FEDERAL DEPOSIT INSURANCE CORPORATION
OFFICE OF THE COMPTROLLER OF THE CURRENCY
OFFICE OF THRIFT SUPERVISION
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Interpretive Letter #1083
June 2007
12 USC 1828(c)

May 3, 2007

Re: Applicability of the Bank Merger Act to the Acquisition of Certain Credit Card Portfolios

Dear [ ]:

This is in response to your inquiry regarding the applicability of the Bank Merger Act, 12 U.S.C. § 1828(c), to certain transactions in which an insured depository Institution acquires a portfolio of credit card accounts from another insured depository institution.

The Bank Merger Act provides, in relevant part:

> No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency . . .

12 U.S.C. § 1828(c)(2).

You inquired whether the Bank Merger Act is applicable to a transaction in which an insured depository institution acquires credit card accounts from another insured depository institution that include credit balances. In particular, you asked whether the acquisition of a credit card portfolio that contains some credit balances, no matter how small, is subject to the Bank Merger Act because of the clause in section 1828(c)(2) that

applies the Act to institutions that "assume liability to pay any deposits." Your inquiry does not involve a transaction that is a merger or consolidation or a transaction in which the acquiring institution is acquiring all or substantially all of the assets of the selling institution. Such transactions are subject to the Bank Merger Act under the other provisions of section 1828(c)(2). You raise the issue because credit balances generally are considered "deposits" for purposes of the Federal Deposit Insurance Act.[1]

A "credit balance" in a credit card account represents a positive balance on the customer's account. Credit balances arise when a customer's payment and other credits posted to the account (such as a credit from the retailer when goods are returned to a store) are higher than the total charges incurred on the account during the current or a previous billing cycle. These balances typically arise from the timing of payments involved in incurring and then paying off credit card obligations, are not solicited, and are not advertised as a separate service. The balances do not represent a separate relationship between the customer and the depository institution that could be entered into independently of, or transferred or assumed separately from, the credit card account. The balances are part of the credit card accounts, and their transfer is a normal and inherent part of the acquisition of the related credit card portfolio.

We do not believe that the presence of a de minimis amount of credit balances in a credit card portfolio causes the acquisition of that portfolio to be subject to the Bank Merger Act under the assumption of deposit liabilities provision in section 1828(c)(2), provided that the credit balances represent less than 1 percent of the value of the credit card receivables transferred and the selling institution is in compliance with section 165 of the Truth in Lending Act.[2] This provision requires institutions to refund any credit balances promptly upon request of the customer and to take all necessary and appropriate steps to refund any credit balances within six months. The selling institution also must not have solicited or otherwise advertised the availability of credit balances with respect to the acquired credit card accounts. In addition, the terms of the transferred credit card accounts may not permit customers to transfer their credit balances to a transaction account at the institution or an affiliate or allow customers to withdraw their credit balances by check or similar means for payment to third parties.

This opinion is limited to the acquisition of a credit card portfolio under the circumstances described above and does not cover other situations, including situations

[1] See 12 U.S.C. § 1813(*l*).
[2] See 15 U.S.C. § 1666d.

when the credit balances being transferred are connected with any account that is accessible by debit card, is directly or indirectly linked to a stored value card, or has similar features.

We hope this response addresses your concerns.

Sincerely,

/s/
Julie L. Williams
First Senior Deputy Comptroller
And Chief Counsel
Comptroller of the Currency

/s/
Sara A. Kelsey
General Counsel
Federal Deposit
Insurance Corporation

/s/
Scott G. Alvarez
General Counsel
Board of Governors of the
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/s/
John Bowman
Chief Counsel
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