

regulations, and any chemical releases, transfers, and spills. Facility-specific reports are available in the SFIP for viewing and downloading. In addition to gathering all this information into one location for the first time, the SFIP is unique in that it structures and aggregates the data so a user can easily view, compare, and analyze information from different facilities. The SFIP includes compliance and enforcement information submitted to state and federal regulators, as well as chemical release information submitted under the federal Toxics Release Inventory (TRI). The SFIP also links data submitted to state and federal agencies by facilities regulated under the Clean Air Act, the Clean Water Act, the Resource Recovery and Conservation Act, and the Emergency Planning and Community Right-to-Know Act. Finally, statistics about the population around facilities were taken from census reports, and information about production was gathered from sources outside EPA.

To link all these data, the SFIP uses an interactive, high-speed data retrieval and integration system developed by EPA, the Integrated Data for Enforcement Analysis (IDEA) system.

EPA has been committed to providing all stakeholders an opportunity to comment formally on the SFIP in its entirety, as well as to review the project's underlying data. Therefore, from the onset of this project, the Agency embarked upon an extensive review and outreach process. Stakeholders, including environmental and community organizations, have commented on the project. Each facility included in the pilot project received a copy of its records and was given an opportunity to submit corrections. State agencies also received the information for review, since a large portion of the data is provided to EPA by state governments. EPA modified the data as appropriate, based on these comments. EPA will continue taking comments as this pilot project evolves. The Agency has set up an SFIP Hotline (617-520-3015) and has also established a "comment page" on the SFIP website for users to submit their comments instantly.

In addition to releasing the data electronically, EPA also will be providing a hard copy summary report of SFIP. The SFIP Progress Report is a publication that provides aggregated, pre-formatted information. A Notice of Availability will be placed in the **Federal Register** when it is ready for distribution.

Dated: May 11, 1998.

**Mamie Miller,**

*Branch Chief, Manufacturing Branch,  
Manufacturing Energy & Transportation  
Division, Office of Compliance.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### General Counsel's Opinion No. 11, Interest Charges by Interstate State Banks

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of General Counsel's Opinion No. 11.

**SUMMARY:** The FDIC has received inquiries regarding the application of section 27 of the Federal Deposit Insurance Act to State banks operating interstate branches. This General Counsel's Opinion sets forth the Legal Division's conclusions regarding where such banks are "located" for purposes of section 27; when host state, as opposed to home state, laws will provide the appropriate interest rates for loans to customers; how various functions related to making loans to customers should be defined and the impact that they will have on the application of a particular state's interest rates to those loans; and the need for appropriate disclosure of the laws governing the loan to bank customers.

**FOR FURTHER INFORMATION CONTACT:** Barbara I. Taft, Assistant General Counsel, (202) 898-6830, Rodney D. Ray, Counsel, (202) 898-3556 or Robert C. Fick, Counsel, (202) 898-8962, Federal Deposit Insurance Corporation, Legal Division, 550 17th Street, NW, Washington, DC 20429.

### Text of General Counsel's Opinion

*General Counsel's Opinion No. 11;  
Interest Charges by Interstate Banks*

By William F. Kroener, III, General Counsel

### Background

Section 27 of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. 1831d)<sup>1</sup> ("section 1831d") establishes

<sup>1</sup> For the convenience of the reader, the initial reference to a provision of the FDI Act or interstate branching legislation will be made to the citation, as enacted, followed by the United States Code citation. Thereafter, the provision will be referred to by the section number contained in the United States Code. For example, the initial citation of section 27 of the FDI Act will be followed by the United States Code citation (12 U.S.C. 1831d) and the section will subsequently be referred to as "section 1831d".

the maximum rates that insured state-chartered depository institutions and state-licensed insured branches of foreign banks (collectively, "State banks") may charge their customers for most types of loans. Section 1831d is patterned after and has been construed *in pari materia* with section 5197 of the Revised Statutes (12 U.S.C. 85) ("section 85" of the National Bank Act ("NBA")). Like section 85, section 1831d has been construed to provide State banks with "most favored lender" status and to permit State banks to "export" interest charges allowed by the state where the lender is located to out-of-state borrowers.

