

INTERPRETATION OF LAW OR REGULATION

(Copies to be sent to all Federal Reserve banks)

August 31, 1939.

Mr. \_\_\_\_\_, Assistant Vice President,  
Federal Reserve Bank of \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_.

Dear Mr. \_\_\_\_\_:

Further reference is made to your letter of August 18, 1939, with respect to the question submitted to you by the \_\_\_\_\_ National Bank and Trust Company, \_\_\_\_\_, as to whether transfers may be made from the savings accounts of certain depositors to so-called FHA mortgage accounts in their names, pursuant to the written orders of the depositors but without the presentation, at the time the transfers are made, of the pass books evidencing such savings accounts.

It is understood that the national bank is servicing a large number of mortgage loans which are insured by the Federal Housing Administration; that in connection with the making of such loans the mortgagors open savings accounts with the bank and deliver to it written authorizations to charge their respective savings accounts for the amounts due monthly in respect of their mortgages. The amounts thus charged to their savings accounts are credited to so-called FHA mortgage accounts in their names, and amounts so credited are used to pay the monthly installments due on the mortgages for principal, interest, premiums for mortgages, insurance, service charges, taxes, ground rents and assessments. The savings accounts pass books are not presented to the bank, but the bank sends monthly advices to the mortgagors of the amounts charged to their savings accounts and the mortgagors send their savings deposits pass books to the bank quarterly for the entry therein of the debits to their savings accounts.

Although the amounts charged to the savings account are credited to the so-called FHA mortgage account of the mortgagor, the transaction is essentially a payment by the bank out of the savings account to a third party, because under the agreement between the mortgagor-depositor and the bank, the amounts thus debited to the savings accounts and credited to the FHA mortgage accounts are no longer under the control of the mortgagor-depositor but are merely in transit to the ultimate recipients of the amounts constituting the monthly payments due under the mortgage.

In view of the facts stated above, it is clear that the payment is not made "upon presentation of the pass book", and the question

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is presented whether the transaction complies with the provision of section 1(e)(2) of Regulation Q with respect to savings deposits that

- "Withdrawals are permitted in only two ways, either
- (i) upon presentation of the pass book, through payment to the person presenting the pass book, or (ii) without presentation of the pass book, through payment to the depositor himself but not to any other person whether or not acting for the depositor."

You refer to the ruling contained in the Board's letter of June 22, 1936 (X-9627) to the effect that a transfer may properly be made by a member bank from the savings account of a depositor to his checking account upon the written order of the depositor but without the presentation of the savings deposit pass book. In the present case you point out that the mortgagor-depositor could accomplish the same result as is accomplished by the existing arrangement by following the procedure described in X-9627 and by giving the bank a further order to pay the required amount out of his checking account; but you suggest that it would not be desirable to require a member bank to make these additional entries on its books merely in order to achieve technical compliance with the requirements of the definition of "savings deposit" in Regulation Q.

It seems proper in a case like the present one to consider the essential nature and purpose of the transaction as well as its form. One of the typical purposes for which savings accounts are maintained is the accumulation of funds with which to pay off a mortgage. In the present case the savings accounts are maintained for that purpose, and each depositor gives the bank a written order to pay off his mortgage out of his savings account at the time when his savings account is opened and as a part of the same transaction. As stated in the Board's letter of February 8, 1936 (X-9489), the requirement that the savings pass book must accompany a check payable to a third party is designed to prevent the drawing of more than one check at a time against a savings account and the use of a savings account as an ordinary checking account; but it does not appear that any such abuse is involved in the present arrangement. While the order given by the depositor provides for several transfers at regular periodic intervals, it appears that all of the transfers are for the same purpose and are made in pursuance of the same order.

Accordingly, the Board is of the opinion that the handling of the periodic payments in the manner described above is not in violation of Regulation Q.

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It is hardly necessary to point out that the present ruling is based upon the facts of this particular case, and that a different result might be reached in another case with facts bearing a superficial resemblance to those discussed herein.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,  
Assistant Secretary.