generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check.'' A check is considered local if it is payable by or at or through a bank located in the same Federal Reserve check-processing region as the depositary bank.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check-processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check-processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check-processing region and thus are local to one another.

On July 25, 2009, the Reserve Banks will transfer the check-processing operations of the head office of the Federal Reserve Bank of Minneapolis to the head office of the Federal Reserve Bank of Cleveland. As a result of this change, some checks that are drawn on and deposited at banks located in the Minneapolis and Cleveland check-processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. To assist banks in identifying local and nonlocal checks and making funds availability decisions, the Board is amending the lists of routing symbols in appendix A associated with the Federal Reserve Banks of Minneapolis and Cleveland to reflect the transfer of check-processing operations from the head office of the Federal Reserve Bank of Minneapolis to the head office of the Federal Reserve Bank of Cleveland. To coincide with the effective date of the underlying check-processing changes, the amendments to appendix A are effective July 25, 2009. The Board is providing notice of the amendments at this time to give affected banks ample time to make any needed processing changes. Early notice also will enable affected banks to amend their availability schedules and related disclosures if necessary and provide their customers with notice of these changes.[2]

commercial banks, savings institutions, and credit unions.

[2] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of the final rule. The revisions to appendix A are technical in nature and are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary. In addition, the underlying consolidation of Federal Reserve Bank check-processing offices involves a matter relating to agency management, which is exempt from notice and comment procedures.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The technical amendments to appendix A of Regulation CC will delete the reference to the head office of the Federal Reserve Bank of Minneapolis and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Cleveland. The depository institutions that are located in the affected check-processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, all paperwork collection procedures associated with Regulation CC already are in place, and the Board accordingly anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. The Fourth and Ninth District routing symbol lists in appendix A are amended by removing the headings and listings for the Ninth Federal Reserve District and revising the listings for the Fourth Federal Reserve Districts to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0220	2220
0223	2223
0410	2410
0412	2412
0420	2420
0421	2421
0422	2422
0423	2423
0430	2430
0432	2432
0433	2433
0434	2434
0440	2440
0441	2441
0442	2442
0515	2515
0519	2519
0720	2720
0724	2724
0740	2740
0749	2749
0813	2813
0830	2830
0839	2839
0863	2863
0910	2910
0911	2911
0912	2912
0913	2913
0914	2914
0915	2915
0918	2918
0919	2919
0960	2960

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12925 Filed 6–2–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations relating to the interest rate restrictions that apply to insured depository institutions that are not well capitalized. Under the amended regulations, such insured depository institutions generally will be permitted to offer the ''national rate'' plus 75 basis points. The ''national rate'' will be defined, 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. For those cases in which the FDIC determines that the national rate as published on the FDIC's Web site does not represent the prevailing rate in a particular market, as indicated by available evidence, the depository institution will be permitted to offer the prevailing rate in that market plus 75 basis points. The purpose of this final rule is to clarify the interest rate restrictions for certain insured depository institutions and examiners.

DATES: The final rule is effective December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Louis J. Bervid, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6896 or *lbervid@fdic.gov*; or Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov*, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Section 29 of the Act

Section 29 of the Federal Deposit Insurance Act (''FDI Act'') provides that an insured depository institution that is not well capitalized may not accept deposits by or through deposit brokers. See 12 U.S.C. 1831f(a). Notwithstanding this prohibition, section 29 also provides that an adequately capitalized institution may accept brokered deposits if it obtains a waiver from the FDIC. *See* 12 U.S.C. 1831f(c). In contrast, an undercapitalized institution may not accept brokered deposits under any circumstances. *See* 12 U.S.C. 1831f(a) and (c).

