



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-109-2005
November 10, 2005

INTERSTATE BANKING, FEDERAL INTEREST RATE AUTHORITY

Notice of Proposed Rulemaking

Summary: The FDIC has published the attached new notice of proposed rulemaking to clarify which state laws apply to branches of out-of-state, state-chartered banks and to clarify the interest rates that state-chartered banks may charge. The notice seeks public comment on all aspects of the proposed rules through December 13, 2005.

Distribution:
State-Chartered Banks

Suggested Routing:
Chief Executive Officer
Chief Operations Officer
Chief Lending Officer

Related Topics:
Activities of Insured State Banks And Insured
Savings Associations
12 C.F.R. Part 362

Attachment:
Notice of Proposed Rulemaking

Contact:
Robert C. Fick, Counsel, at rfick@fdic.gov or 202-898-8962; Rodney D. Ray, Counsel, at rroy@fdic.gov or 202-898-3556; or Joseph A. DiNuzzo, Counsel, at jdinuzzo@fdic.gov or 202-898-7349.

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2005/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, 801 17th Street, NW, Room 100, Washington, DC 20434 (1-877-275-3342 or 202-416-6940).

Highlights:

- On October 6, 2005, the FDIC Board issued a notice of proposed rulemaking that would implement two provisions of the Federal Deposit Insurance Act (FDI Act): section 24(j), which describes, generally, which host state laws apply to branches of out-of-state, state-chartered banks, and section 27, which describes the interest rates that state banks may charge.
- On the applicability of host state law, generally, the proposed rules would clarify that a host state law does not apply to an activity that involves a branch in the host state of an out-of-state, state-chartered bank to the same extent that a federal court or the Office of the Comptroller of the Currency (OCC) has determined in writing that the particular host state law does not apply to an activity involving a branch in the host state of an out-of-state national bank.
- Regarding state usury laws, the proposed rules would provide, parallel to the OCC's rules, a federal definition of the term "interest"; clarify that state banks have "most-favored-lender" status; clarify where a state bank is "located" for purposes of interest rate exportation; and clarify the effect of a state's opt-out from the federal interest rate provisions.

INTERSTATE BANKING, FEDERAL INTEREST RATE AUTHORITY
Notice of Proposed Rulemaking

The Federal Deposit Insurance Corporation (FDIC) has issued the attached Notice of Proposed Rulemaking to clarify the applicability of state laws to branches of out-of-state, state-chartered banks and to clarify the limitations on the interest rates that state-chartered banks may charge. The FDIC is requesting comments on all aspects of the new proposed rules. Comments are due by December 13, 2005.

In December 2004, the Financial Services Roundtable submitted a petition asking the FDIC to adopt rules that would provide parity between state banks and national banks in all interstate operations and activities. Specifically, the Roundtable asked that the rules provide that a state bank may operate interstate under the law and regulations of the bank's home state (i.e., its chartering state) to the same extent that a national bank operates interstate under the National Bank Act (NBA) and the OCC's rules. The Roundtable also requested that the rules implement section 27 of the FDI Act in such a way as to parallel the rules issued by the OCC and the OTS regarding preemption of state usury laws for national banks and federal thrifts operating interstate.

In response to that petition, the FDIC Board of Directors approved the attached notice of proposed rulemaking at its October 6, 2005, meeting. The proposed rules would implement section 24(j) of the FDI Act, 12 U.S.C. § 1831a(j), which describes, generally, which state laws apply to branches of out-of-state, state-chartered banks and would also implement section 27 of the FDI Act, 12 U.S.C. § 1831d, which generally describes the interest rates that state banks may charge.

Regarding the applicability of the law of a host state (i.e., a state other than the bank's home state), generally, the proposed rules would clarify that a host state law does not apply to an activity that involves a branch in the host state of an out-of-state, state-chartered bank to the same extent that a federal court or the OCC has determined in writing that the particular host state law does not apply to an activity involving a branch in the host state of an out-of-state national bank. When host state law does not apply, then the proposed rules would provide that the bank's home state law applies. In addition, the proposed rules would clarify that, subject to the activity restrictions provided in part 362 of the FDIC's regulations, a state bank that has a branch in a host state may conduct any activity at such branch that is permissible under its home state law if the activity is also permissible either for a bank chartered by the host state or for a branch in the host state of an out-of-state national bank.

Regarding the interest rates that state banks may charge, the proposed rules would provide, parallel to the OCC's rules, a federal definition of the term "interest" that would include as interest such charges as late fees, overlimit fees, annual fees, NSF fees, and cash-advance fees. The proposed rules would clarify that state banks have "most-favored-lender" status, i.e., state banks may charge interest at the maximum rate permitted to any state-chartered or state-licensed lender by the law of the state where the bank is located. In addition, the proposed rules would clarify where a state bank is "located" for purposes of interest rate exportation. Finally, the proposed rules would clarify the effect of a state's opt-out from the federal interest rate provisions on the interest rates that state banks may charge for a loan made in that state.

Written comments may be sent to Robert E. Feldman, Executive Secretary, Attention: Comments/Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments also may be mailed electronically to comments@fdic.gov. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may also be faxed to (202) 898-3838.

For more information, please contact Robert C. Fick, Counsel, at rfick@fdic.gov or 202-898-8962; Rodney D. Ray, Counsel, at rray@fdic.gov or 202-898-3556; or Joseph A. DiNuzzo, Counsel, at jdinuzzo@fdic.gov or 202-898-7349.

William F. Kroener, III
General Counsel
Legal Division