Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #782
June 1997
12 U.S. C. 85

May 21, 1997

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Dear [ ]:

This is in response to your inquiry of April 4, 1997, supplemented by information provided on May 9, 1997, concerning the use of interest rates permitted by the state where an interstate national bank (the Bank) has branches (State A) in connection with credit card loans to the Bank's credit card holders. The Bank initially became an interstate bank as a result of a reorganization involving two affiliated banks with main offices previously located in States A and B.

Prior to the merger, the target bank, which previously had its main office in State A, had made credit card loans using rates permitted by State A. Your question concerns the impact of the merger on the Bank's continuing ability, following the merger, to use interest rates permitted by the laws of State A with respect to extensions of credit to credit card holders who reside in State B, the Bank's current main office state, as well as to credit card holders who reside in any other states including states where the bank has or will have branches (collectively referred to as State C).

Thus, the Bank seeks to continue to use the interest rates, as that term is used within the meaning of 12 U.S.C. § 85 and OCC regulations,[1] permitted by the state where the bank has branches, State A, in connection with credit card loans to out-of-state customers. To avoid customer confusion regarding the usury laws that govern credit card agreements, the Bank has represented that it will make clear to each borrower that the interest applicable to extensions of credit under the credit card program are governed by applicable Federal and State A law.

[1] See 61 Fed. Reg. 4849, 4869 (Feb. 9, 1996) (to be codified at 12 C.F.R. § 7.4001).

For the reasons set forth below, we find that the Bank may use the interest rates permitted by the law of State A with respect to extensions of credit made to holders of credit cards issued by the Bank regardless of where they reside.

I. Background

A. Structure of the Bank's credit card program

As mentioned, the credit card operations now conducted by the Bank were conducted by the target bank from its main office state, State A, prior to the reorganization. The credit card department has historically operated from a branch location of the target bank in State A and from a non-branch "back-room office" support center also located in State A.[2] In keeping with modern practices, certain specialized functions are outsourced to an independent service provider located in another state but the service provider's operations are directed by the Bank's credit card personnel located at the Bank in State A.[3]

B. Credit card lending activities undertaken in State A

According to your description, the Bank conducts virtually all of its credit card operations in and from Bank facilities in State A. You represent that key strategic planning and development functions relating to the Bank's credit card program take place in State A. These include:

- developing credit and other policies regarding product pricing and terms; and
- developing marketing plans and strategies, product plans and product changes, as well as the customer communications to implement them.

In addition, the Bank conducts virtually all of its credit card operations in and from Bank facilities in State A. These functions include:

- receiving credit card applications mailed by applicants;
- approving or denying of the application by the Bank's underwriters following the receipt of relevant information. If the Bank's underwriters determine to approve an application, the Bank directs the service provider to establish the

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[2] Because the Bank's credit card department is simply a business unit within the Bank, for purposes of clarity, this opinion recognizes that its activities, operations, functions and facilities are those of the Bank.

[3] As the OCC has noted, the performance of functions, pursuant to a bank's direction, by a nonaffiliated vendor, which may be located anywhere, is irrelevant for purposes of section 85. See OCC Interpretive Letter No. 776 (March 18, 1997) at fns. 5, 8. See also, e.g., Cades v. H.&R. Block, 43 F.3d 869, 874 (4th Cir. 1994), cert. denied, 115 S. Ct. 2247 (1995).

account on its system and mail the credit card(s) to customer(s). If the Bank's underwriters deny a credit card application, a letter declining to provide a card is sent to the applicant by the underwriters;

- extending credit to the cardholder by honoring merchant sales drafts while concomitantly charging the cardholder's account;[4]

- receiving customer inquiries both by mail and by telephone and handling billing errors by Customer Service representatives;

- reviewing delinquent accounts by employees who then make appropriate contacts and take appropriate action; and

- receiving reports of lost or stolen credit cards which are forwarded to the attention of security personnel who may act to block the account and initiate follow-up action regarding fraudulent activities.[5]

C. Credit card activities undertaken at the branches

The role of the Bank's branches with respect to the credit card program is limited. Branches make available credit card applications to customers and, on rare occasions when an application is returned to the branch, the branch may forward the application to the Bank in State A through the Bank's interoffice mail system. In addition, the branches refer inquiries from potential and current cardholders to the Bank facilities in State A. Finally, while the Bank does not encourage the repayment of credit card balances at branch sites, on the infrequent occasions when payments are made there, the branch mails the payment to an independent service provider in another state.

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[4] Receivables are booked through an on-line system by the processor to the Bank in State A on a daily basis. The processor deposits sales drafts generated through use of the credit cards to the credit of the merchant's deposit account and also generates a corresponding charge to be transmitted to the appropriate cardholder's account.

[5] The Bank also offers credit cards through its agent Card program, pursuant to which correspondent community banks may arrange through the Bank to have their names embossed on credit cards but otherwise have no responsibility for the program. Cards issued in this matter are handled similarly to the Bank's customary credit card program and the program is administered, as described, from State A. While the community banks make applications available to their customers, the completed applications are mailed to the Bank in State A, customer inquiries are referred by the community bank to the Bank in State A, and payments are mailed to the independent service provider.

II. Discussion

A. Applicability of the branch state's rates following the reorganization

It is undisputed that prior to the reorganization of the State A bank into the Bank, that the State A bank could charge customers in its state and elsewhere interest rates on its credit card loans in accordance with the rates permitted by the law of State A. See Marquette Nat'l Bank v. First of Omaha Service Corp., 439 U.S. 299 (1978).[6] You have asked, however, whether following the reorganization, resulting in State B replacing State A as the main office state of the bank providing credit while State A continues to be the site of bank branches and credit card operations, State A's rates can still be utilized if the Bank continues the credit card lending procedures, described above, that were utilized prior to the reorganization.

