

Legal Updates & News

Legal Updates

New Rules in 2010 for Institutions Subject to Interest-Rate Restrictions on Deposits

December 2009

Overview

Less than well-capitalized FDIC-insured institutions cannot pay more than 75 basis points above the prevailing rates for deposits in the applicable market area. Effective January 1, 2010, the rules for determining compliance with the 75 basis point ceiling will change. Institutions subject to interest rate restrictions will be required to use the “national rate” to determine conformance with the restrictions, unless they qualify to use local market area rates. Previously, these interest rate restrictions were measured against local market area rates. In many areas, the national rate may be lower than local market area rates that banks have been using as a benchmark. As a result, many banks may have to lower applicable deposit rates to comply with the new rules.

The FDIC discusses the application of these new rules in Financial Institution Letter 69-2009 issued on December 4, 2009. An institution that believes it is operating in a high-rate area can determine conformance using the prevailing rates in its local market area only if it has received a determination from the FDIC that it is, in fact, operating in a high-rate area. Institutions can submit one determination request to the FDIC each quarter. The determination received by the institution is effective for the calendar year in which it is granted but will be rescinded by written notice from the FDIC if, during the calendar year, the institution’s market area no longer meets the requirements for being a high-rate area. Institutions operating in high-rate areas must apply for determinations annually.

Summary

Section 29 of the Federal Deposit Insurance Act (the “FDI Act”) restricts the use of

Related Practices:

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brokered deposits and the rate of interest paid on deposits for insured institutions that are less than “well-capitalized.” A bank is less than well-capitalized if it does not have: (i) a total risk-based capital ratio of 10 percent or greater; (ii) a Tier 1 risk-based capital ratio of 6 percent or greater; or (iii) a leverage ratio of 5 percent or greater. In addition, a bank subject to a written agreement, consent or cease and desist order, capital directive or prompt corrective action directive will not be regarded as well capitalized for Section 337.6 purposes even if it otherwise meets the quantitative requirements for being well capitalized. A Board Resolution or a Memorandum of Understanding (“MOU”) will not result in such a reclassification.

Deposits solicited by less than well-capitalized institutions cannot exceed the prevailing rates in the applicable market area by more than 75 basis points. Institutions that are not well capitalized must seek a waiver from the FDIC to continue to accept, renew or roll over brokered deposits.

Under the new rule, effective January 1, 2010, the prevailing rate in all market areas is deemed to be the “national rate.” The national rate is published from time to time on the FDIC website at www.fdic.gov/regulations/resources/rates. It consists of “a simple average of rates paid by all insured depository institutions and branches for which data are available.” An institution that believes it is operating in a high-rate area 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. With or without such a determination, institutions must use the national rate to determine conformance for all deposits outside the market area.

Institutions can request a determination that they are operating in a high-rate area by sending a letter to the applicable FDIC regional office. The FDIC will use standardized data (average rates by state, metropolitan statistical area, and micropolitan statistical area) for the market area in which the institution is operating to determine if the institution is operating in a high-rate area. If the standardized rate data for the institution's market area exceeds by at least 10 percent the national average for a minimum of three of the four deposit products reviewed, the FDIC can determine that the institution is operating in a high-rate area and allow the institution to use the local area rates.

Institutions that submit determination requests by December 31, 2009 will receive a response by January 30, 2010. For institutions that submit determination requests after December 31, 2009, the national rate caps must be used until the institutions have received notice they are operating in a high-rate area.

A copy of FIL-69-2009 can be found at the following website:
<http://www.fdic.gov/news/news/financial/2009/fil09069.html>.

If you have any questions pertaining to this alert, please feel free to call Henry Fields at (213) 892-5275, Joe Gabai at (213) 892-5284, Mark Gillett at (213) 892-5289 or Barbara R. Mendelson at (212) 468-8118.