other banks included in determining the prevailing rate, or effective yield, in a geographic market area?**

Individual branches of other institutions are considered to be competitors soliciting deposits within a market area. As mentioned previously, the new rule redefines the national rate as "a simple average of rates paid by all insured depository institutions and branches for which data are available." Excluding branches for calculating the prevailing rate for a local market would be inconsistent with the methodology for calculating the

national rate under the new rule. When calculating the prevailing rate for its local market, institutions should begin using all branches immediately.

**Can a market area consist of a subset of banks with similar characteristics, such as asset size or a retail focus, or exclude branches of large institutions?**

No. The market area must be a geographic area and include FDIC-insured competitors and branches.

**How is the prevailing rate calculated using a local market approach?**

Once the rule becomes effective, the national rate will be used to determine conformance with all market areas unless the bank has requested and received a determination from the FDIC that it is operating in a high-rate area. Using a local market approach, the prevailing rate is calculated based on the maturity and size of the deposit.

Maturity: For accounts with a maturity, calculate the prevailing rate by averaging competitors’ rates based on the deposit term. For example, the bank’s one-year certificate of deposit should be compared against the average rate for its competitor’s one-year certificates of deposit. The final rule allows the segregation of savings accounts, NOW accounts, and MMDAs for evaluation purposes (banks can segregate these accounts immediately). However, further account bifurcation (for example, separate calculations for special feature NOW accounts) is not consistent with the regulation and is therefore not allowed.

Size: For deposits of like maturity, calculate the prevailing rate for deposits under \$100,000 (non-jumbo) and over \$100,000 (jumbo).

In the example below, the bank’s \$50,000 tier exceeds the rate cap by five basis points and, therefore, does not conform to the interest rate restrictions. Lowering the \$50,000 tier to 1.45% would bring the rate into compliance.

Example:

Bank’s Rates – Less Than \$100,000	
Tier	Rate
\$10,000	1.2
\$50,000	1.5

Competitor’s Rates – Less Than \$100,000	
Bank/Tier	Rate
Bank A/ \$10,000	0.5
Bank A/ \$50,000	0.7
Bank B/\$10,000	0.8
Bank B Branch/\$10,000	0.8
Prevailing Rate $(.5 + .7 + .8 + .8) / 4 =$	0.7
Rate Cap $(.7 + .75) =$	1.45

**Should the cost of gifts given for opening a deposit account be included in the calculation of the deposit rate? For example, an institution is giving new certificate of deposit customers an iPod with a retail value of \$50.**

Yes, the rate used should include incentives provided to the customer, including the value of any gifts or cash incentives.

**How are accounts with uncommon features and restrictions handled when determining the effective yield?**

The final rule allows the segregation of savings accounts, NOW accounts, and money market deposit accounts (MMDAs) for evaluation purposes (segregation can be done now). However, accounts cannot be segregated based on special features.

### **Brokered Deposits**

**When assessing an application for a brokered deposit waiver, what factors does the FDIC consider?**

Applications for brokered deposit waivers are evaluated on a case-by-case basis and are not automatically granted. The waiver request should include a plan for quickly reducing an institution's dependence on brokered funds and restoring capital to well capitalized status. Expedited processing should not be expected in the current environment.

Waiver applications are evaluated for traditional safety-and-soundness concerns based on an institution's capital position, asset quality, liquidity and earnings performance. The opinion of an institution's primary federal regulator and an institution's Community Reinvestment Act (CRA) rating are considered. Management's capability to use brokered deposits, manage the potential volatility, and reduce reliance on such funding weighs heavily on the overall analysis. The FDIC will assess an institution's contingency funding plans related to lines of credit with other correspondent banks and government agencies. Further, the FDIC will review an institution's current business plan, specifically related to expansion or growth. Consideration also will be given to an institution's liquidity monitoring program and its plans to reduce its reliance on brokered deposits.

**If a bank falls below well capitalized, should existing non-brokered certificates of deposit that are more than 75 basis points above the average effective yield in its market or the national rate be reported on the Call Report as brokered deposits?**

High-cost certificates of deposit, generated before a bank falls below well capitalized, should not be reported as brokered deposits and may continue to be held until their maturity date. Upon renewal, the certificate of deposit cannot exceed the applicable market average by more than 75 basis points.

**When comparing the actual cost of brokered deposits to the Section 337.6 rate restrictions, should we use the Annual Percentage Yield (APY) the depositor receives or the all-in cost the bank pays? For example, if a customer receives 3.50 percent APY and a deposit broker charges a 25-basis points fee on the deposit, should I use 3.50 percent or 3.75 percent?**

In the above example, the rate restrictions of Section 337.6 would apply to the all-in-cost (APY plus 25 basis points fee or, in this example, 3.75 percent). Interest on deposits should be consistent with the Reports of Condition and Income. The instructions for line item RI 2.a. state in part:

“Include as interest expense on the appropriate category of deposits finders' fees and brokers' fees that represent an adjustment to the interest rate paid on deposits the reporting bank acquires through brokers. If material, such fees should be capitalized and amortized over the term of the related deposits. However, exclude fees levied by brokers that are, in substance, retainer fees or that otherwise do not represent an adjustment to the interest rate paid on brokered deposits.”

**Are deposits received through a deposit placement network—also referred to as reciprocal deposits—brokered deposits?**

For purposes of FDIC Section 337.6 (“Brokered Deposits”), deposits received through a deposit placement network on a reciprocal basis (“reciprocal deposits”) are brokered deposits and should be reported as such on Call Reports and Thrift Financial Reports. This is consistent with the final rule approved by the FDIC Board on February 27, 2009, which excludes reciprocal deposits from the newly added adjusted brokered deposit ratio for Risk Category I institutions, but does not alter the general definition of a brokered deposit.