The purpose of section 29 generally is to limit the acceptance or solicitation of deposits by insured depository institutions that are not well capitalized. This purpose is promoted through two means: (1) The prohibition against the acceptance of brokered deposits by depository institutions that are less than well capitalized (as described above); and (2) certain restrictions on the interest rates that may be paid by such institutions. In enacting section 29, Congress added the interest rate restrictions to prevent institutions from avoiding the prohibition against the acceptance of brokered deposits by soliciting deposits internally through ''money desk operations.'' Congress viewed the gathering of deposits by weaker institutions through either third-party brokers or ''money desk operations'' as potentially an unsafe or unsound practice. *See* H.R. Conf. Rep. No. 101–222 at 402–403 (1989), reprinted in 1989 U.S.C.C.A.N. 432, 441–42.

Section 29 imposes different interest rate restrictions on different categories of insured depository institutions that are less than well capitalized. These categories are (1) adequately capitalized institutions with waivers to accept brokered deposits; (2) adequately capitalized institutions without waivers to accept brokered deposits; and (3) undercapitalized institutions. The statutory restrictions for each category are described in detail below.

Adequately capitalized institutions with waivers to accept brokered deposits. Institutions in this category may not pay a rate of interest on deposits that ''significantly exceeds'' the following: ''(1) The rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the national rate paid on deposits of comparable maturity, as established by the [FDIC], for deposits accepted outside the institution's normal market area.'' 12 U.S.C. 1831f(e).

In this category, an institution must adhere to (or not ''significantly exceed'') the prevailing rates in its own ''normal market area'' only with respect to deposits accepted from that market area. For other deposits, the institution is permitted to offer (but not ''significantly exceed'') the ''national rate'' established by the FDIC. Thus, an institution in this category is not permitted to outbid local institutions for local deposits but is permitted to compete with non-local institutions for non-local deposits.

Adequately capitalized institutions without waivers to accept brokered deposits. In this category, institutions may not offer rates that ''are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' 12 U.S.C. 1831f(g)(3). In other words, the institution must adhere to the prevailing rates in its own ''normal market area'' for all deposits (whether local or non-local). Thus, the institution will be unable to compete with non-local institutions for non-local deposits unless the rates in the institution's own ''normal market area'' are competitive with the non-local rates.

For institutions in this category, the statute restricts interest rates in an indirect manner. Rather than simply setting forth an interest rate restriction for adequately capitalized institutions without waivers, the statute defines the term ''deposit broker'' to include ''any insured depository institution that is not well capitalized * * * which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' 12 U.S.C. 1831f(g)(3). In other words, the depository institution itself is a ''deposit broker'' if it offers rates significantly higher than the prevailing rates in its own ''normal market area.'' Without a waiver, the institution cannot accept deposits from a ''deposit broker.'' Thus, the institution cannot accept these deposits from itself. In this indirect manner, the statute prohibits institutions in this category from offering rates significantly higher than the prevailing rates in the institution's ''normal market area.''

Undercapitalized institutions. In this category, institutions may not offer rates ''that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted.'' 12 U.S.C. 1831f(h). Thus, for deposits in its own ''normal market area,'' an undercapitalized institution must offer rates that are not ''significantly higher'' than the local rates. For non-local deposits, the institution must offer rates that are not ''significantly higher'' than either (1) the institution's own local rates; or (2) the applicable non-local rates. In other words, the institution must adhere to the prevailing rates in its own ''normal market area'' for all deposits (whether local or non-local) and also must adhere to the prevailing rates in the non-local area for any non-local deposits. Thus, the institution will be unable to outbid non-local institutions for non-local deposits even if the non-local rates are lower than the rates in the institution's own ''normal market area.''

As described above, section 29 of the FDI Act imposes interest rate restrictions based on a depository institution's capital category (and whether the depository institution has obtained a waiver to accept brokered deposits). Also, section 29 authorizes the FDIC to ''impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the [FDIC] may determine to be appropriate.'' 12 U.S.C. 1831f(f).

II. Section 337.6 of the FDIC's Regulations

The FDIC has implemented section 29 of the FDI Act through section 337.6 of the FDIC's regulations. See 12 CFR 337.6. Prior to its amendment through this final rule, section 337.6 added several significant definitions to the statutory rules. First, the ''national rate'' was defined. Second, the terms ''significantly exceeds'' and ''significantly higher'' were defined. Third, the term ''market area'' was defined. Each of these definitions, and the reasoning behind the definitions, are discussed in greater detail below.

