

INTERPRETIVE LETTER 85-5 (OCTOBER 30, 1985)

Customer may borrow up to a state bank's lending limit and separately guarantee a loan up to the bank's limit for total "money borrowed or otherwise" to one person.

This letter is in response to our recent telephone conversation regarding the ability of one person to (1) borrow up to the bank's legal loaning limit and (2) guarantee another person's loan up to the bank's legal loaning limit.

Section 32 of the Illinois Banking Act (Act) limits the liabilities of any one person for money borrowed to 20% of the bank's capital and surplus. It further limits the total liabilities of any one person for money borrowed or "otherwise" to no more than 50% of the amount of the bank's capital and surplus. Encompassed within the term "otherwise" are the transactions described within the 5 subsections of Section 32. Under subsection (5) of this Section, a person may act as an accommodation party (guarantor) with respect to evidences of indebtedness not to exceed 20% of the bank's capital and surplus. Since a direct loan to an individual constitutes money borrowed and is limited to 20% of the bank's capital and surplus, and a guarantee is considered "otherwise" and is limited to 20% of the bank's capital and surplus, the two amounts do not exceed 50% of the bank's capital and surplus and thus are not in violation of the provisions of the Act.

For purposes of this letter, I have assumed that the person who received the loan from the bank and also guaranteed another's loan at the same bank in no way received a direct or indirect monetary benefit from the guarantee. If this assumption is incorrect, then the two transactions involved may be aggregated, resulting in an overline situation.