

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date June 1, 1937.To Dr. CurrieSubject: Discretionary Power over Reserve
Requirements against Foreign De-
posits in American Banks.From Mr. Vest

This refers to your memorandum of May 27, 1937 to Mr. Wyatt requesting a check on the legal aspects of the attached proposal entitled "Discretionary Power over Reserve Requirements against Foreign Deposits in American Banks."

As I understand the proposal, it is that the Board of Governors be given authority in its discretion to raise or lower reserve requirements against time and demand deposits held by or on behalf of non-resident aliens in American banks, whether member or nonmember banks of the Federal Reserve System.

From a legal standpoint there are few comments to be made with regard to this proposal. Obviously it would require legislation.

The proposal contemplates control over reserve requirements against deposits of non-resident aliens, not only of member banks but also of nonmember banks. If the proposal is made in this form, a constitutional question would probably be raised as to the authority of Congress to regulate reserve requirements of nonmember banks and, while the probabilities seem to be on the side of the validity of the law, if enacted, it is a problem which will have to be faced, as you recognize in your memorandum. However, there are practical considerations here which seem to me of some importance. In the first place, the raising of constitutional questions tends to make Congress reluctant to pass legislation if such questions can be eliminated. Of more serious import, however, is the fact that it would probably be contended at once by many Congressmen who hold to States' rights views that passage of this legislation would merely be a forerunner to proposals in Congress for a unified banking system and votes against the bill might be solicited on that ground.

I assume, however, that nonmember banks are included within the scope of the proposal because if they were omitted the effect of the legislation would be merely to run deposits of aliens out of member banks and into nonmember banks where they would not be subject to any regulation. Nevertheless it seems to me that the effect of the possible difficulties of getting this proposal through Congress on the chances of success or failure of legislation to bring about unified banking in this country, if this is proposed at a later date, should be carefully considered in connection with this matter.

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Another constitutional phase of the matter might be presented in connection with the proposed requirement that reports be made of deposits of aliens in nonmember banks. This question, however, even if it should be raised at all, would seem to present a relatively unimportant aspect of the subject.

On page 2 of your memorandum I note the sentence: "The courts have always taken a liberal view of the authority of Congress to legislate on matters affecting international monetary relations." While I am not prepared to say that this sentence is necessarily incorrect, it is a rather broad statement from a legal point of view and you may wish to give consideration to eliminating or perhaps modifying it.

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LPC*

GBV