

DOB OPINION 98-003

Date: December 1, 1998

From: John L. Bley, (concurrence)

Subject:
Request for concurrence on lending limitations

Thank you for taking the time to speak with me this morning concerning questions involving the proper interpretation of lending limitations applicable to state-chartered banks. In our discussion, you indicated that you would consider issuing a written concurrence if requested to do so.

I am writing to request your written concurrence in the following interpretations of the lending limitations under RCW 30.04.111, and implementing regulations at WAC 50-12-210 through 50-12-300:

1. Generally, the lending limit applicable to state-chartered banks is triggered by the actual advancement of loan proceeds to a borrower, not by a loan commitment to advance loan proceeds to a borrower in the future. A loan commitment to advance funds to a borrower in the future is not a "loan or extension of credit" subject to the lending limit imposed by RCW 30.04.111. Upon the actual advancement of funds pursuant to such a loan commitment, the amount advanced becomes a "loan or extension of credit" subject to the lending limit imposed by RCW 30.04.111.
2. The only instances in which a loan commitment to advance funds in the future constitute a "contractual commitment to advance funds," and thus a loan or extension of credit under WAC 50.12.230(2), are the two limited instances described in WAC 50-12-230(3)(a) and (b) involving obligations to advance funds to or for the benefit of third parties, under the circumstances indicated in such subsections.
3. The loan commitment made in the following hypothetical circumstances would not constitute a loan or extension of credit subject to the lending limit established by RCW 30.04.111, and would not violate such loan limit: A bank's lending limit is \$1,800,000. The borrower has an outstanding loan balance of \$1,400,000. The bank gives the borrower a written commitment to advance an additional \$1,000,000, with a proviso in the commitment that no monies will be advanced thereunder if such advance would make the total outstanding loan(s) by the bank to the borrower exceed the legal lending limit applicable to the bank. Thereafter, the bank makes disbursements to the borrower pursuant to such commitment, but at no time does the borrower's outstanding loan balance owed to the bank exceed \$1,800,000.

Per your suggestion, I have provided a signature space below for purposes of indicating your concurrence. Please contact me if there are any questions. Thank you for your willingness to consider and address these questions.