



## Interest Charges

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TO: CHIEF FINANCIAL OFFICER

SUBJECT: *General Counsel Opinions on Interest Charges*

The Federal Deposit Insurance Corporation (FDIC) General Counsel has recently issued two opinions concerning interest charges by insured institutions. Both opinions, No. 10 and No. 11, have been published in the attached Federal Register notices.

General Counsel Opinion No. 10 concerns charges that constitute "interest" for purposes of section 27 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831d). Section 1831d establishes the maximum rates that insured state-chartered depository institutions and state-licensed insured branches (collectively, "State Banks") may charge their customers on most loans. The opinion concludes that the term "interest" for purposes of section 1831d includes those charges that a national bank is authorized to charge under section 85 of the National Bank Act, the statutory counterpart of section 1831d applicable to national banks.

General Counsel Opinion No. 11 provides guidance on the application of section 1831d to loans made by State Banks operating interstate branches (known as "Interstate State Banks"). The opinion concludes the following:

- An Interstate State Bank can be "located" for purposes of section 1831d in the state in which it is chartered (the "home" state), as well as the states where the bank's out-of-state branch or branches are located (the "host" states).
- The Riegle-Neal Banking and Branching Efficiency Act of 1994 and the Riegle-Neal Amendments Act of 1997 ("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 three of the non-ministerial functions (i.e., approval of an extension of credit, extension of the credit, and disbursement 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, the interest rates permitted by the host state where a non-ministerial function occurs may be applied if, based on an assessment of all facts and circumstances, the loan has a clear nexus to the host state.

- To avoid customer uncertainty about 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 that will govern the transaction.

For more information about General Counsel Opinions No. 10 and No. 11, please contact Rodney D. Ray, Counsel in the FDIC's Legal Division, at (202) 898-3556.

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Attachments:

[April 17, 1998 Federal Register, pages 19258-19259](#) and

[May 18, 1998 Federal Register, pages 27282-27286.](#)

Distribution: FDIC-Supervised Banks (Commercial and Savings)

NOTE: Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 801 17th Street, N.W., Room 100, Washington, D.C. 20434 (800-276-6003 or (703) 562-2200).