FEDERAL RESERVE BANK
OF DALLAS

Dallas, Texas, September 19, 1941

INTERPRETATIONS OF REGULATION W—CONSUMER CREDIT

To all Banking Institutions, and Others Concerned,
in the Eleventh Federal Reserve District:

Interpretations of Regulation W, relating to the extension of instalment credit, which have been issued by the Board of Governors of the Federal Reserve System, are printed below:

0. Re Regulation W, any mechanical refrigerator of less than twelve cubic feet rated capacity is subject to the Regulation regardless of the purpose for which it is sold or the use to which it is put or to be put.

1. An inquiry which may be stated as follows has been received under Regulation W:

> "Work is in progress on a home modernization job which cannot be completed by August 31. Prior to the issuance of Regulation W or the signing of Executive Order 8843 under which Regulation W was issued, a lender made a written commitment to finance the modernization upon its completion. When the work is completed in due course after September 1, may it be financed pursuant to the pre-September commitment, or must the financing comply with the 18-months limitation stated in the Supplement to the Regulation? Would it make any difference whether the credit was instalment sale credit instead of instalment loan credit?"

It is the opinion of the Board that in such a case of a bona fide written pre-September commitment, which is in effect a contract to make a contract and which involves no effort to evade the Regulation, section 9(d) permits the modernization to be financed pursuant to such commitment even though the loan is not made until after September 1. The same result would follow in such a case whether the credit was instalment sale credit or instalment loan credit.

2. An inquiry which may be stated as follows has been received under Regulation W:

> "In connection with a contract for the modernization of a building, a written commitment is made on September 2, 1941 for a loan which will be subject to Regulation W and is to be made when the work is completed. The construction and installations involved in the modernization are expedited as much as circumstances will permit, and are completed on October 10, when the loan is made on the certificate of completion. In calculating the 18-months maximum maturity permitted for the credit, should September 2 or October 10 be taken as the base? Would it make any difference if the credit was instalment sale credit instead of instalment loan credit?"

The Board is of the opinion that in the specified case the date to be used as the base for calculating the 18-months maximum maturity is October 10. This would hold true whether the credit is instalment sale credit or instalment loan credit.

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3. Re Regulation W inquiry on furniture, if furniture is of the type used in households it is subject to the Regulation and it does not matter that the particular piece may be sold for use in an office, hospital, store, or other commercial building.

4. Re Regulation W inquiry on cooking stoves and ranges, an oven or a broiler is considered a heating surface if it has a separate source of heat, as, for example, a separate burner or electric element, but if oven and broiler have a separate source of heat in common it is considered that there is but one heating surface. Neither is considered a heating surface if its source of heat is a central firebox.

5. An inquiry which may be stated as follows has been received under Regulation W:

> "Pursuant to an established bona fide business practice a finance company issues and sells notes which are secured by instalment sales obligations trusteed under a collateral trust agreement. It is not feasible for a purchaser of the collateral trust notes to examine the underlying obligations held by the trustee. Suppose one of the underlying instalment obligations failed to comply with the requirements of Regulation W and such noncompliance, although unknown to the purchaser of the collateral trust notes, showed on the face of the underlying instalment obligation. Would the purchase of the collateral trust note in such a case, or the receipt of payments on the note, constitute a violation of Regulation W?"

The Regulation does not apply to the purchaser unless he is a person required by section 3(a)(1) to be licensed. If he is such a person, the payments received, according to the question as stated, arise out of the collateral trust note rather than the underlying obligation and under section 9(e) the Regulation does not apply to such payments.

Even if the transaction were such that the payments arose out of the underlying obligation rather than the collateral trust note the receipt of payments by the Registrant purchasing the note secured by such underlying obligation would not be contrary to the Regulation if when he made the purchase the underlying obligation did not on its face show some noncompliance or if he did not at that time know some fact by reason of which the extension of credit on which the underlying obligation was based failed to comply with the Regulation. In this connection it will be noted that while 4(f) requires that extension of instalment sale credit be evidenced in the prescribed manner, this does not require that the obligation or claim referred to in section 3(a)(2)(B) shall contain all the prescribed information, since under section 4(f) the evidence of the underlying transaction which must contain the necessary information, or have such information attached, may be a separate instrument or record and need not be the same as the obligation or claim referred to in section 3(a)(2)(B).

