

521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), Pub. L. 96-221, 94 Stat. 132 (1980). Section 27 was intended to give state-chartered banks the benefit of section 85 and purposefully engrafted, at several points, language from the NBA.<sup>5</sup> *Greenwood Trust Co. v. Commonwealth of Massachusetts*, 971 F.2d 818, 826 (1st Cir.), cert. denied, 506 U.S. 1052 (1993).

Because similar language and concepts appear in both statutes they frequently have been cited and discussed together in court opinions and construed in *pari materia*. See e.g., *Greenwood Trust*, 971 F.2d at 827; *Hill v. Chemical Bank*, 799 F. Supp. 948, 953 (D. Minn. 1992); *Stoorman v. Greenwood Trust Co.*, 908 P.2d 133, 135 (Colo.), cert. denied, 116 S.Ct. 2498 (1996); *Copeland v. MBNA America Bank, N.A.*, 907 P.2d 87, 93 (Colo.), cert. denied, 116 S.Ct. 2498 (1996); *Hunter v. Greenwood Trust Co.*, 272 N.J. Super. 526, 532-38, 640 A.2d 855 (N.J. Super. 1994), reinstated, 146 N.J. 65, 679 A.2d 652 (N.J. 1996). The FDIC's practice also has been to construe the two provisions similarly. See FDIC Advisory Opinion No. 81-3, February 3, 1981, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) P 81,006 (state-chartered banks have the same "most favored lender" status under section 27 as national banks have under section 85 of the NBA); FDIC Advisory Opinion No. 81-7, March 17, 1981, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) P 81,008 (state-chartered banks have the same right to export interest rates under section 27 as national banks have under section 85 of the NBA).

## II. Charges Constituting Interest

While neither section 85 nor section 27 defines what charges constitute "interest," court decisions have not limited the scope of the term solely to a state's numerical percentage rate, but have broadly construed the term to include various other types of credit charges. See e.g., *Smiley v. Citibank (South Dakota), N.A.*, 116 S.Ct. 1730, 1734 (1996) (deferring to the Office of the Comptroller of the Currency's (OCC) regulation interpreting "interest," for purposes of section 85, as including payments compensating a creditor for making a loan, extending a line of credit, or any default or breach by a borrower of a condition upon which credit was extended, but excluding other types of payments, such as,

payments to reimburse a creditor for loan processing fees, collateral insurance, or appraisal fees); *Greenwood Trust*, 971 F.2d at 824 (late payment fees and kindred charges may constitute "interest" under section 27); *Fisher v. First Nat'l Bank of Omaha*, 548 F.2d 255, 258-61 (8th Cir. 1977) (cash advance fees); *Watson v. First Union Nat'l Bank*, 837 F. Supp. 146, 150 (D.S.C. 1993) (overlimit fees); *Tikkanen v. Citibank (South Dakota) N.A.*, 801 F. Supp. 270, 278-79 (D. Minn. 1992) (late payment, over the limit fees, and similar charges); *Hill*, 799 F. Supp. at 954 (over the limit fees); *Stoorman*, 908 P.2d at 136 (late payment fees); *Copeland*, 907 P.2d at 94 (late payment fees); *Sherman v. Citibank (South Dakota), N.A.*, 272 N.J. Super. 435, 640 A.2d 325 (N.J. Super. 1994), reinstated, 146 N.J. 65, 679 A.2d 652 (N.J. 1996) (late payment fees); *Hunter*, 272 N.J. Super. at 537 (late payment fees).

## III. Other Agency Interpretations

The OCC has defined "interest" for purposes of the NBA by interpretive ruling as follows: "The term 'interest' as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports." 12 CFR 7.4001(a) (1997). Virtually the same definition also has been adopted by the Office of Thrift Supervision in connection with section 4(g) of the HOLA for savings associations.<sup>6</sup> See 12 CFR 560.110 (1997).

Although the OCC's interpretive ruling was only recently published in the Code of Federal Regulations, the ruling is consistent with the OCC's

earlier legal interpretation of the term<sup>7</sup> and the United States Supreme Court has determined that it constitutes a reasonable interpretation of the statute. *Smiley*, 116 S.Ct. at 1736.

