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B-129898, Dec. 28, 1956

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TO MR. LESTER H. THOMPSON, AUTHORIZED CERTIFYING OFFICER:

REFERENCE IS MADE TO YOUR LETTER OF NOVEMBER 26, 1956, TRANSMITTING A VOUCHER, AND RELATED CLAIM FILE, IN FAVOR OF WELLS FARGO BANK, 1935 UNIVERSITY AVENUE, E. PALO ALTO, CALIFORNIA,IN THE AMOUNT OF $172.65. THE VOUCHER COVERS THE AMOUNT CLAIMED AS REIMBURSEMENT OF A LOSS SUSTAINED ON ACCOUNT OF DEFAULT IN THE PAYMENT OF A NOTE SIGNED BY JOSEPH P. AND SHIRLEY M. MORONEY WHICH THE INSURED INSTITUTION PURCHASED FROM LEE FRALEY, PALO ALTO, CALIFORNIA, AND REPORTED FOR INSURANCE UNDER ITS CONTRACT WITH THE FEDERAL HOUSING ADMINISTRATION ISSUED UNDER TITLE I OF THE NATIONAL HOUSING ACT. YOU REQUEST A DECISION AS TO WHETHER YOU MAY CERTIFY THE VOUCHER FOR PAYMENT.

IT IS REPORTED THAT THE DUE DATE OF THE FINAL INSTALLMENT OF THE NOTE WAS JULY 1, 1956, AND THE BORROWER'S LEASE ON THE PROPERTY IMPROVED WITH THE PROCEEDS OF THE LOAN EXPIRES ON DECEMBER 31, 1956.

SECTION 2/A) OF THE NATIONAL HOUSING ACT, 12 U.S.C. 1703/A), AUTHORIZES THE FEDERAL HOUSING COMMISSIONER TO INSURE FINANCIAL INSTITUTIONS AGAINST LOSSES THEY MAY SUSTAIN AS A RESULT OF LOANS AND ADVANCES OF CREDIT FOR THE PURPOSE OF FINANCING IMPROVEMENTS ON CERTAIN PROPERTY BY THE OWNERS THEREOF "OR BY LESSEES OF SUCH REAL PROPERTY UNDER A LEASE EXPIRING NOT LESS THAN SIX MONTHS AFTER THE MATURITY OF THE LOAN OR ADVANCE OF CREDIT.' THE REQUIREMENT AS TO LOANS FOR IMPROVEMENT BY LESSEES IS ALSO SET OUT IN REGULATIONS OF THE FEDERAL HOUSING COMMISSIONER GOVERNING PROPERTY IMPROVEMENT LOANS, 24 CFR 201.2, WHICH DEFINES ELIGIBLE LESSEE BORROWERS AS ,ONE WHO APPLIES FOR AND RECEIVES A LOAN IN RELIANCE UPON THE PROVISIONS OF THE ACT AND WHOSE INTEREST IN THE PROPERTY TO BE IMPROVED IS "A LEASE HAVING A FIXED TERM, EXPIRING NOT LESS THAN SIX CALENDAR MONTHS AFTER THE MATURITY OF THE LOAN.'

TIME "AFTER" AN EVENT IS COMPUTED BY EXCLUDING THE DATE OF THE HAPPENING. VAN DUYN V. VAN DUYN, 225 P. 444. ALSO, IT HAS BEEN HELD THAT, UNLESS THE CONTRARY APPEARS FROM THE CONTEXT OF A STATUTE, A MONTH IS DEEMED A CALENDAR AND A MONTH IS TO BE DETERMINED BY EXCLUDING THE INITIATORY DAY AND CALCULATING TO AND INCLUDING THE SAME DATE OF THE MONTH WHEREIN THE PERIOD WILL EXPIRE, PROVIDED THE LATTER MONTH HAS SUFFICIENT NUMBER OF DAYS TO INCLUDE THE DATE MENTIONED, OTHERWISE THE PERIOD WILL END ON THE LAST DAY OF THE TERMINAL MONTH. PHILLIPS V. COMMERCIAL CREDIT CO., 3 S.E. 2D 836, 838; ROPIEQUET V. AETNA LIFE INSURANCE CO., 33 N.E. 2D 228, 233. ALSO, SEE 86 .J.S., TIME, SEC. 10. THE WORDS "MATURITY OF THE LOAN OR ADVANCE OF CREDIT" AS USED IN THE STATUTE APPEAR TO HAVE THE SAME MEANING AS "MATURITY DATE" SET OUT IN 12 U.S.C. 1713 (A) (4), THAT IS, THE DATE ON WHICH THE INDEBTEDNESS WOULD BE EXTINGUISHED IF PAID IN ACCORDANCE WITH THE

PERIODIC PAYMENT SCHEDULE PROVIDED FOR IN THE MAKING OF THE LOAN OR ADVANCE. SINCE THE MATURITY DATE OF THE INSTANT LOAN WAS JULY 1, 1956, NOT LESS THAN SIX MONTHS AFTER SUCH DATE WOULD BE JANUARY 1, 1957, OR THEREAFTER. ALSO, THE FACT THAT THE LESSEE'S TENURE EXPIRED DECEMBER 31, 1956, IS CLEARLY SHOWN IN HIS APPLICATION TO THE BANK AND ITS ACTION IN MAKING THE LOAN DOES NOT APPEAR TO HAVE BEEN INDUCED BY ANY MISREPRESENTATION ON HIS PART. SINCE THE LEASE EXPIRED DECEMBER 31, 1956, IT APPEARS THAT THE LESSEE DID NOT HAVE A LEASE EXPIRING NOT LESS THAN SIX MONTHS AFTER THE MATURITY OF THE LOAN OR ADVANCE. UNDER BOTH THE STATUTE AND REGULATIONS, THE LOAN WAS NOT ONE WHICH THE HOUSING ADMINISTRATION COULD VALIDLY INSURE AND HENCE THERE IS NO LIABILITY ON THE PART OF THE FEDERAL HOUSING ADMINISTRATION FOR THE LOSS SUSTAINED BY THE LENDER.

CONCERNING YOUR OBSERVATION THAT IT MAKES PRACTICAL DIFFERENCE WHETHER THE LEASE EXPIRED FIVE OR SEVEN MONTHS AFTER MATURITY OF THE LOAN, THE STATUTE IS SPECIFIC AS TO THE PERIOD AND ITS TERMS ARE, OF COURSE, CONTROLLING. ALSO, WHILE THERE IS NO SPECIFIC PROHIBITION IN THE STATUTE OF INSURING LOANS TO LESSEES OF PROPERTY WHOSE LEASE TENURE IS LESS THAN SIX MONTHS BEYOND THE MATURITY DATE FOR LIQUIDATION OF THE LOAN, BY SETTING FORTH THE TYPES OF LOANS TO LESSEES WHICH WERE AUTHORIZED TO BE INSURED, THE STATUTE EXCLUDED FROM INSURABILITY UNDER THE ACT, THOSE LOANS NOT EMBRACED WITHIN SUCH CLASS.

THE VOUCHER IN QUESTION, WHICH IS RETURNED HEREWITH, TOGETHER WITH YOUR CLAIM FILE, FOR THE REASONS HEREINABOVE GIVEN, MAY NOT BE CERTIFIED FOR PAYMENT.