



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

July 19, 2004

Interpretive Letter #1008
October 2004
12 USC 2901

Dear []:

This responds to your inquiry about whether the OCC would consider a bank's investment in separate-account bank owned life insurance (BOLI) to be a qualified investment under the Community Reinvestment Act (CRA). [*Division*], a division of [] Bank National Association, together with an insurance partner, is contemplating offering such a CRA investment option as one of the investment options in separate account BOLI it provides where the separate BOLI account would be comprised solely of investments intended to be qualified under the CRA.

When a bank purchases separate-account BOLI, the premium paid by the bank at the time the policy is purchased is not invested in the general account of a life insurance company but, instead, in a distinct account comprised of premiums from several bank-policyholders. In this case, the BOLI-CRA separate account would be offered to bank-policyholders that wished to employ their BOLI premium dollars to advance the goals of the CRA, rather than investing those dollars in other investment options. The funds in this CRA separate account would be used to purchase and hold distinct investments that correspond to assessment area targets of each bank-policyholder. All such investments would then be pooled in the separate account in a mutual fund-like manner, and the return to each bank-policyholder would be based on the overall return of the portfolio.

It is important to stress that, in the first instance, any national bank that wants to purchase BOLI offered through [*Division*] must comply with all applicable legal requirements and supervisory guidance concerning purchase of BOLI, including OCC Bulletin 2000-23, "Bank Purchases of Life Insurance," (July 20, 2000). Among other things, the bank must:

- Purchase the BOLI for a purpose that the OCC has found to be permissible under 12 U.S.C. §24 (Seventh);
- Purchase an amount of insurance that is not excessive and is appropriate for the bank's needs;

- Perform a thorough pre-purchase analysis; and
- Perform ongoing management of the supervisory risks involved.

We have held a number of discussions with our fellow federal bank and thrift regulators to consider how arrangements of the type you describe would be treated under the interagency CRA regulations. The OCC has concluded, and the other agencies are in agreement with our position and yours, that a bank's investment in the BOLI-CRA separate account would be a qualified investment. The primary basis for our opinion is found in the interagency CRA guidance,¹ which states:

[T]he direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between "direct" and "indirect" investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s).

Therefore, assuming that the bank complies with the requirements applicable to the purchase of BOLI, an investment held in a BOLI-CRA separate account would be a qualified investment for purposes of the bank's CRA performance, provided that the investment has a primary purpose of community development and benefits the bank's assessment area(s).

I greatly appreciate your patience during our interagency consultation process. If you have further questions, please contact me at (202) 874-5750.

Sincerely,

/s/ Michael S. Bylsma

Michael S. Bylsma
Director
Community and Consumer Law Division

¹ "Interagency Questions and Answers Regarding Community Reinvestments," 66 Fed. Reg. 36620, 36635 (July 12, 2001) (Q&A § __.23(a)-1).