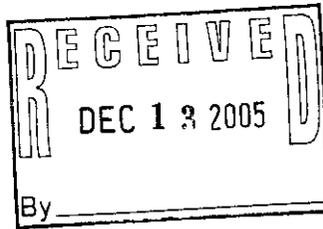


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December 12, 2005

Mr. Robert E. Feldman  
Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

RE: Proposed Rule: Interstate Banking; Federal Interest Rate Authority -RIN 3064-AC95

Dear Mr. Feldman:

I am writing on behalf of my client, BancorpSouth, to comment on the FDIC's proposed rule concerning interstate banking and the federal interest rate authority, published at 70 Fed. Reg. 60019 (October 14, 2005). BancorpSouth is a Mississippi state-chartered bank with 271 locations in six states. The proposed rule would have a significant impact on BancorpSouth and other state-chartered banks with interstate lending operations, and BancorpSouth is therefore vitally interested in the proposed rule and appreciates this opportunity to comment. BancorpSouth supports adoption of the proposed rule, but with modifications suggested below.

BancorpSouth strongly favors the codification of the FDIC General Counsel Opinion Letter No. 11 dated May 9, 1998 ("GC-11"). BancorpSouth and other state banks conducting lending operations interstate have relied upon GC-11 as guidance on the issue of interest rate exportation, and it is entirely appropriate that GC-11 be incorporated into a rule. However, BancorpSouth is concerned that the proposed rule does not fully incorporate the provisions of GC-11 and is concerned that adoption of the rule as presently proposed will have the unintended effect of placing state banks at a disadvantage which does not presently exist under GC-11.

The codification of GC-11 is undertaken in § 331.4 of the proposed rule. Section 331.4(a)(3) defines the three non-ministerial lending functions consistently with GC-11. However, § 331.4(c) of the proposed rule, dealing with which state's law controls where the non-ministerial functions occur in different states, is an incomplete statement of GC-11's discussion of this multistate issue.

The proposed rule at § 331.4(c) discusses three multistate scenarios and, with regard to the controlling interest law in each scenario, provides as follows:

- where all of the non-ministerial functions occur in the same state, the law of that state will control [§ 331.4(c)(1)].
- where the non-ministerial functions occur in branches in different host states or in any state where the bank does not maintain a branch, the law of the bank's home state may control [§ 331.4(c)(2)].
- where a non-ministerial function occurs in the host state and loan has a clear nexus to the host state, the law of the host state may control [§ 331.4(c)(3)].

The first and third of these provisions, (c)(1) and (c)(3), are harmonious with GC-11. The second, (c)(2), only partially reflects the meaning of GC-11, however. With regard to the common circumstance of non-ministerial functions occurring in different states, GC-11 refers to the two specific circumstances described in (c)(2) and goes on state that “[i]n these and *similar situations*, the OCC concluded that home state rates may be used” (63 Fed. Reg. at 27285, emphasis added). Use of home state rates is not intended by GC-11 to be limited only to the two situations mentioned but also to *similar* situations. This is underscored at the conclusion of GC-11 with the observation, “[i]f the three non-ministerial functions occur in different states . . . then home state rates may be used.” *Id.* at 27286. It is clear from GC-11, and has always been understood by banks following its guidance, that the two circumstances mentioned in GC-11 and incorporated into § 331.4(c)(2) of the proposed rule are *examples* only, and not an exhaustive list of circumstances of non-ministerial functions occurring in different states.

A typical situation encountered by BancorpSouth involves the origination of a loan and its disbursement in, for example, Arkansas, but with the approval of the loan occurring in the bank's home state of Mississippi. Such is an example of the three non-ministerial functions occurring in different states and one in which, pursuant to GC-11, Mississippi interest law can be applied. The proposed rule seems to change this and thus deprive a state bank like BancorpSouth from exporting its home state rate in this situation because this situation, while similar, does not fit squarely within GC-11's two illustrative examples. The proposed rule would erroneously codify the two examples mentioned in GC-11 as the *only* situations where a bank could export home state rate when the non-ministerial functions occur in different states.

For this reason, BancorpSouth urges that proposed § 331.4(c)(2) be amended to read “May be determined by reference to the laws of the home state of the state bank, where the non-ministerial functions occur in branches located in different host states, or any of the non-ministerial functions occur in the home state of the state bank, or any of the non-ministerial functions occur in a state where the state bank does not maintain a branch.”

BancorpSouth is likewise concerned about the use of the permissive “may” in subsections (c)(2) and (c)(3) of proposed § 331.4. The use of “may” of course means that alternatives are available in determining which state’s law will control. Under § 331.4(c)(2) and (c)(3) as proposed, it is possible to have a loan for which the non-ministerial functions occur in branches located in different host states [(c)(2)] and which, based on all of the relevant facts and circumstances, has a clear nexus to a particular host state [(c)(3)]. In that scenario, the proposed rule would justify the use of the bank’s home state rate or the rate of the “clear nexus” host state. The proposed rule does not provide who determines which law controls. It is vital for purposes of clarity in the application of the rule that there be no ambiguity on this point. BancorpSouth believes that GC-11 contemplates that where alternatives are available as to which state’s interest law will control, it is the bank’s prerogative to choose between the alternatives. To provide the clarity needed on this point, BancorpSouth urges that subsections (c)(2) and (c)(3) of § 331.4 of the proposed rule be modified to read, “May, at the option of the bank, be determined . . .”

Finally, in its notice of the proposed rulemaking, the FDIC invited comment as to whether § 331.4 should be expanded to require banks to disclose to borrowers which state’s interest rate law will govern the loan. BancorpSouth supports such disclosure. Without it, there might loom the same possible ambiguity mentioned above in connection with the use of the permissive “may” in subsections (c)(2) and (c)(3). Any such disclosure requirement, however, should be flexible enough to anticipate a variety of circumstances.

While under GC-11 a state bank is permitted to export its home rate where the non-ministerial functions occur in different states, it is not required to do so if, for example, the loan has a clear nexus to the host state, in which case the bank could opt to apply the host state’s interest law. From an operational standpoint, a bank having such an option would need flexibility in the manner in which it makes the disclosure of which option it has elected. For example, it is common for state banks to use separate standardized promissory note forms for each of the states in which they conduct lending activity (often provided by a loan documentation vendor). Such note forms typically provide as to governing law, for example, “This loan will be governed by the laws of the state of Louisiana and by federal law, including, but not limited to, federal law governing the maximum rate of interest.” Under GC-11, this language is sufficient to warrant application of Louisiana interest rate law if the loan has a clear nexus to that state. Alternatively, this language is likewise sufficient under GC-11 to permit a state bank outside of Louisiana to export its home state rate where one of the non-ministerial functions occurs in the home state. Either alternative may be elected without changing the standardized note form used by the bank.

While BancorpSouth supports disclosure of the applicable interest rate law, it supports a disclosure requirement that is flexible enough to permit banks to make the disclosure without the burden of revising existing standardized promissory note forms. This burden could be avoided by permitting a bank to make the disclosure in a document separate from the promissory note. Such flexibility would not prohibit a bank from making the disclosure in the note itself. However, a disclosure made

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in a separate document would probably be a more conspicuous disclosure than one made within the other terms of the promissory note. With regard to the timing of the disclosure, BancorpSouth believes that it should be made at the time the borrower becomes obligated on the loan.

BancorpSouth supports the adoption of the proposed rule with the clarifications, modifications and additions discussed above, all of which are essential to fully accomplishing the proposed rule's intended purposes. BancorpSouth greatly appreciates the opportunity provided by the FDIC to offer these comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read "L Alvis", written in a cursive style.

Les Alvis