



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ
GENERAL COUNSEL

May 22, 2006

Douglas H. Jones, Esq.
Acting General Counsel
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Dear Mr. Jones:

This is in response to your letter dated February 13, 2006, requesting clarification of the application of the Board's Regulation O (12 CFR part 215) to credit cards issued to bank insiders for the bank's business purposes. Specifically, you have asked whether and under what circumstances an insider's use of a bank-owned credit card would be deemed an extension of credit by the bank to the insider for purposes of Regulation O.

You have indicated that insiders of a bank often use a bank-owned credit card to purchase goods and services for the bank's business purposes. A bank-owned credit card is a credit card issued by a third-party financial institution to a bank to enable the bank (through its employees) to finance the purchase of goods and services for the bank's business. I understand that a bank that provides a bank-owned credit card to its employees typically forbids or discourages use of the card by employees for their personal purposes and that an employee who uses the card for personal purposes is obligated to promptly reimburse the bank. I also understand that the bank is liable to the card-issuing institution for all extensions of credit made under the card (whether for the bank's business purposes or for an employee's personal purposes).¹

Although section 215.3(a) of Regulation O defines an extension of credit broadly to include "a making or renewal of a loan, a granting of a line of credit, or an extending of credit in any manner whatsoever," the rule also provides several important exceptions to the definition that are relevant to your inquiry. Section 215.3(b)(1) of Regulation O excludes from the definition of extension of credit any advance by a bank to an insider for the payment of authorized or other expenses incurred or to be incurred

¹ I also understand that some banks directly issue credit cards to their employees to enable the employees to finance the purchase of goods and services for the bank's business ("bank-issued credit cards"). The principles set forth in this letter with regard to bank-owned credit cards also would apply to bank-issued credit cards.

on behalf of the bank. Section 215.3(b)(5) of Regulation O excludes from the definition of extension of credit indebtedness of up to \$15,000 incurred by an insider with a bank under an ordinary credit card.

In light of these provisions of the regulation and the purposes of the insider lending restrictions in the Federal Reserve Act, it is my opinion that a bank does not make an extension of credit to an insider for purposes of Regulation O at the time of issuance of a bank-owned credit card to the insider (regardless of whether the line of credit associated with the card is greater than \$15,000). In addition, a bank does not extend credit to an insider for the purposes of Regulation O when the insider uses the card to purchase goods or services for the bank's business purposes. When an insider uses the card to purchase goods or services for the insider's personal purposes, however, the bank may be making an extension of credit to the insider. An extension of credit would occur for the purposes of Regulation O if (and to the extent that) the amount of outstanding personal charges made to the card, when aggregated with all other indebtedness of the insider that qualifies for the credit card exception in section 215.3(b)(5) of Regulation O, exceeds \$15,000.

You also ask whether incidental personal expenses charged by an insider to a bank-owned credit card are per se violations of the market terms requirement in section 215.4(a) of Regulation O because non-insiders do not have access to this form of credit from the bank. Section 215.4(a) requires extensions of credit by a bank to its insiders to (i) be on substantially the same terms (including interest rates and collateral) as, and subject to credit underwriting standards that are not less stringent than, those prevailing at the time for comparable transactions with non-insiders; and (ii) not involve more than the normal risk of repayment or other features unfavorable to the bank.

A bank may be able to satisfy the market terms requirement, however, if the bank approves an insider for use of a bank-owned credit card only if the insider meets the bank's normal credit underwriting standards and the card does not have preferential terms (or the card does not have preferential terms in connection with uses of the card for personal purposes). Nonetheless, use of a bank-owned credit card by an insider for personal purposes may violate the market terms requirement of Regulation O if the card carries a lower interest rate or permits a longer repayment period than comparable consumer credit offered by the bank.

This opinion applies only to the specific issues and circumstances described above and does not address any other issues or circumstances. Please do not hesitate to call me if you have any additional questions concerning this matter.

Sincerely,