

January 26, 1976

Dear :

This is in reply to your letter of January 29, 1975, requesting a ruling on the applicability of the reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 (ERISA) to the Incentive Savings Plan of The Savings Bank (Plan). You contend that the Plan does not fit within the definition of an employee pension benefit plan because the liberal withdrawal provisions of the Plan make the benefits available at any time a participant chooses, before retirement. The Plan was not covered under the Welfare and Pension Plans Disclosure Act (WPPDA).

As you state in your letter, coverage under the ERISA is of broader scope than under the WPPDA. The definition of "an employee pension benefit plan" and "pension plan" includes "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan." The Plan does satisfy the definition of "an employee pension benefit plan". Although the withdrawal privileges in the Plan are liberal, the employee Handbook clearly states that withdrawals are intentionally discouraged (pages 4 and 9) and there are penalties imposed; i.e., employee contributions will not be accepted for a period of from three to twelve months depending on which portion of vested money is withdrawn and to what extent. The Plan

does result in "...a deferral of income by employees for periods extending to the termination of covered employment or beyond,...". Therefore, the Incentive Savings Plan of The Savings Bank is covered under the ERISA and is subject to its reporting and disclosure requirements.

Sincerely,