



# Office of the Comptroller of the Currency

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## Interpretive Letter #740

*Published in Interpretations and Actions September 1996*

### 12 C.F.R. 2

August 19, 1996

[ ]

Re: [ ] ("Bank")

Dear [ ]:

This acknowledges our receipt of your letter to Leslie Linville, dated April 15, 1996. Your letter has been forwarded to the OCC's Washington office for response. You raise the following three issues concerning the application of 12 C.F.R. 2.4 - the OCC's regulation governing bonus and incentive plans for employees that sell credit life insurance: (1) whether "salary" as used in 12 C.F.R. 2.4 includes an officer's base salary, bonuses, director's fees and/or any other compensation paid by the Bank to the officer; (2) whether the payment of bonuses for credit life insurance sales under 12 C.F.R. 2.4 may be based on salary received by the recipient in a calendar year; and (3) whether the salary for the Bank's chief executive officer, who makes loans, must be included in averaging the salaries of loan officers that participate in the Bank's bonus or incentive plan as provided at 12 C.F.R. 2.4?

Twelve C.F.R. 2.4 (1995) provides that

"bank employees and officers may participate in a bonus or incentive plan under which payments based on credit life insurance sales are made in cash or in kind out of the bank's funds not more frequently than quarterly and in an amount not exceeding in any one year 5 percent of the recipient's annual salary. Alternatively, bonuses paid to any one individual during the year for credit life sales may not exceed 5 percent of the average salary for all loan officers participating in the plan and may not be paid more frequently than quarterly." <NOTE: As you may be aware, on September 13, 1995, the OCC published in the Federal Register the attached proposal to revise and update 12 C.F.R. Part 2. Accordingly, please be advised that 12 C.F.R. 2.4 may be subject to revision.>

### 1. "Salary" under 12 C.F.R. 2.4

In the OCC's final revisions to 12 C.F.R. Part 2 in 1982, the OCC stated that it should be left to bank management to decide whether the term "salary" as used in section 2.4 was meant to refer to the employee's total compensation for the year, i.e., salary plus bonuses and incentives not related to credit life insurance sales, or whether "salary" is meant to refer solely to an employee's base salary. 47 FR 31376 (1982). Please be advised that the OCC has not changed its position on this issue.<NOTE:The OCC's proposal to revise and update 12 C.F.R. Part 2 does not affect the use of the term "salary" as used in 12 C.F.R. 2.4. Accordingly, the question of whether "salary" as used in 12 C.F.R. 2.4 includes an officer's base salary, bonuses, director's fee and/or any other compensation paid by the Bank must be determined by the Bank's management.

## **2. The Annual Amount of Bonuses Paid under 12 C.F.R. 2.4**

Section 2.4 does not specify whether the payment of bonuses for credit life insurance sales under 12 C.F.R. 2.4 may be based on salary received by the recipient in a calendar year, a fiscal year, or any 12-month period. As discussed above, the OCC has stated that it is bank management's responsibility to decide whether the term "salary", as used in section 2.4, includes an employee's total compensation for the year. Consistent with this approach, Bank management should determine the time period used to calculate the Bank employee's salary and bonuses for credit life insurance sales under 12 C.F.R. 2.4.

## **3. The Inclusion of the CEO's Salary**

Twelve C.F.R. 2.4 states that "bonuses paid. . .for credit life sales may not exceed 5 percent of the average salary for all loan officers participating in the plan. . . ." Accordingly, if the CEO is a loan officer and the CEO participates in the bonus plan under which payments based on credit life insurance sales are made, then the CEO's salary must be included in averaging the salaries of loan officers that participate in the Bank's bonus or incentive plan.

The Bank's policies and procedures for all the requirements of 12 C.F.R. Part 2 should be formalized in the Bank's written policy concerning its credit life insurance bonus and incentive plan. Before the Bank implements the written policy, the Bank may want to discuss the policy with the appropriate OCC examining staff assigned to the Bank.

We trust that the above will provide some guidance in this area.

Very truly yours,

/s/  
Asa L. Chamberlayne  
Senior Attorney  
Securities and Corporate Practices Division