1. Statutory requirements and OCC precedent

Title 12 U.S.C. § 85 provides, in part, that a national bank "may . . . charge on any loan . . . interest at the rate allowed by the laws of the State . . . where the bank is located."

As the OCC previously has recognized, for purposes of section 85, a national bank is "located" in any state in which it has its main office or a branch office. See OCC Interpretive Letter No. 686, September 11, 1995, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-001.[7] Having determined that a bank may be located in more than one state for purposes of section 85, the OCC then addressed the question of whether the particular bank could charge interest under the law of a particular state in which it had a branch with respect to certain loans made by the bank to residents of various states. The OCC concluded that, under the facts presented, there was a clear nexus between the branch and the loan, permitting the bank to charge rates permissible under the laws of the state where the branch was located. See also OCC Interpretive Letter No. 707, n. 9, January 31, 1996, reprinted in (1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-022. The OCC specifically stated that because of the particular facts presented, it was not necessary at that time to address other theories, or facts other than those posed, which may permit a bank to charge rates permitted by the law of a particular state. In Letter No. 686 we stated that "this letter does not address whether factual circumstances, other than those posed by the Bank, would establish a nexus" and also noted that an Office of Thrift Supervision opinion "addresses issues relating to exportation of the home state rate not raised in your inquiry . . . we are not addressing those issues in this response . . . ." In addition, Letter No. 776, which addressed the use of rates permitted by the main office state, specifically stated that "because of the conclusion that we reach under the facts presented we do not at this time address other

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[6] For a more complete discussion of this principal, see Letter No. 776 at Part II.A.

[7] There is no need in this letter to reiterate the full analysis set forth Letter No. 686 regarding the location of a bank for purposes of section 85. That analysis is summarized where necessary and fully incorporated into and relied upon in this letter.

theories which may permit the Bank to charge rates permitted by the main office state." See Letter No. 686 at fns. 7 and 8 and Letter No. 776 at fn. 16. Likewise, the facts that you have described, involving use of rates permitted by a branch state which has a clear nexus to the credit card loans, make it unnecessary to explore other theories at this time including theories that may permit use of main office state rates which are in no way implicated by your inquiry or this response.

Consequently, we conclude, under the facts presented, that the Bank may continue, under section 85, to use the interest rates permitted by State A.

2. Impact of the Riegle-Neal Act

We further note that this interpretation is consistent with the understanding of Congress with respect to the applicability of section 85 to loans made by interstate banks following the adoption of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the Riegle-Neal Act) (which for the first time paved the way for general interstate branching by national banks), Congress provided in section 111 (the "usury savings clause") that:

> No provision of this title and no amendment made by this title to any other provision of law shall be construed as affecting in any way--
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> (3) the applicability of [section 85] or [the usury provisions] of the Federal Deposit Insurance Act.

Consistent with the plain language of the usury savings clause that section 85 is to be interpreted without regard to the legal impact of any of the provisions of the Riegle-Neal Act, the Conference Report stated that the Riegle-Neal Act:

> [does] not affect existing authorities with respect to any charges under [section 85] . . . imposed by national banks . . . for loans or other extensions of credit made to borrowers outside the state where the bank or branch making the loan or other extension of credit is located.

See H.R. Rep., No. 651, 103d Cong., 2d Sess., at 63 (1994).[8] Sen. Roth, the sponsor of this provision, clearly stated the intent underlying the usury savings clause to "preserve the efficiency of uniformity from the credit-provider's viewpoint, notwithstanding formal or structural changes that may occur through mergers within a bank holding company . . . ." See

[8] Courts have recognized that "Committee Reports represent the most persuasive indicia of congressional intent" and "are powerful evidence of legislative purpose." See 2A Sutherland, Statutes and Statutory Construction. § 48.06 (5th ed. 1992 & Supp. 1996).

140 Cong. Rec. S12789 (daily ed. Sept. 13, 1994).[9] Significantly, the "efficiency of uniformity" embedded in section 85 also has been judicially recognized. See Marquette at p. 312 (determining that the location of a national bank for purposes of section 85 did not depend on the state of residency of a borrower).[10] The conclusion we reach in this letter is wholly consistent with this underlying Congressional purpose and the language of Marquette. By enabling the target bank, following its transformation to a branch as a result of a reorganization, to continue to conduct credit card operations in the manner that it did prior to the reorganization and rely on the law of the state from which it conducts those credit card operations, preserves this "efficiency of uniformity" despite the impact of the structural changes.

III. Conclusion

For the foregoing reasons, based on the facts described herein, we agree that the Bank may charge interest rates permitted by the law of the branch state -- State A -- to credit card customers no matter where they may reside.

Sincerely,

/s/

Julie L. Williams
Chief Counsel

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[9] Likewise, as sponsor of the provision, courts recognize that Sen. Roth's views may provide a "weighty gloss" on the meaning of legislation. See, e.g., Galvin v. U.L. Press, 347 U.S. 522, 527 (1954).

[10] As the Supreme Court stated:

> If the location of the bank were to depend on the whereabouts of each credit-card transaction, the meaning of the term "located" would be so stretched as to throw into confusion the complex system of modern interstate banking. A national bank could never be certain whether its contacts with residents of foreign states were sufficient to alter its location for purposes of § 85. We do not choose to invite these difficulties by rendering so elastic the term "located."