



# Office of the Comptroller of the Currency

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## Interpretive Letter #751

*Published in Interpretations and Actions October 1996*

### **12 C.F.R. 4.31 (Subpart C)**

September 24, 1996

[ ]

Dear Mr. [ ]:

Thank you for your letters of September 16 and 18, 1996, enclosing 27 questions that opposing counsel wishes to ask employees of [Bank] at depositions in the above referenced litigation.

We have reviewed the 27 questions, all of which relate to communications between the bank and the OCC about certain loans. In our view, responses to these questions constitute "non-public OCC information" as defined in OCC's regulations, 12 C.F.R. 4, Subpart C. See specifically 12 C.F.R. 4.32(b)(1)(vi). Thus, the bank's employees are forbidden to disclose this information without the OCC's prior approval. 12 C.F.R. 4.36(b).

The information responsive to these questions is exempt from disclosure under the Freedom of Information Act and is privileged under federal appellate case law. However, a private party seeking access to this information may file a request with us under 12 C.F.R. 4.33. If we find that a satisfactory showing has been made, we will authorize the party to use relevant excerpts from OCC Reports of Examinations, subject to the entry of a protective order. Our strong preference is to furnish documents rather than authorize bank employees to convey orally OCC non-public information. Reaching a decision on a request can take up to 60 days, 12 C.F.R. 4.35(a)(4), unless the requester can justify expedited treatment. See 12 C.F.R. 4.33(a)(2).

Although the procedure described above is available, our experience is that the most relevant information about a loan is found in bank-created documents. Such documents, if not otherwise privileged, can be obtained directly from the bank in discovery. OCC's Reports of Examination may contain nothing about a particular loan; even if an examination report discusses a loan, the facts are usually gleaned from the bank's own files.

In summary, the bank's employees are forbidden by federal regulations from responding to the 27 questions. If a party wishes to apply under 12 C.F.R. 4 for access to non-public OCC information, the party may address its request to me.

Sincerely yours,

/s/

L. Robert Griffin  
Director

# Litigation Division