6. The classification mechanical refrigerators includes frozen food cabinets of the specified capacity but does not include milk coolers, assuming that they are not designed for household use.

7. Tumbler clothes driers are not included in any of the classifications of listed articles.

8. In connection with section 9(d) of Regulation W exempting contracts made before September 1, questions have been received as to whether orders received through the mail by a mail order company come within the exemption if the orders are postmarked prior to September 1 but in the usual course of business are not filled until after that date. The standing practice of the company has been to fill all such mail orders according to the terms of the catalog, subject only to the right of the company to refuse to fill the order for certain specified reasons such as unsatisfactory credit standing of the customer. If such orders are received in good faith pursuant to an outstanding catalog and without personal solicitation, it is the view of the Board that those postmarked before September 1 may be deemed to be exempted under section 9(d) even though in the usual course of business they are not filled until after that date.

9. The classification household furniture includes lamps designed for household use.

10. An inquiry which may be stated as follows has been received under Regulation W:

> "Coupons serve as money within a department store and are sold by store on instalment basis with maturity shorter than prescribed in Regulation but

down payments are smaller than required by Regulation. May coupons purchased for 10 per cent down and 8 months to pay be used for purchase of vacuum cleaner requiring 20 per cent down payment?"

Board is of opinion that for purposes of applying Regulation W face value of coupon is not material but that consideration should be given only to amount of money actually paid by purchaser.

Accordingly sale of vacuum cleaner would not comply with Regulation if sufficient money to constitute required down payment had not been paid before sale, whether money was paid for coupons or otherwise.

11. Question has been raised as to effect of September 1 holiday upon the effective date of Regulation W. Fact that this is a holiday does not alter effective date of Regulation, which becomes effective at beginning of business on September 1.

12. Certain questions have been received regarding the status under Regulation W of commitments made prior to September 1 to extend credit after September 1. Section 9(d) of the Regulation exempts "any valid contract made prior" to September 1. An earlier ruling of the Board has indicated that this exemption applies to a written commitment made prior to September 1 with respect to a modernization job that is in process on August 31. In order to clarify further the application of this provision to outstanding commitments, certain general principles applicable to such commitments are set out below.

(1) The underlying principle is that the exemption in section 9(d) for "any valid contract" made before September 1 applies not only to an extension of credit actually made before that date, but also to a valid contract to make a contract. The exemption, therefore, includes a valid commitment made in good faith before September 1 to extend credit after September 1, and includes also the credit extended pursuant to such a commitment.

(2) In order for the exemption to apply there must have been a valid contract. The general test is that the borrower should, in the absence of the Regulation, have been able to maintain a suit for damages if the credit had not been granted pursuant to the contract. Some of the requirements for such a contract may be briefly summarized: (a) Even an exact agreement on the sale of a particular article is not necessarily an agreement to extend credit therefor. There must have been a valid contract **relating to the credit.** Where there is ambiguity as to whether the contract included credit arrangements, relatively little proof would be needed in the case of a contract for a unique or "custom built" item, as for example a home modernization job, to show that the contract did include credit arrangements; but in the case of a standard article the presumption would be strongly the other way. (b) There must in any case be considerably more than general negotiations or indefinite "understandings" that the credit would be extended. There must have been an agreement to extend the credit and a reasonably exact agreement as to terms and amount. (c) While not always essential, the case is much clearer if there is written evidence of the commitment. The time as of which the extension of credit is itself dated is not important, the significant date being that of the prior commitment.

(3) Substance and good faith rather than technicalities and formalities control in determining whether there is a valid pre-September contract. The most elaborate written documents do not constitute such a contract unless they represent a bona fide commitment made as a part of a regular business transaction and not as a means of evading the Regulation.

13. The classification household furniture includes mirrors, unpainted furniture, stools, kitchen or breakfast room sets, porch tables, chairs, and swings, and kitchen cabinets but does not include pictures or clothes hampers.

14. The following articles are not included in any of the classifications of listed articles: toasters, food mixers, roasters, air circulating or ventilating fans other than attic fans or air conditioners, waffle irons, clocks, carpet sweepers not electrically operated.

15. Section 4(d) of Regulation W does not permit sale of listed article for payment in five equal instalments spaced at three months intervals.

