

Interpretive Letter 2002-04 (March 18, 2002)

For purposes of the lending limit exemption under Section 32(3) of the Illinois Banking Act, both appraisers must meet the minimum federal standards of state licensure or certification in order to be “qualified.”

This is in response to your letter in which you asked the Office of Banks and Real Estate (“Agency”) whether it would be permissible for *** (“Bank”) to obtain an appraisal by a non-licensed, non-certified appraiser in connection with a loan made under Section 32(3) of the Illinois Banking Act (“Act”).¹ The Agency has determined that the Illinois Real Estate Appraiser Licensing Act (“REALA”) would prohibit such an appraisal.² Therefore, in order for the Bank to satisfy the requirements of both REALA and Section 32(3) of the Act, the Bank must employ two, state certified, independent appraisers for this particular loan.

Your correspondence indicated that the Bank would like to make a loan in the amount of \$1,475,000 secured on farmland. The Bank obtained one appraisal by a certified general real estate appraiser in the amount of \$3,364,000. The Bank now wishes to employ a second appraiser who is not state licensed or certified. In order for the bank to exempt the loan from the lending limit under Section 32(3) of the Act, two “...*qualified* appraisers, neither of whom shall be an officer, director, or employee of the bank...” must certify that the value of the real estate is at least twice the amount of the loan.³

Although the Act does not define the term “qualified,” the federal bank regulators issued joint guidelines that specifically address appraiser qualifications in connection with loans secured on real estate.⁴ The guidelines provide a detailed discussion of the federal regulations promulgated under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) that contain minimum standards for appraisers in various loan transactions.⁵ The federal regulations generally require an appraisal to be performed by a state licensed or state certified appraiser in all “federally related transactions.” Although the regulations exempt certain categories of real estate-related loans from the appraisal standards, most real estate transactions over \$250,000 are considered “federally related transactions.”

In addition to defining the types of transactions requiring appraisals, the regulations specify which transactions require the use of a state certified appraiser, as opposed to a state licensed appraiser. A state certified appraiser is required to have more experience and qualifications than a state licensed appraiser. According to the regulations, a real estate related transaction involving a value of \$1,000,000 or more would require an appraisal by a state certified appraiser.⁶ The federal regulations, however, do not appear to require more than one such appraisal. As a result, we must address whether the Bank would be permitted to use the services of a non-licensed, non-certified appraiser for its second appraisal as required by Section 32(3) of the Act.

1 205 ILCS 5/32(3).

2 225 ILCS 457 *et seq.*

3 205 ILCS 5/32(3).

4 See FDIC Interagency Appraisal and Evaluation Guidelines.

5 FDIC: 12 C.F.R. 323; FRB: 12 C.F. R. 208.18 and 12 C.F. R. 225.

6 12 C.F.R. 323.3(d).

In order to determine the scope of the term “qualified appraiser” as used in Section 32(3), we examined the requirements set forth in REALA. Section 15 of REALA prohibits any person from performing an appraisal in a federally related transaction without being licensed or certified by the State of Illinois.⁷ This section indicates that performing such an appraisal without a license or certification would not only constitute a violation of REALA, it would also constitute a Class A misdemeanor. Since state law would explicitly prohibit the second appraisal from being performed by a non-certified appraiser, the Bank must use a state certified appraiser to qualify for the exemption under Section 32(3) of the Act and to comply with REALA.

In conclusion, in order to be “qualified” under Section 32(3), both appraisers must meet the minimum federal standards for federally related transactions.

⁷ 225 ILCS 457/15.