Since the enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. 103-328, 108 Stat. 2338 (1994) ("Riegle-Neal Act") and the Riegle-Neal Amendments Act of 1997, Pub. L. 105-24, 111 Stat. 238 (1997) ("Riegle-Neal Amendments Act") (collectively, "Interstate Banking Statutes") questions have arisen regarding the appropriate state law for purposes of section 1831d that should govern the interest charges on loans made to customers of a State bank that is chartered in one state (the bank's home state) but has a branch or branches in another state (the host state) (an "Interstate State Bank"). These questions have not previously been addressed by the Legal Division. Therefore, this General Counsel's Opinion sets forth the Legal Division's interpretation of section 1831d as it relates to the Interstate Banking Statutes to provide guidance in this area to State banks and the public.<sup>2</sup>

The Riegle-Neal Act established, for the first time, a comprehensive federal statutory scheme for interstate branching by state and national banks. In doing so, Congress recognized the potential efficiencies to be gained by an interstate branch banking structure as well as the complications that could arise in determining when an interstate bank should look to the laws of its home

<sup>2</sup> This opinion is not intended to address these issues with regard to national banks. The Office of the Comptroller of the Currency ("OCC"), which has regulatory jurisdiction over national banks, has issued several Interpretive Letters addressing these issues, in the context of national banks and section 85. See, OCC Interpretive Letter No. 686, September 11, 1995, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) P 81-001 ("Interpretive Letter No. 686"); OCC Interpretive Letter No. 707, January 31, 1996, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) P 81-022 ("Interpretive Letter No. 707"); OCC Interpretive Letter No. 782, May 21, 1997, *reprinted in* [Current Binder] Fed. Banking L. Rep. (CCH) P 81-209 ("Interpretive Letter No. 782"); OCC Interpretive Letter No. 822, February 17, 1998, *reprinted in* [Current Binder] Fed. Banking L. Rep. (CCH) P 81-265 ("Interpretive Letter No. 822").

state or a host state to determine the interest rates that the bank may permissibly charge its customers.

### 1. Where May an Interstate State Bank Be Located for Purposes of Section 1831d?

Section 1831d(a) establishes the maximum interest charges that State banks may charge their customers for most types of loans. The interest charges are established by reference to the location of the lender. The statute provides:

In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater. (Emphasis added.)<sup>3</sup>

While the FDI Act does not specifically address where a lender is located for purposes of section 1831d, the same reference to interest rates where the bank is located is contained in section 85 of the NBA, upon which section 1831d is based.<sup>4</sup>

Prior to the enactment of section 1831d, the United States Supreme Court recognized that a national bank, pursuant to section 85, could "export" interest charges allowable in the state where the bank was located to debtors domiciled outside the bank's home state.<sup>5</sup> In *Marquette* the Court

<sup>3</sup>The alternative interest rate that is tied to the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank is not tied to state law but it, like the rate allowed by state law, also requires a determination of where the lender is "located".

<sup>4</sup>Section 85 states, in relevant part: "Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidence of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located. . . ." (Emphasis added.)

<sup>5</sup>*Marquette Nat'l Bank v. First Omaha Serv. Corp.*, 439 U.S. 299 (1978) ("*Marquette*").

determined that the national bank was "located" for purposes of section 85 in the state designated in its organization certificate and could charge interest to residents of other states at rates permitted under the laws of the state so designated.<sup>6</sup> Section 85 has been recognized to be the "direct lineal ancestor" of section 1831d, which was enacted as part of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 132 (1980). Congress made a conscious choice to pattern section 1831d after section 85 to achieve competitive equality in the area of interest charges between state and national banks.<sup>7</sup>

Reading the two provisions *in pari materia* because of their historical background, the court in *Greenwood* determined that section 1831d provided a state bank with the ability to export interest charges to out-of-state borrowers from the state in which it was chartered (recognizing the state where the bank was chartered, Delaware, as the place where the bank was "located" for purposes of section 1831d).<sup>8</sup> Therefore, prior to the enactment of the Interstate Banking Statutes, the state where a State bank was chartered had been established as the state in which a bank was "located" for purposes of exporting interest rates under section 1831d(a).