The ''National Rate.'' In section 337.6, prior to the adoption of this final rule, the ''national rate'' was defined as follows: ''(1) 120 percent of the current yield on similar maturity U.S. Treasury obligations; or (2) In the case of any deposit at least half of which is uninsured, 130 percent of such applicable yield.'' 12 CFR 337.6(b)(2)(ii)(B). In defining the ''national rate'' in this manner, the FDIC relied upon the fact that such a definition is ''objective and simple to administer.'' 57 FR 23933, 23938 (June 5, 1992). By using percentages (120 percent or 130 percent of the yield on U.S. Treasury obligations) instead of a fixed number of basis points, the FDIC hoped to ''allow for greater flexibility should the spread to Treasury securities widen in a rising interest rate environment.'' Id. In deciding not to rely on published deposit rates, the FDIC offered the following explanation: ''The FDIC believes this approach would not be timely because data on market rates must be available on a substantially current basis to achieve the intended purpose of this provision and permit institutions to avoid violations. At this time, the FDIC has determined not to tie the national rate to a private publication. The FDIC has not been able to establish that such published rates sufficiently cover the markets for deposits of different sizes and maturities.'' *Id.* at 23939.

''Significantly Exceeds.'' Through section 337.6, the FDIC has provided that a rate of interest ''significantly exceeds'' another rate, or is ''significantly higher'' than another rate, if the first rate exceeds the second rate by more than 75 basis points. See 12 CFR 337.6(b)(2)(ii), (b)(3)(ii) and (b)(4). In adopting this standard, the FDIC offered the following explanation: ''Based upon the FDIC's experience with the brokered deposit prohibitions to date, it is believed that this number will allow insured depository institutions subject to the interest rate ceilings * * * to compete for funds within markets, and yet constrain their ability to attract funds by paying rates significantly higher than prevailing rates.'' 57 FR at 23939.

''Market Area.'' In section 337.6, the term ''market area'' is defined as follows: ''A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area.'' 12 CFR 337.6(b)(4). In adopting this definition, the FDIC offered the following explanation: ''Under the final rule, the market area will be determined pragmatically, on a case-by-case basis, based on the evident or likely impact of a depository institution's solicitation of deposits in a particular area, taking into account the means and media used and volume and sources of deposits resulting from such solicitation.'' 57 FR at 23939.

These rules and definitions in section 337.6 have been difficult for insured depository institutions and examiners to apply. Prior to the adoption of this final rule, one issue was that section 337.6 defined ''market area'' but did not define ''normal market area.'' In the absence of a definition, institutions and examiners struggled to determine ''normal market areas.'' [1]

Another issue was that the definition of the ''national rate'' became outdated. As discussed above, prior to the adoption of this final rule, the ''national rate'' was defined as ''120 percent of the current yield on similar U.S. Treasury obligations'' (or 130 percent in the case of a deposit ''at least half of which is uninsured''). 12 CFR 337.6(b)(2)(ii)(B). For many years, this definition functioned well because rates on Treasury obligations tracked closely with rates on deposits. At present, however, the rates on certain Treasury obligations are low compared to deposit rates. Consequently, the ''national rate'' as defined in the FDIC's regulations has been artificially low. By setting a low rate, the FDIC's regulations required some insured depository institutions to offer unreasonably low rates on some deposits, thereby restricting access even to market-rate funding.

III. The Proposed Rule

In response to the issues discussed above, the FDIC sought public comments on a proposed rule. *See* 74 FR 5904 (February 3, 2009). Through the proposed rule, the FDIC addressed two basic problems: (1) The obsolescence of the FDIC's definition of the ''national rate''; and (2) the difficulty experienced by insured depository institutions and examiners in determining prevailing rates in ''normal market areas'' and other market areas.