16. A case has been presented to the Board in which a dealer selling a listed article in Group D does not take a note from the purchaser payable to the dealer, but instead,

according to arrangements with a bank, takes from the purchaser a note payable to the bank. Since the note is not secured by the listed article, the question has been presented whether the transaction is an extension of instalment sale credit subject to section 4, in which case a down payment would be required, or whether the transaction is an extension of unsecured instalment loan credit subject to section 5(b), in which case the down payment would not be required.

The question is covered by section 2(d) of the Regulation. That section defines an "extension of instalment sale credit" as an extension of instalment credit which is made "by any seller" and "arises out of the sale of such listed article", and it specifically states that the definition applies whether the seller is acting "as principal, agent or broker."

It is accordingly clear that the extension of credit here in question is an extension of instalment sale credit, and as such is subject to the down payment requirement.

17. The classification "household furniture" does not include china dinner sets, stainless steel cooking utensil sets, or silver-plated flatware.

18. The classification "household electric organs" includes electronic instruments and electric action instruments designed for use in homes. It does not include ecclesiastical models the cases of which are specially designed for use in churches or for similar use.

19. In order to clarify the status of renewals, revisions and consolidations (or "add-ons") under Regulation W during the period until November 1, when sections 8(a) and 8(b) on these subjects become effective, certain general principles applicable to such transactions during this period until November 1 are set out below:

(1) Any instalment credit which was originally extended **before September 1** may be renewed or revised **once** on or after September 1 on any terms which the Registrant would have granted in good faith in the absence of the Regulation. In the case of the renewal or revision of a credit which was originally extended on or after September 1, or the renewal or revision of a credit which was originally extended before September 1 but has already been renewed or revised (or consolidated with a new credit) on or after September 1, the credit as renewed or revised may not have a maturity beyond 18 months from the date of the renewal or revision. This 18-months limitation, however, does not apply to a renewal or revision which relates to an obligation of a member of the armed forces of the United States incurred prior to his induction into the service, or which is necessary for the Registrant's protection in connection with an obligation which is in default and is the subject of bona fide collection effort by the Registrant.

(2) The mere act of consolidating two separate obligations, or of "adding-on" one obligation to another, can confer no greater privileges than would apply if the obligations were treated separately. Accordingly, any new extension of credit which would be subject to a down payment requirement if made alone, is subject to the same requirement if consolidated with, or "added-on" to, an outstanding obligation.

(3) Similarly, in determining the terms of repayment permissible when an extension of credit is consolidated with, or "added-on" to, an outstanding obligation of the same obligor, it is necessary to consider (a) the terms on which the outstanding obligation could be renewed or revised (for that is what its consolidation may in effect accomplish), and (b) the terms required for the additional extension of credit if it stood alone. The consolidated obligation may not provide for repayment at a slower rate than would have been permissible if the outstanding obligation were revised as permitted by the Regulation and the new credit were extended in accordance with the Regulation but the two credits were not consolidated.

(4) While sections 8(a) and 8(b) which require a statement of necessity in certain cases do not become effective until November 1, section 8(g) of the Regulation, which is in full effect beginning September 1, prohibits any extension of instalment credit in connection with which there is any evasive side agreement for the subsequent renewing or revising of the credit. Therefore, any extension of instalment sale credit or instalment loan credit made on or after September 1 cannot be the subject of any contemporaneous agreement, arrangement or understanding by which renewals or revisions are to be used as a means of evading the requirements of the Regulation. Any renewal or revision must be the bona fide result of developments

coming after the making of the original extension of credit. Unless it is such a bona fide result of a subsequent development, it is prohibited by section 8(g).

20. The classification "mechanical refrigerators" does not include coin operated machines for dispensing beverages or coolers designed for the purpose of holding bottled beverages offered for sale even though they are of less than twelve cubic feet rated capacity.

21. The classification "water pumps designed for household use" includes water system pumps which are either shallow well or reciprocating deep-well pumps having a rated capacity of 300 gallons per hour or less, or deep-well jet type or centrifugal pumps operated by motors having a rating of 1/3 horsepower or less. The actual use to which the pumps are put does not affect the classification.

22. Re ruling number six the classification "mechanical refrigerators" does not include frozen food cabinets designed for the display of frozen foods offered for sale but does include frozen food cabinets designed for the home freezing of foods or for the home storage of frozen foods.