Following enactment of the Interstate Banking Statutes it is possible for an Interstate State Bank to make loans to customers either from the state in which it is chartered or from an out-of-state branch. Although the courts do not appear to have addressed the issue of whether an Interstate State Bank may be located for purposes of section 1831d in the state where it is chartered and in each state where it maintains one or more branches the OCC has recently issued several Interpretive Letters indicating that an interstate national bank may be "located" for purposes of section 85 in the state where its main office is located, as well as in the state or states where it maintains branches. See Interpretive Letter Nos. 686, 707, 782 and 822.

Similarly, in my view an Interstate State Bank also may be "located" for purposes of section 1831d in its home

<sup>6</sup> See also *Cades v. H & R Block*, 43 F.3d 869 (4th Cir.), cert. denied, 515 U.S. 1103 (1995); *Christiansen v. Beneficial Nat'l Bank*, 972 F. Supp. 681 (S.D. Ga. 1997); *Basile v. H & R Block*, 897 F. Supp. 194 (E.D. Penn. 1995).

<sup>7</sup> See *Greenwood Trust Co. v. Commonwealth of Massachusetts*, 971 F.2d 818, 826-827 (1st Cir.), cert. denied, 506 U.S. 1052 (1993) ("*Greenwood*").

<sup>8</sup> *Greenwood*, at 829; see also *Venture Properties, Inc. v. First Southern Bank*, 79 F.3d 90 (8th Cir. 1996) (Arkansas bank located in Arkansas for purposes of section 1831d).

state and in each state where it maintains out-of-state branches. There are at least three reasons for this view. First, the Riegle-Neal Amendment Act's applicable law clause for State banks<sup>9</sup>, discussed in greater detail below, is an indication of Congress' recognition that maintaining a branch within a state, except as otherwise provided in section 1831a(j), constitutes a sufficient presence (i.e., location) in the state to subject the branch to host state laws, including the host state's consumer protection laws (which include applicable usury ceilings). Second, the OCC also has observed, most recently in Interpretive Letter No. 822, that there is a clear and direct relationship between section 94 of the NBA, addressing the "location" of a national bank for venue purposes, and section 85, addressing the "location" of a bank for usury purposes, based upon court decisions construing the two provisions. The language of section 1831d, which is based largely upon sections 85 and 86<sup>10</sup> of the NBA, has been recognized to include judicial interpretations of those provisions.<sup>11</sup> Finally, there is an evident congressional intent to provide State banks with competitive equality with national banks in enacting section 1831d<sup>12</sup> and to provide parity between State banks and national banks in enacting the Riegle-Neal Amendments Act.<sup>13</sup>

### 2. If a State Bank is Located in More Than One State, Which State's Usury Provisions Govern the Loans From the Bank?

Given that a State bank can be located in more than one state, the next question is what state's usury provisions should govern loans made by an Interstate State Bank.

<sup>9</sup> 12 U.S.C. 1831a(j)(1).

<sup>10</sup> Section 86 of the NBA provides the remedy for violations of section 85. Section 1831d(b) is the statutory counter-part contained in the FDI Act.

<sup>11</sup> See *Greenwood*, at 827; *Hill v. Chemical Bank* 799 F. Supp. 948, 952 (D. Minn. 1992) ("*Hill*") ("The key language of (section 1831d) is substantially identical to language in sections 85 and 86 of the National Bank Act, the federal usury provisions governing national banks. Generally, similar language should be interpreted the same way, unless context requires a different interpretation. Further, Congress is presumed to be aware of judicial interpretations of statutory language when it intentionally incorporates the language of one statute into another statute.")

<sup>12</sup> See 126 Cong. Rec. 6900 (1980) (statement of Senator Proxmire); 126 Cong. Rec. 6907 (1980) (statement of Senator Bumpers); see also *Hill*, at 952 ("Given the similarity in language and clearly expressed intent of Congress to create parity between state and national banks, (section 1831d) should be interpreted consistently with sections 85 and 86.")

<sup>13</sup> See 143 Cong. Rec. H3089 (daily ed. May 21, 1997) (statement of Representative Roukema).

