



Illinois Department of Financial and Professional Regulation

Division of Banking

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Interpretive Letter 2020-04 (May 4, 2020) [Legal Lending Limits – Exemption for SBA Paycheck Protection Program Loans]

To Officers and Directors of State Banks and Savings Banks:

State banks have requested guidance from the Illinois Department of Financial and Professional Regulation, Division of Banking (Division) on whether Section 35(2) of the Illinois Banking Act (IBA) exempts loans made by a State bank under the U.S. Small Business Administration's Paycheck Protection Program from the legal lending limit of Section 32 of IBA. This letter provides guidance for both State banks under the IBA and savings banks under the Illinois Savings Bank Act (ISBA).

The Paycheck Protection Program (Program) is authorized by the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act).¹ To implement the Program, the U.S. Small Business Administration (SBA) has issued Interim Final Rules (SBA Rules).² The CARES Act and the SBA Rules indicate that loans meeting the SBA's requirements of the Program (PPP loans) are 100 percent guaranteed as to the unpaid principal and accrued interest of the loan and that this guarantee is backed by the full faith and credit of the United States.

Section 35(2) of the IBA, in reference to the Section 32 legal lending limit, addresses loans made by State banks that are guaranteed by administrative agencies of the United States. In relevant part, it states:

The limitations in Sections 32, 33, 34, and 35.1 upon the liabilities of any one person and upon the purchase or holding of marketable investment securities shall not apply to the following as to which there shall be no limitation:

(2) Loans to or obligations of any person *** to the extent that the same shall be secured or covered by guaranty or by commitment or agreement to take over or purchase, made by any Federal Reserve Bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States.³

The Illinois Savings Bank Act includes provisions to the same effect. Specifically, Section 6013(a) of the ISBA states the legal lending limit, but the limit is subject to the following exception at subsection 6013(j):

¹ Public Law 116-136; 134 Stat. 281.

² 85 FR 20811 and 85 FR 21797. *See also* 85 FR 22345.

³ 205 ILCS 5/32 and 35(2).

This Section shall not apply to loans or extensions of credit to the United States of America or its agencies or this State or its agencies or to any loan, investment, or extension of credit made pursuant to Section 6003 of this Act.⁴

In this connection, Section 6003 provides that a savings bank may invest its funds in:

In obligations of, or obligations that are fully guaranteed by the United States and in stocks or obligations of any Federal Reserve Bank, Federal Home Loan Bank, the Student Loan Market Association, the Government National Mortgage Association, the Federal National Mortgage Association, The Federal Home Loan Mortgage Corporation, the Federal Deposit Insurance Corporation, or any other agency of the United States.⁵

Thus, loans made by State banks or savings banks are exempt from their respective legal lending limits to the extent the loan is guaranteed by administrative agencies of the United States.

As stated above, federal law and the SBA Rules indicate that PPP loans are 100 percent guaranteed. Thus, *in principle*, to the extent PPP loans are guaranteed, PPP loans made by State banks or savings banks are exempt from their respective legal lending limits. However, each bank has the sole responsibility to ensure that each PPP loan it makes meets the Program's requirements to be guaranteed.

The Division will not consider a loan exempt from the bank's legal lending limit merely because the bank designates it a PPP loan. However, in the case of a given loan, if the Division determines the bank exercised reasonable due diligence to ensure that the loan met the Program requirements, but that loan or a portion thereof is subsequently disqualified from the Program guaranty, the Division will not cite that loan as a basis for a legal lending limit violation. However, the loan amount exceeding the lending limit will be deemed non-conforming, and the bank must take steps to conform with the lending limit as quickly as safe and sound banking practice permits.

If you have questions regarding this guidance, please contact me at robert.stearn@illinois.gov.

Sincerely,

Robert Stearn
Associate General Counsel

⁴ 205 ILCS 205/6013(a) and (j).

⁵ 205 ILCS 205/6003(3)