In response to the first problem, the FDIC proposed to redefine the ''national rate'' as ''a simple average of rates paid by all insured depository institutions and branches for which data are available.'' In other words, the FDIC proposed to sever the connection between the national rate and the yield on U.S. Treasury obligations.

In response to the second problem, the FDIC proposed to create a presumption that the prevailing rate in any market would be the national rate (as defined above). An insured depository institution could rebut this presumption by presenting evidence to the FDIC that the prevailing rate in a particular market is higher than the national rate. If the FDIC agreed with this evidence, the institution would be permitted to pay as much as 75 basis points above the local prevailing rate.

IV. The Comments

In response to the publication of the proposed rule, the FDIC received twenty comments from insured depository institutions, banking associations and bank service providers. Some commenters urged the FDIC to adopt tougher interest rate restrictions on insured depository institutions that are not well capitalized. They expressed concern that such institutions, through high interest rates, are driving up costs for healthy banks. Most commenters, however, urged the FDIC to provide insured depository institutions with greater flexibility in offering interest rates.

The commenters did not dispute that the ''national rate'' has become outdated. Also, they generally supported the concept of allowing an insured depository institution to submit evidence that the national rate, in a particular market, does not represent the actual prevailing rate. In regard to determining the prevailing or applicable rate in a particular market, the commenters made various suggestions including the following:

- A bank should be free to choose any of the following rates as the applicable prevailing rate: (1) The national rate; (2) the State rate; (3) the ''metropolitan statistical area'' or ''MSA'' rate; or (4) the Internet rate (for Internet banks).

[1] Prior to 1992, the term ''normal market area'' was defined in a footnote in section 337.6. Under this definition, a depository institution's ''normal market area'' depended upon the institution's advertising practices in soliciting deposits. *See* 12 CFR 337.6(a)(1)(ii) (1992) (footnote 11).

• The prevailing rate should be based upon the rates offered by insured depository institutions but also should be based upon the rates offered by credit unions (and perhaps other entities not insured by the FDIC).

• The prevailing rate should be based upon the highest rates in a market. The lowest rates should not be considered because banks offering low rates are not competing for deposits.

• Different rates should apply to different deposit products. For example, time deposits should not be compared to deposits without maturity dates. Further, deposits without maturity dates should be divided into smaller categories based on distinct features (for example, ''money market deposit accounts'' or ''MMDAs'' could be separated from ''negotiable order of withdrawal'' or ''NOW'' accounts).

• Certain types of deposit accounts (such as transaction accounts) should be exempt from any interest rate restrictions because such accounts represent core deposits.

V. The Final Rule

After considering the comments, the FDIC has decided to adopt certain amendments to section 337.6. Each of these amendments is discussed in turn below.

Paragraph (a)(5)(iii). Prior to the adoption of the final rule, this paragraph provided that the term ''deposit broker'' includes ''any insured depository institution that is not well capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' This provision in the regulations is based upon corresponding language in the statute itself. *See* 12 U.S.C. 1831f(g)(3). As previously discussed, the effect of this provision is to prohibit certain insured depository institutions (adequately capitalized institutions without waivers to accept brokered deposits) from offering rates of interest significantly higher than the prevailing rates in the institution's normal market area.

Through the proposed rule, the FDIC proposed adding the following sentence: ''For purposes of this paragraph, the prevailing rates of interest in such depository institution's normal market area shall be deemed to be the national rate as defined in paragraph (b)(2)(ii)(B) unless the FDIC determines, based on available evidence, that the prevailing rates differ from the national rate.'' Through the final rule, the FDIC has adopted the substance of this provision but the FDIC has decided not to add this sentence to paragraph (a)(5)(iii). Rather, the FDIC has moved this provision to new paragraph (e) (discussed below).

Paragraph (b)(2)(ii)(B). As amended by the final rule, this paragraph defines the ''national rate'' as follows: ''[T]he national rate shall be a simple average of rates paid by all insured depository institutions and branches for which data are available. This rate shall be determined by the FDIC.''