The answer to this question requires reference to the applicable law and usury savings clauses contained in the Riegle-Neal Act, the Riegle-Neal Amendments Act, which subsequently amended the applicable law clause for State banks, and to the legislative history underlying these provisions.

#### The Applicable Law Clause for State Banks

With the introduction of nationwide interstate branching, questions arose as to the appropriate law to be applied to out-of-state branches of interstate banks. Congress addressed this matter for national banks in section 102(b)(1) of the Riegle-Neal Act, which amended section 36 of the NBA to add a new subsection (f), which included 12 U.S.C. 36(f)(1)(A) ("the applicable law clause for national banks"), and addressed this matter for State banks in section 102(b)(3)(B) of the Riegle-Neal Act, which amended section 1831a of the FDI Act to add a new subsection (j), which included 12 U.S.C. 1831a(j)(1) ("the applicable law clause for State banks").

As originally enacted by the Riegle-Neal Act, the applicable law clause for national banks provided for the inapplicability of specific host state laws to a branch of an out-of-state national bank under specified circumstances, including where Federal law preempted such state laws for a national bank.<sup>14</sup> No similar provision, however, was contained in the applicable law clause for State banks.<sup>15</sup> This made branches of out-of-state State banks subject to all of the laws of the respective host state. In contrast, a national bank operating with branches in various states benefitted from preemption, and hence greater

<sup>14</sup> Section 36(f)(1)(A)(ii) also provided for preemption of host state law where the Comptroller determines that state law discriminates between an interstate national bank and an interstate state bank.

<sup>15</sup> Section 36(f)(1)(A) reads in relevant part as follows:

The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except—

(i) when Federal law preempts the application of such State laws to a national bank \* \* \*

In the context of the law applicable to branches of out-of-state State banks, however, section 1831a(j)(1) read in relevant part as follows:

**The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch of a bank chartered by that State.** (Emphasis added.)

uniformity than a State bank, with regard to those host state laws specified in section 36(f)(1)(A)<sup>16</sup> that affected their operations. This led to concerns that the nation's dual banking system might be jeopardized because State banks might opt to convert from state to national bank charters to avoid compliance with a multitude of different state laws in each state in which State banks wished to operate through interstate branches.

On June 1, 1997, the interstate branching provisions of the Riegle-Neal Act became fully effective. Shortly thereafter, on July 3, 1997, section 1831a(j) was amended by the Riegle-Neal Amendments Act to revise the applicable law clause for State banks. As amended by the Riegle-Neal Amendments Act, section 1831a(j)(1) provides:

The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank **to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank.** To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch. (Emphasis added.)<sup>17</sup>

As explained by the legislation's sponsor, Representative Roukema, the purpose of the legislation was to provide parity between State banks and national banks. In describing the amendment's effect on host state consumer protection laws, she indicated:

\* \* \* Moreover, it recognizes the importance of host State laws by requiring all out-of-State banks to comply with host State laws in four key areas, community reinvestment, consumer protection, fair lending, and intrastate branching, unless the State law has been preempted (with respect to) national banks. In that instance the law of the State which issued the charter will prevail.<sup>18</sup>

Therefore, under section 1831a(j)(1), the laws of a host state apply to branches of out-of-state State banks to the same extent such state laws would apply to a branch of an out-of-state national bank. If the laws of the host state would be inapplicable to a branch

<sup>16</sup> The reference to "applicable usury ceilings" in the Riegle-Neal Act Conference Report's ("Conference Report") discussion of host state consumer protection laws clearly indicates that the statute's reference to consumer protection laws of host states included any applicable host state usury ceilings. See H.R. Rep. No. 651, 103d Cong., 2d Sess., 51 (1994).

<sup>17</sup> Pub. L. 105-24, 111 Stat. 238 (1997).

<sup>18</sup> 143 Cong. Rec. H3089 (daily ed. May 21, 1997).

of an out-of-state national bank they are equally inapplicable to a branch of an out-of-state State bank and the home state law will generally apply to the branch of an out-of-state State bank.<sup>19</sup>

#### The Usury Savings Clause

The next question is when the host state interest provisions will apply to a branch of an out-of-state State bank. For that issue, it is necessary to consider the Riegle-Neal Act's usury savings clause and the pertinent portions of the statute's legislative history.

