



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

May 5, 2008

Interpretive Letter #1100
July 2008
12 USC 85

Dear [],

This is in response to your inquiry seeking confirmation that under the facts you describe an operating subsidiary of a national bank may originate loans and charge and export interest rates and fees, as authorized by 12 U.S.C. § 85 and the applicable law of the home state of the parent bank as applied to national banks by § 85. For the reasons described below, and consistent with our prior letters on this issue,¹ the operating subsidiary should impose and export interest rates and fees permitted by the home state of the parent bank without regard to usury laws of the state of residence of the borrowers under the same terms and conditions applicable to the parent bank.

You explain that the operating subsidiary conducts its operations through offices located in one or more states, but none are located in the home state of the parent bank.² You represent that the operating subsidiary is authorized under 12 C.F.R. § 5.34. As stated in the relevant OCC regulations --

Examination and supervision. An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank.³

¹ See, e.g., OCC Interpretive Letter 974, July 21, 2003, *reprinted in* [2003-2004 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-500; OCC Interpretive Letter 954, December 16, 2002, *reprinted in* [2003-2004 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-479; OCC Interpretive Letter 968, February 12, 2003, *reprinted in* [2003-2004 Transfer Binder] (CCH) ¶ 81-493 (each letter determining that an operating subsidiary of national bank could rely on section 85 to the same extent that the parent bank could rely on section 85).

² The “home state” of a bank is the state where its main office is located.

³ 12 C.F.R. § 5.34(e)(3).

Elsewhere, our regulations specify that “[s]tate laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank.”⁴ Thus, OCC regulations ensure that an operating subsidiary is subject to OCC examination and supervision and is subject to the same federal laws and standards that govern its parent bank, including any state laws and standards that are made applicable to the parent bank by federal law.⁵

One such law is section 85 governing the rate of interest and other fees constituting interest that a national bank may charge.⁶ Under section 85, the interest a national bank is authorized to charge is based on the laws of the state in which the bank is located.⁷ OCC regulations provide that:

A national bank located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state.⁸

This “most favored lender” status permits a national bank to contract with borrowers in any state for interest at the maximum rate permitted by the law of the state in which the national bank is located. Generally, that is the state in which the main office of the national bank is located, and the bank may impose interest without regard to the law of the state where the borrower resides.⁹

Under certain limited circumstances, however, national banks with branches in more than one state may be required to impose interest rates permitted by the law of a state in which they have a branch. That would happen in circumstances where three functions -- loan approval, communication of loan approval, and disbursement of loan proceeds -- all occur in a branch or branches in the same branch state.¹⁰ You have represented that neither approval of the loans nor communication of the decision to the borrower occur at or from any branch of the

⁴ 12 C.F.R. § 7.4006.

⁵ *See Watters v. Wachovia Bank, N.A.*, 167 L. Ed.2d. 389 (2007) (noting, among other things, that the OCC “treats national banks and their operating subsidiaries as a single economic enterprise” and “oversees both entities by reference to ‘business line,’ applying the same controls whether banking ‘activities are conducted directly or through an operating subsidiary’”).

⁶ Title 12 C.F.R. § 7.4001(a) sets forth standards for determining which fees constitute interest and provides examples.

⁷ 12 U.S.C. § 85.

⁸ 12 C.F.R. § 7.4001(b).

⁹ *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978).

¹⁰ OCC Interpretive Letter No. 822 (Feb. 17, 1998), *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-265. These three functions are referred to as the “nonministerial functions.”

parent bank.¹¹ Absent this set of circumstances, a national bank should impose rates permitted by the state where its main office is located.¹²

Accordingly, and based on the facts that you have presented, pursuant to 12 C.F.R. §§ 5.34(e)(3) and 7.4006, the interest rates and fees constituting interest that may be charged on loans made by an operating subsidiary are governed by section 85 to the same extent and in the same manner as section 85 applies to the parent bank.¹³ Thus, the interest rates and fees constituting interest that may be imposed by the operating subsidiary permissibly should be based on the usury laws of the parent bank's home state, even though the operating subsidiary itself has no offices in that home state.

I hope the foregoing is helpful in your analysis of your client's lending programs. Please do not hesitate to contact Jerry Edelman, Senior Counsel, Bank Activities and Structure, at (202) 874-5300 if you have any questions or if you need any additional information.

Sincerely,

signed

Eric Thompson
Director
Bank Activities and Structure

¹¹ You also have represented that none of the offices of the operating subsidiary would be branches of the parent bank since none would receive deposits, pay withdrawals or disburse loan proceeds in person to borrowers.

¹² *Id.* As an alternative, national banks may impose rates permitted by a branch state where at least one of the three nonministerial functions occurs in the branch state and the loan has a "clear nexus" to that state. *Id.* Section 85 also sets forth several alternative rates that may be charged by national banks and, therefore, their operating subsidiaries.

¹³ *See, supra*, fn. 1. This position was first expressed by the OCC in a 1979 letter. *See* OCC Interpretive Letter by John Shockey, Chief Counsel (May 18, 1979). *See also Moss v. Southtrust Mobile Services, Inc.*, No. CV-95-P-1647-W, 1995 U.S. Dist. LEXIS 21770 (N.D. Ala. Sept. 22, 1995) (court concluded, without analysis, that section 85 applied to the subsidiary in question pursuant to 12 C.F.R. § 5.34 because it was an operating subsidiary of a national bank).