In adopting this definition, the FDIC does not mean to prevent insured depository institutions from offering evidence that the prevailing rate in a particular market differs from the national rate. On the contrary, the FDIC will allow insured depository institutions to submit such evidence under new paragraph (e) (discussed below). The purpose of this paragraph (b)(2)(ii)(B) is simply to provide insured depository institutions and examiners with a clear ''safe harbor'' that can be used in determining permissible rates. This ''safe harbor'' (*i.e.,* the rate published by the FDIC) will be based upon the rates offered by all insured depository institutions and branches.

The FDIC intends to publish or post the national rate on its Web site. In publishing the national rate, the FDIC would publish separate rates for deposits of different amounts and maturities. In addition, the FDIC might publish separate rates for different types of deposit products. For example, the FDIC might publish a rate for NOW accounts and a separate rate for MMDAs.

Some commenters suggested that the FDIC's definition of the ''national rate'' (based on all insured depository institutions and branches) is too strict. These commenters argued that the FDIC, in calculating a national average, should use no institutions or branches except those offering the highest rates.

For two reasons, the FDIC has not adopted this suggestion. First, the exclusion of the rates offered by some insured depository institutions and branches would result in a national rate that does not represent a true average national rate. On the contrary, the exclusion of low rates would produce a national rate that exceeds the true average. Such a rate would fail to serve as a meaningful restriction on insured depository institutions that are not well capitalized. Second, for cases in which the FDIC's published national rate does not represent the actual prevailing rate in a particular market, the FDIC believes that insured depository institutions will be given a fair opportunity to establish the prevailing rate through new paragraph (e) (discussed below).

Paragraph (b)(4). Prior to the adoption of the final rule, this paragraph defined ''market area.'' Also, this paragraph set forth a procedure (interpolation) for determining average or effective yields on time deposits with odd maturities in a particular market area. Through the final rule, the substance of these provisions has not been changed but the provisions have been moved to new paragraph (e) (discussed below).

By its own terms, paragraph (b)(4) applied solely to the interest rate restrictions applicable to (1) adequately capitalized insured depository institutions with waivers to accept brokered deposits (*see* paragraph (b)(2)(ii)(A)); and (2) undercapitalized insured depository institutions (*see* paragraph (b)(3)(ii)). It did not apply to the interest rate restrictions applicable to adequately capitalized insured depository institutions without waivers to accept brokered deposits (*see* paragraph (a)(5)(iii)). This limitation on paragraph (b)(4) was illogical. For this reason, through the final rule, the FDIC has removed paragraph (b)(4) and moved its provisions to new paragraph (e). The latter paragraph is discussed below.

Paragraph (e). Under new paragraph (e), ''a presumption shall exist that the effective yield in the relevant market is the national rate * * * unless the FDIC determines, based on available evidence, that the effective yield differs from the national rate.'' Under this provision, an institution not choosing to avail itself of the national rate will be able to assert it is operating in a high-rate environment and provide evidence of such to the appropriate FDIC regional office. In evaluating this evidence, the FDIC may use segmented market rate information (for example, evidence by State, county or MSA). Also, the FDIC may consider evidence as to the rates offered by credit unions but only if the insured depository institution competes directly with the credit unions in the particular market. Finally, the FDIC may consider evidence that the rates on certain deposit products differ from the rates on other products. For example, in a particular market, the rates on NOW accounts might differ from the rates on MMDAs. NOW accounts might be distinguished from MMDAs because the two types of accounts are subject to different legal requirements. See 12 U.S.C. 1832 and 12 CFR 204.2(e)(2) (dealing with NOW accounts); 12 CFR 204.2(d)(2) (dealing with MMDAs).