Section 111 of the Riegle-Neal Act (the usury savings clause), was added to the legislation prior to its enactment by an amendment sponsored by Senator Roth to address the effect of the Riegle-Neal Act on sections 85 and 1831d. The amendment was introduced by Senator Roth in response to uncertainty expressed by the Acting Chairman of the FDIC and one of the Governors of the Federal Reserve Board regarding the effect that pending drafts of the interstate banking legislation might have on the exportation of interest rates by a bank to borrowers residing in states where the bank also operated an out-of-state branch.<sup>20</sup> See 140 Cong. Rec. S12789 (daily ed. Sept. 13, 1994) (remarks of Senator Roth).

The usury savings clause provides, in pertinent part:

No provision of this title and no amendment made by this title to any other provision of law shall be construed as affecting in any way—

\* \* \* \* \*

(3) The applicability of (section 85) or (section 1831d) of the Federal Deposit Insurance Act.<sup>21</sup>

Therefore, Congress did not intend for the Riegle-Neal Act to affect the applicability of section 1831d to State banks.

<sup>19</sup> Section 1831a(j)(3)(B), however, requires that the applicable law clause for State banks not be construed to affect the applicability of Federal law to State banks and State bank branches in a home or host state. Therefore, the reference to home state law in the applicable law clause for State banks may not dictate the result in all circumstances regarding interest charges on loans to bank customers if reference to other federal law, such as section 1831d, the usury savings clause, or the rules regarding exportation of interest charges, would lead to a different result.

<sup>20</sup> See *Nationwide Banking and Branching and the Insurance Activities of National Banks: Hearings Before the Senate Committee on Banking, Housing, and Urban Affairs*, 103d Cong., 1st Sess. 272 (1993) (Response to Written Questions of Senator Roth from Andrew C. Hove, Jr.); (Response to Written Questions of Senator Roth from John P. LaWare), *id.* at pp. 280-81.

<sup>21</sup> 12 U.S.C. 1811 (note).

### Harmonization of the Applicable Law Clause for State Banks with the Usury Savings Clause

While the usury savings clause could conceivably be read to conflict with the language of the applicable law clause,<sup>22</sup> reference to the Riegle-Neal Act's legislative history allows the provisions to be harmonized and placed in proper context.<sup>23</sup>

In discussing the usury savings clause, the Conference Report states:

Section 111(3) specifically states that nothing in Title I affects sections (85) or (1831d). Accordingly, the amendments made by the (Riegle-Neal Act) that authorize insured depository institutions to branch interstate do not affect existing authorities with respect to any charges under section (85) or (1831d) imposed by national or state banks for loans or other extensions of credit made to borrowers outside the state where the bank or **branch making the loan or other extension of credit is located.**<sup>24</sup> (Emphasis added.)

Senator Roth explained this section of the Conference Report as follows:

The statement of the managers expressly refers to the potential of a "branch making the loan or other extension of credit \* \* \*". This language underscores the widespread congressional understanding that, in the context of nationwide interstate branching, it is the office of the bank or branch making the loan that determines which state law applies. The savings clause has been agreed to for the very purpose of addressing the FDIC's original concerns and making clear that after interstate branching, section (85) and section

(1831d) are applied on the basis of the branch making the loan.<sup>25</sup>

According to Senator Roth, for purposes of determining where a loan is "made" the managers of the Conference Committee recognized that in the new interstate banking environment banks with a branch or branches in other states could involve those branches in some but not all aspects of a loan transaction without the state law where the branch was located becoming applicable to the loan. In explaining the provisions Senator Roth distinguished "ministerial functions"<sup>26</sup> from other functions (subsequently referred to as "non-ministerial functions"<sup>27</sup>) related to the loan. To further explain the importance of these distinctions, in the context of the appropriate state law to apply to an interstate bank loan, Senator Roth indicated:

(It) is clear that the conferees intend that a bank in State A that approves a loan, extends the credit, and disburses the proceeds to a customer in State B, may apply the law of State A even if the bank has a branch or agent in State B and even if that branch or agent performed some ministerial functions such as providing credit card or loan applications or receiving payments.<sup>28</sup>

Senator Roth's comments, considered in the context of the applicable law clause for State banks, are indicative of congressional intent to recognize a parallel between existing law and the law that should be applied if a loan was made in a branch or branches of a single host state. Existing law already recognized the effect of home state law on the state laws of a borrower's residence when loans were made by national banks and State banks, respectively, to out-of-state borrowers. In the context of interstate branching, however, Congress intended to strike a balance between the application of host state and home state interest provisions by applying the same exportation principle previously recognized by the courts to loans made in a host state because the three non-ministerial functions occurred in a branch or branches of the host state.

