INTERPRETIVE LETTER 90-13 (AUGUST 8, 1990)

State bank may establish a deferred compensation plan for the benefit of senior bank officers and fund the plan with life insurance contracts without regard to investment limitations.

Your letter to *, District Supervisor of the * District, has been referred to me for response. In it you addressed investment limitations with respect to the purchase of life insurance.

As I understand the facts, * ("Bank") plans to establish a deferred compensation plan for the benefit of senior bank officers. The Bank intends to fund the plan with life insurance contracts. You asked whether the Bank would violate statutory limitations on investments if the Bank purchased all of the life insurance policies from the same insurance company.

Subsection (5) of Section 5 of the Illinois Banking Act ("Act") (Ill. Rev. Stat. 1989, ch. 17, par. 311(5)) provides that state banks have the power "[t]o adopt and operate reasonable bonus plans, profit-sharing plans, stock-bonus plans, stock-option plans, pension plans and similar incentive plans for its directors, officers and employees." This Agency interprets subsection (5) as including deferred compensation plans. An important aspect of operating a deferred compensation plan is its funding. The use of life insurance policies for the purpose of funding deferred compensation plans is an acceptable means of operating the plan.

Section 33 of the Act (Ill. Rev. Stat. 1989, ch. 17, par. 341) addresses the limitations on bank investments. That section specifically addresses investments purchased for a bank's own account, and the limitation of Section 33 would only apply to those investments. When life insurance is purchased to fund a deferred compensation plan, it is not purchased for a bank's own account. Rather it is purchased as a means for a bank to meet its responsibility and obligation to operate a reasonable plan. The investment limitations of Section 33 would not apply to a purchase of life insurance for the purpose of funding a deferred compensation plan.

This Agency interprets subsection (5) of Section 5 of the Act as empowering the Bank to fund its deferred compensation plan with life insurance. Subsection (5) would not impose any specific limitations upon the number of policies which the Bank may purchase from any one insurance company. The Bank is expected to use sound business judgment to avoid a concentration of policies with any particular company where such concentration would jeopardize the Bank's life insurance purchases. Additionally, the investment limitations of Section 33 of the Act would not apply to the Bank's purchase of life insurance policies which would fund its deferred compensation plan.