The FDIC does not intend, however, to provide the insured depository institution (being less than well capitalized) with complete freedom in determining the prevailing rates on various deposit products. For example, the FDIC will not consider alleged distinctions between the MMDAs offered by one insured depository institution and the MMDAs offered by other insured depository institutions in the same market. Such an approach would enable an insured depository institution, by adding special features to its deposit products, to avoid comparison to the interest rates offered by other insured depository institutions located in the same area. This result would be inconsistent with the purpose of section 29 of the FDI Act, which is meant to restrict the interest rates that can be offered by insured depository institutions that are not well capitalized.

Though the final rule revises the definition of the ''national rate'' and changes the methodology for determining prevailing rates in different markets, the final rule does not change the meaning of ''significantly exceeds'' or ''significantly higher.'' Under the amended regulations, an interest rate will continue to be ''significantly higher'' than a second rate if the first rate exceeds the second rate by more than 75 basis points. Most of the commenters did not object to this standard.

The final rule will not become effective until six months after the date of publication in the **Federal Register**. The FDIC believes that a delayed effective date may be necessary to enable insured depository institutions to adjust to the new rules. Notwithstanding this delayed effective date, the FDIC intends to post national average rates on its Web site immediately. These rates may assist insured depository institutions in complying with the current rules as well as the new rules. Indeed, under either set of rules, the staff believes that the national average rates may represent the prevailing rates in many market areas. For this reason, the FDIC would not object to the immediate use of the posted rates by an insured depository institution that is not well capitalized though such use will not be mandatory.

VI. Conclusion

The purpose of the final rule is to provide examiners and insured depository institutions that are not well capitalized with a clear method for determining the highest permissible interest rates. Under the amended regulations, an insured depository institution will be able to ascertain the ''national rate'' and the applicable rate cap by checking the FDIC's Web site. In those cases in which the depository institution believes that the average rate in a relevant market exceeds the national rate, the depository institution will be permitted to offer evidence of such higher rate. Assuming the evidence confirms the higher rate, the institution will be permitted to offer rates up to the higher rate cap.

Community Development and Regulatory Improvement Act

The final rule does not impose any new reporting or disclosure requirements on insured depository institutions under the Riegle Community Development and Regulatory Improvement Act.

Paperwork Reduction Act

The final rule does not involve any new collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the FDIC certifies that the final rule will not have a significant impact on a substantial number of small entities. This conclusion is based upon the fact that the final rule merely clarifies the interest rate restrictions set forth in the Federal Deposit Insurance Act. The final rule does not impose any new restrictions. Indeed, under the final rule, the burden of determining compliance with the interest rate restrictions will be eased because insured depository institutions that are not well capitalized (including any small entities) can rely on the ''national rate'' determined by the FDIC. In those cases in which the insured depository institution believes that the rates in its ''normal market area'' exceed the ''national rate,'' the final rule permits the institution to offer evidence of the ''normal market area'' rates just as the former rules permitted institutions to offer evidence of ''normal market area'' rates.

Impact on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC requested comments on this issue but received none.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 337 of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 1. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831, 1831f.

■ 2. In § 337.6, paragraph (b)(2)(ii)(B) is revised, paragraph (b)(4) is removed, and paragraph (e) is added to read as follows:

§ 337.6 Brokered deposits.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) The national rate paid on deposits of comparable size and maturity for deposits accepted outside the institution's normal market area. For purposes of this paragraph (b)(2)(ii)(B), the national rate shall be a simple average of rates paid by all insured depository institutions and branches for which data are available. This rate shall be determined by the FDIC.

* * * * *

(e) A market is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area. For purposes of this § 337.6, a presumption shall exist that the prevailing rate or effective yield in the relevant market is the national rate as defined in paragraph (b)(2)(ii)(B) of this section unless the FDIC determines, based on available evidence, that the effective yield differs from the national rate. The effective yield on a deposit with an odd maturity shall be determined by interpolating between the yields offered by other insured depository institutions on deposits of the next longer and shorter maturities offered in the market.

Dated at Washington, DC, this 29th day of May, 2009.