Therefore, under the Riegle-Neal Act's usury savings clause the ability of an out-of-state State bank to export the interest charges that are permissible in

the home state are preserved, even if a branch or branches of the same bank is located in the same state as the borrower. If all of the non-ministerial functions involved in making the loan are performed by a branch or branches located in a host state, however, the host state's interest provisions should be applied to the loan.

### Non-Ministerial Functions Occur in Multiple States or Outside of Banking Offices

There are some situations that are not addressed by the Interstate Banking Statutes. These include loans where the three non-ministerial functions occur in different states or where some of the three non-ministerial functions occur in an office that is not considered to be the home office or branch of the bank (collectively, "banking offices"). The OCC recently addressed these issues in Interpretive Letter 822. With regard to loans where the three non-ministerial functions occur in banking offices located in different states and the loans cannot be said to have been "made" in a host state under the criteria discussed in the legislative history of the Riegle-Neal Act, the OCC concluded that the law of the home state could always be chosen to apply to the loans because such a result will avoid throwing "confusion" into the complex system of modern interstate banking by having no rate to apply and because the bank is always the lender, regardless of where certain functions occur.

The other situation addressed in Interpretive Letter 822 is where any of the non-ministerial functions occur in a host state but not in a branch. This could occur, for example, where a loan is approved in a back office but the proceeds of the loan are disbursed in a branch in a host state.

In these and similar situations, the OCC concluded that home state rates may be used. Alternatively, in those situations the interest rates permitted by the host state where a non-ministerial function occurs may be applied, if based on an assessment of all of the facts and circumstances, the loan has a clear nexus to the host state.<sup>29</sup>

<sup>29</sup> The non-ministerial functions, according to Senator Roth's discussion of the Conference Report, are factors to be considered in determining which state's law should be applied to a loan. See Roth statement, at S12789:

The rationale for this conference amendment (substituting loan servicing for disbursement of loan proceeds in the agency authority contained in section 101) is that the actual disbursement of proceeds—as distinguished from delivering previously disbursed funds to a customer—is so closely tied to the extension of credit that it is a factor in determining, in an interstate context, what State's law to apply. (Emphasis added.)

<sup>22</sup> As enacted by the Riegle-Neal Act, as indicated earlier, the applicable law clause for State banks made branches of out-of-state State banks subject to the laws of the host state. Also, as indicated earlier, concerns had been expressed over the impact that the application of host state laws regarding consumer protection might have on the ability of an out-of-state bank to export interest charges authorized by its home state to a state where the bank maintained a branch.

<sup>23</sup> In this respect, the analysis tracks that employed by the courts. See *Weinberger v. Hynson*, 412 U.S. 609, 631–32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose. (Citations omitted)."); *Dierksen v. Navistar Internat'l Transportation Corp.*, 912 F. Supp. 480, 486 (D. Kansas 1996) ("A primary rule of construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to an obvious purpose the court should follow the intent as expressed by the words used. (citation omitted). It is the duty of the court, insofar as practical, to reconcile different statutory provisions so as to make them consistent, harmonious and sensible. (Citation omitted). Allegedly repugnant statutes are to be read together and harmonized, if at all possible, to the end that both may be given force and effect. (Citation omitted).")

<sup>24</sup> H.R. Rep. No. 651, 103d Cong., 2d Sess., 63 (1994).

<sup>25</sup> 140 Cong. Rec. S12789 (daily ed. Sept. 13, 1994).

<sup>26</sup> These include providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing loan account information, and receiving payments.