## Conclusion

Section 27 and section 85 of the NBA have been and should be, in the Legal Division's opinion, construed in *pari materia* because section 27 is patterned after section 85 and the provisions embody similar terms and concepts. Congress also clearly intended to establish competitive equality between state-chartered lending institutions and national banks with regard to interest rates by enacting section 27. In addition, the OCC and OTS have adopted similar regulatory definitions of "interest" for purposes of section 85 of the NBA and section 4(g) of HOLA, respectively. Therefore, it is the Legal Division's opinion that the term "interest", for purposes of section 27, includes those charges that a national bank is authorized to charge under section 85 of the NBA. See 12 CFR 7.4001(a) (1997).

Authorized to be published in the **Federal Register** by Order of the Board of Directors, dated at Washington, D.C., this 24th day of March, 1998.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 98-10181 Filed 4-16-98; 8:45 am]

BILLING CODE 6714-01-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Tuesday, April 14, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Julie Williams (Acting Comptroller of the Currency), concurred by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did

<sup>5</sup> See 126 Cong. Rec. 6900 (1980) (statement of Sen. Proxmire); 126 Cong. Rec. 6907 (1980) (statement of Sen. Bumpers).

<sup>6</sup> The statutory language contained in section 4(g) of HOLA was enacted in section 522 of DIDMCA and was originally codified as section 414 of the National Housing Act (NHA) (12 U.S.C. 1730g (a)). The language was later transferred from the NHA to section 4(g) of HOLA by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183, 282 (1989).

<sup>7</sup> See, OCC Interpretive Letter No. 670, February 17, 1995, reprinted in [1994-1995 Decisions] Fed. Banking L. Rep. (CCH) P 83618.

not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: April 14, 1998.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 98-10321 Filed 4-15-98; 12:05 pm]

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## FEDERAL ELECTION COMMISSION

[Notice 1998-9]

### Filing Dates for the New Mexico Special Election

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special elections.

**SUMMARY:** New Mexico has scheduled a special election on June 23, 1998, to fill the U.S. House seat in the First Congressional District held by the late Congressman Steve Schiff.

Committees required to file reports in connection with the Special General Election on June 23 should file a 12-day Pre-General Election Report on June 11 and a 30-day Post-General Report on July 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 694-1100; Toll Free (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** All principal campaign committees of candidates who participate in the New Mexico Special General Election and all other political committees not filing monthly which support candidates in the Special Election shall file a 12-day Pre-General Report on June 11, 1998, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through June 3, 1998; and a Post-General Report on July 23, 1998, with coverage dates from June 4 through July 13, 1998.

### CALENDAR OF REPORTING DATES FOR NEW MEXICO SPECIAL ELECTION FOR COMMITTEES INVOLVED IN THE SPECIAL GENERAL (6/23/98)

| Report               | Close of books * | Reg./cert. mailing date ** | Filing date |
|----------------------|------------------|----------------------------|-------------|
| Pre-General .....    | 06/03/98         | 06/08/98                   | 06/11/98    |
| July Quarterly ..... | (1)              | (1)                        | (1)         |
| Post-General .....   | 07/13/98         | 07/23/98                   | 07/23/98    |

<sup>1</sup> Waived.

\* The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

\*\* Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: April 13, 1998.

**Joan D. Aikens,**

*Chairman, Federal Election Commission.*

[FR Doc. 98-10198 Filed 4-15-98; 8:45 am]

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1209-DR]

### Georgia; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Georgia, (FEMA-1209-DR), dated March 11, 1998, and related determinations.

**EFFECTIVE DATE:** April 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Georgia, is hereby amended to include

the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Gordon County for Individual Assistance (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98-10214 Filed 4-16-98; 8:45 am]

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1209-DR]

### Georgia; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Georgia, (FEMA-1209-DR), dated March 11, 1998, and related determinations.

**EFFECTIVE DATE:** April 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Butts, Chatham, Muscogee and Richmond Counties for Individual Assistance.