Authorized to be published in the **Federal Register** by Order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12938 Filed 6–2–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Amendment of the Temporary Liquidity Guarantee Program To Extend the Debt Guarantee Program and To Impose Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is issuing this final rule to amend the Temporary Liquidity Guarantee Program (TLGP) by providing a limited extension of the Debt Guarantee Program (DGP) for insured depository institutions (IDIs) participating in the DGP. The extended DGP also applies to other participating entities; however, other participating entities that did not issue FDIC-guaranteed debt before April 1, 2009 are required to submit an application to and obtain approval from the FDIC to participate in the extended DGP. The final rule imposes surcharges on certain debt issued on or after April 1, 2009. Any surcharge collected will be deposited into the Deposit Insurance Fund (DIF or Fund). The final rule also establishes an application process whereby entities participating in the extended DGP may apply to issue non-FDIC-guaranteed debt during the extension period. The final rule restates without change the interim rule published in the **Federal Register** by the FDIC on March 23, 2009.[1]

DATES: Effective June 3, 2009.

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SUPPLEMENTARY INFORMATION

I. Background

The FDIC adopted the TLGP in October 2008 following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve).[2] The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

The steps taken to stabilize the nation's financial system by the Congress, the Treasury, and the federal banking agencies have improved conditions in the U.S. credit markets. While liquidity in the financial markets has not returned to pre-crisis levels, the TLGP debt guarantee program has benefited participating IDIs, bank and certain savings and loan holding companies, and certain of their affiliates by improving their options for short-term and intermediate-term funding.

On March 17, 2009, the FDIC's Board of Directors (Board) adopted an interim rule that amended the TLGP by providing for a limited extension of the DGP, imposing surcharges on assessments for certain debt issued on or after April 1, 2009, and providing procedures to enable participating entities to issue certain non-guaranteed debt.[3] This amendment was designed to reduce market disruption at the conclusion of the TLGP by facilitating the orderly phase-out of the DGP and encouraging participating entities to use the limited extension of the DGP to plan for a successful return to sources of non-FDIC-guaranteed funding markets.

II. The Interim Rule

On March 17, 2009, the FDIC's Board adopted an interim rule with request for comment that amended the TLGP by providing for a limited extension of the DGP, surcharges for certain debt issuances, and procedures for participating entities to issue certain non-guaranteed debt. The interim rule was published in the **Federal Register** on March 23, 2009. As discussed in the section that follows, commenters generally favored the interim rule. Accordingly, the FDIC is implementing the interim rule as a final rule without change.

III. Summary of Comments

The FDIC received two comments on the interim rule from groups representing the banking industry. Both commenters supported the amendments to the DGP made in the interim rule.

The commenters specifically endorsed the surcharges placed on certain FDIC-guaranteed debt and made applicable to all participating entities that issued FDIC-guaranteed debt after April 1, 2009. In the event of the diminution of the Deposit Insurance Fund (DIF) caused by TLGP losses, if any, the commenters noted that only IDIs would be required to fund a special assessment to replenish the DIF, though IDIs have not been the primary users of the program.[4] Depositing surcharges directly into the DIF was viewed by these commenters as an appropriate recognition of the possible exposure that all IDIs, both participating and non-participating, could face in the event of losses caused by the TLGP. The commenters also welcomed the potential for a corresponding decrease in standard assessments for IDIs that could result from the deposit of the surcharges into the DIF.

[1] 74 FR 12078 (March 23, 2009).

[2] See Section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability, and the FDIC implemented the TLGP in response.

Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth, provides additional authority for the establishment of the TLGP.

[3] 74 FR 12078 (March 23, 2009).

[4] Section 204(d) of the *Helping Families Save Their Homes Act of 2009* (Pub. L. 111–22), enacted on May 20, 2009, authorized the FDIC to impose a special assessment on depository institution holding companies (with the concurrence of the Secretary of the Treasury) to recover losses to the Deposit Insurance Fund arising from action taken or assistance provided with respect to an insured depository institution following a system risk determination made pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act.