

## Rules on High-Yield Deposits to Loosen

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By Joe Adler

WASHINGTON — The Federal Deposit Insurance Corp. is expected Tuesday to ease rules restricting relatively weak banks and thrifts from paying higher rates to attract brokered deposits.

Under current rules, institutions rated below "well-capitalized" are restricted from paying rates much higher than U.S. Treasury bond yields. But that benchmark is abnormally low right now as investors flock to the relative safety of government securities, so the FDIC is weighing whether to shift the benchmark to a simple average of deposit rates paid by all insured institutions.

As more banks slip below "well-capitalized," the change could have a widespread effect.

"This is a recognition that the current way" high-yield deposits "are gauged for compliance really isn't working right now because of the low yields on Treasuries," according to a source familiar with the proposal.

But such flexibility would run counter to regulators' previous moves during the housing crisis.

The agencies have been critical of banks relying too heavily on brokered funds, saying noncore deposits can dry up quickly when a fast-growing institution has problems, and many recent failed banks disproportionately used them. In the FDIC's separate proposal to reform premium pricing, institutions would be penalized for overusing noncore funds.

But with liquidity scarce, observers said the regulators should provide some leeway to institutions that use brokered deposits properly.

"In recent months, the regulators have been critical of brokered deposit use in some instances, but at the same time it seems to me what they are doing is trying to provide reasonable flexibility under the current market conditions, and they still have supervisory tools for cases where they are specifically concerned," said John Murphy, a former FDIC general counsel and now a lawyer at Cleary, Gottlieb, Steen & Hamilton.

"If there are specific institutions where the profile of the institution requires supervisory action, they have more than enough tools" and can still help "the folks that need funding and whose profile is such that it doesn't raise the same level of concern."

Under current rules, undercapitalized institutions are barred from using brokered funds and adequately capitalized ones must seek a waiver from the FDIC before accepting any new brokered deposits.

Once they get the waiver, adequately capitalized banks face further restrictions. They may not pay rates that are 75 basis points higher than either those on comparable deposits in their "normal market area," or the "national rate," which is defined in most cases as 120% of the yields on comparable Treasuries.

The FDIC proposal would redefine the national rate as an average that institutions pay nationwide, and the agency would publish that rate periodically, said the source, who spoke on condition of anonymity.

To allay further concerns from bankers and examiners, the "normal market area" would also be more clearly defined.

The proposal would "clarify some definitions that are used that have been difficult for bankers and examiners to apply in determining whether the bank complies with the statute," the source said.

Industry representatives agreed that figuring out how much an adequately capitalized bank can pay depositors is not straightforward.

"When I talk to bankers," they raise "the opaqueness of the process. They say: 'Give us some clarity, because we're not sure what the rules are. They're changing so fast. It makes it difficult to do any type of long-term planning,'" said Nicholas Ketcha, a former director of supervision at the FDIC who now consults banks for FinPro Inc. "Most bankers would welcome some clarity brought to it."

Others hailed regulators for providing flexibility at a time when they are otherwise making it more difficult for institutions to get noncore funding.

"As we look at recent failed banks, almost all of them go below well capitalized, and then get hit with the restrictions on brokered deposits and rates they can pay," said Ralph F. MacDonald 3rd, a partner at Jones Day in Atlanta. "The FDIC has been very reluctant, and has generally not granted any brokered deposit waivers.

"If they add another alternative to the rule, and/or add a higher spread for the Treasuries, those would both be helpful."

An "adequately capitalized" institution's risk-based capital must be least 8% of assets, and its Tier 1 risk-based capital must be least 4% of assets. An institution becomes well

capitalized when its risk-based capital ratio hits 10% and its Tier 1 risk-based capital ratio hits 6%.