



---

Comptroller of the Currency  
Administrator of National Banks

---

Washington, DC 20219

April 15, 2011

**Interpretive Letter #1131**  
**April 2011**

Re: Disposal of Real Property Acquired for Debts Previously Contracted (“DPC”)

Dear [ ]:

This letter responds to your request for a legal opinion addressing a proposal by [ ] (“Bank”), to dispose of a parcel of DPC real estate. For the reasons discussed below, we believe the proposal constitutes a permissible means of disposal of DPC real estate under 12 C.F.R. Part 34.

The Bank recently acquired a Low-Income Housing Tax Credit (“LIHTC”) development project (“DPC Property”) by deed in lieu of foreclosure. The DPC Property is a multifamily low income housing development located in [ *state* ]. While the Bank currently holds the parcel pursuant to its DPC authority, the investment in the DPC Property also would be a permissible public welfare investment pursuant to 12 U.S.C. § 24 (Eleventh) and 12 C.F.R. § 24.3 because the investment primarily benefits low- and moderate income individuals.

The Bank proposes to dispose of the DPC Property by transferring the property to its wholly-owned community development corporation (“CDC”) subsidiary. To accomplish this transfer, the CDC subsidiary would establish a limited partnership. The Bank would transfer title to the DPC Property to the limited partnership, which would complete development of the project. The CDC subsidiary would be a limited partner with 99.99% of the equity interest. An unrelated third-party would serve as general partner and would own a 0.005% equity interest, and an unrelated special limited partner would own the remaining 0.005% equity interest. This structure is consistent with the CDC subsidiary’s other LIHTC investments.

National banks are permitted to hold DPC real estate but are generally required under 12 U.S.C. § 29 to dispose of such real estate within five years. Under 12 C.F.R. § 34.83(a)(2), one way by which a national bank may dispose of DPC real estate is “by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate.” Here, the phrase

“business of the subsidiary or affiliate” means any activity that is permissible for the subsidiary or affiliate to conduct. The CDC subsidiary is authorized, pursuant to 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24, to invest in certain real estate to promote the public welfare. In other words, the business of the CDC subsidiary is to make public welfare investments, such as investments in the DPC Property.<sup>1</sup> The transfer of the DPC Property to the Bank’s CDC subsidiary, through the CDC subsidiary’s 99.99% equity interest in the limited partnership, is for the use in the business of the CDC subsidiary. Therefore, the transfer constitutes a permissible means by which the Bank may comply with the requirement in 12 U.S.C. § 29 to dispose of such DPC real estate within five years.<sup>2</sup>

Our conclusions herein are specifically based on the Bank’s representations and written submissions describing the facts and circumstances of the subject transaction, and any change in facts or circumstances could result in a different conclusion.<sup>3</sup> If you have any questions concerning this letter, please contact Steven Key, Special Counsel, at (202) 874-5300, or Laura Santos, Attorney, at (312) 360-8805.

Sincerely,

*Julie L. Williams*

Julie L. Williams  
First Senior Deputy Comptroller  
and Chief Counsel

---

<sup>1</sup> The Bank represents that the CDC subsidiary may acquire title to the DPC property under Part 24. Section 24.5(a)(6)(i) requires all public welfare investments involving property carried on a bank’s books as other real estate owned to receive prior approval from Community Affairs. The Bank has separately requested such prior approval.

<sup>2</sup> This letter communicates a legal interpretation of 12 C.F.R. Part 34 and does not address the accounting treatment for the DPC Property under generally accepted accounting principles (GAAP).

<sup>3</sup> This approval and the activities and communications by OCC employees in connection with this approval do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.