<sup>27</sup> The non-ministerial functions are the decision to extend credit, the extension of credit itself, and the disbursement of the proceeds of the loan.

<sup>28</sup> 140 Cong. Rec. S12789–12790 (daily ed. Sept. 13, 1994).

I agree with the OCC Chief Counsel's analysis on these issues and her observations in Interpretive Letter 822 regarding the significance of an appropriate disclosure to customers that the interest to be charged on the loan is governed by applicable federal law and the law of the relevant state which will govern the transaction.

#### The Non-Ministerial Functions

The OCC identified three non-ministerial functions for national banks in Interpretive Letter No. 822 based upon the Riegle-Neal Act's legislative history. An inquiry is required to determine the location where each of the non-ministerial functions occur. Briefly stated, the OCC determined that "approval" (i.e., the decision to extend credit) occurs where the person is located who is charged with making the final judgment of approval or denial of credit, and the site of the final approval is the location where it is granted. "Disbursal" means actual physical disbursal of the proceeds of a loan, as opposed to the delivery of previously disbursed funds to the customer. Disbursal can occur in various ways, including delivery to the customer in person or crediting proceeds to the customer's account at a branch, but does not include delivering the funds to an escrow or title agent who, in turn, disburses them to the customer or for the customer's benefit. "Extension of credit" means the site from which the first communication of final approval of the loan occurs.

While the need for such inquiries as to non-ministerial functions may not be initially apparent, I believe that Senator Roth's distinction for purposes of the "disbursal" function between "the actual disbursal of proceeds" and "delivering previously disbursed funds to a customer" is indicative of the type of inquiry Congress intended in order to identify non-ministerial functions which effect where a loan is made for purposes of determining the state law to be applied to a loan. The same definitions should be equally applicable to State banks under section 1831d.

#### Conclusion

An Interstate State Bank can be "located" for purposes of section 1831d in the state in which it is chartered, as well as the states where the bank's out-of-state branch or branches are located. The Interstate Banking Statutes do not affect the ability of an Interstate State Bank to export interest rates on loans made to out-of-state borrowers from that bank's home state, even if the bank maintains a branch in the state where the borrower resides. If an out-of-state

branch or branches of an Interstate State Bank in a single host state performs all the non-ministerial functions (approval of an extension of credit, extension of the credit, and disbursal of loan proceeds to a customer) related to a loan, it "makes" the loan to the customer for purposes of the Interstate Banking Statutes and the loan should be governed by the usury provisions of the host state. If the three non-ministerial functions occur in different states or if some of the non-ministerial functions occur in an office that is not considered to be the home office or branch of the bank, then home state rates may be used. Alternatively, in those situations the interest rates permitted by the host state where a non-ministerial function occurs may be applied, if based on an assessment of all of the facts and circumstances, the loan has a clear nexus to the host state. To avoid uncertainty regarding which state's interest rates apply to a loan Interstate State Banks should make an appropriate disclosure to the customer that the interest to be charged on the loan is governed by applicable federal law and the law of the relevant state which will govern the transaction.

Authorized to be published in the **Federal Register** by Order of the Board of Directors dated at Washington, DC, this 9th day of May, 1998.

Federal Deposit Insurance Corporation,

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 98-13084 Filed 5-15-98; 8:45 am]

BILLING CODE 6714-01-P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 217-011317-003.

*Title:* PONL/BHP-IMTL Space Charter Agreement.

*Parties:* P&O Nedlloyd Limited ("PONL") BHP-IMTL.

*Synopsis:* The proposed Agreement modification (1) substitutes P&O Nedlloyd Limited for its commonly-

owned affiliate, P&O Nedlloyd B.V. (formerly named Nedlloyd Lijnen BV) as party to the Agreement; (2) changes the name of the Agreement to reflect the foregoing substitution; (3) deletes U.S. Atlantic and Gulf ports, as well as the ports in New Zealand, Chile, Peru, and Panama from the scope of the Agreement; and (4) makes other non-substantial changes to the Agreement.

Dated: May 12, 1998.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 98-13057 Filed 5-15-98; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1998.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Summit Bancorp, Inc.*, Medway, Massachusetts; to become a bank holding company by acquiring 100