23. The following articles are not included in any of the classifications of listed articles: Automobile trailers whether designed for use as living quarters or otherwise, or motor vehicles designed for use as ambulances or hearses.

24. Inquiries have been received as to whether Regulation W limits the amount of an instalment loan (as distinguished from the maturity of the loan) when the Registrant knows the loan is for the purpose of purchasing a listed article but the listed article is not pledged as collateral for the loan. The answer is that unless an extension of instalment credit is made by the seller of the listed article (whether as principal, agent or broker) as described in section 2(d), or unless the extension of instalment credit is secured, or to become secured, by a recently purchased listed article as described in section 5(a), the present Regulation does not limit the amount of the credit (as distinguished from its maturity) regardless of the lender's knowledge that it is to be used to purchase a listed article.

25. An inquiry which may be stated as follows has been received under Regulation W:

> "May first mortgage under section 6(a) be considered 'first lien' even though a prior lien for current taxes not due and payable exists under state law?"

The Board is of the opinion that in such a case the first mortgage is a "first lien" under section 6(a).

26. "First lien" referred to in section 6(a) of Regulation W means any first lien created by agreement of the parties at the time of or as an incident to the extension of credit, including first mortgages, first deeds of trust, and the like. It does not, however, include a lien arising by operation of law, independently of such an agreement, under statutes such as those designed to protect furnishers of labor or material. A lien of the kind existing in some jurisdictions which is sometimes referred to as a mechanic's lien but which is a first lien created by agreement of the parties, and not by operation of law under a statute, is a "first lien" under section 6(a).

27. Extension of credit "secured by a bona fide first lien on improved real estate duly recorded" is exempted by section 6(a) of Regulation W even though the purpose of the credit is to purchase a listed article. For example, if the credit is secured by such a first lien it is exempt even though part of the credit is for the purpose of purchasing a furnace to be installed in the mortgaged property and even though the lien does not extend to the furnace. Conversely, if a portion of the credit involved in the transaction is not secured by the lien, the exemption does not apply to that portion of the credit.

28. Although W-19 dealt generally with renewals and revisions made during September and October, questions have been received regarding renewals or revisions made on or after November 1, of credits which were originally extended before September 1.

The controlling principle in such cases is that credit originally extended before September 1 may be renewed or revised once at any time on or after September 1 without the statement of necessity referred to in section 8(a) and on any terms which the Registrant would have granted in good faith in the absence of the Regulation. This

is the case whether such first renewal or revision of a pre-September credit occurs before November 1 (as discussed in W-19) or after November 1. When a pre-September credit has been once renewed or revised on or after September 1, whether such renewal or revision occurs before or after November 1, any subsequent renewal or revision is subject to the same requirements which would apply if the credit being renewed or revised had originally been extended on or after September 1. As indicated in W-19, the consolidation of a pre-September credit with a new credit has the same effect, for the purposes of this question, as a renewal or revision of the pre-September credit.

29. The question has been asked whether, in view of W-5, Registrant who is purchaser or pledgee of obligation or claim subject to Regulation is required by section 3(a) (2) (B) to receive a copy of the statement of the transaction required by section 4(f).

Answer is that purchaser or pledgee is not required to receive this statement. Section 4(f) provides that there shall be a written instrument or record of the transaction which shall contain certain information and of which a copy shall be given to the obligor, but this instrument or record is not necessarily the same document as the "obligation or claim" which is discounted or accepted by the Registrant under section 3(a) (2) (B).

30. An inquiry which may be stated as follows has been received under Regulation W:

> "A mortgagee, who has made a loan of $2,000 secured by a first mortgage, advances $400 more to the same borrower but instead of combining the two transactions into one debt secured by one mortgage, the lender takes another note and a second mortgage. Can the latter mortgage be regarded as a 'first lien' within the meaning of section 6(a)?"

The Board is of the opinion that the second mortgage securing the additional loan of $400 may not be regarded as a "first lien" within the meaning of section 6(a).

31. Question—Is consumer who knowingly violates or induces violation of Regulation subject to criminal penalties?

Answer—Knowing participation in violation may subject offender to criminal penalties.

32. Question—Section 8(f), Line 6, Do words "any other extension of credit" mean any other extension of instalment credit?

Answer—Words quoted include but are not confined to other extensions of instalment credit.

33. Question—May a new furnace be purchased without down payment in emergency situations?

Answer—Exceptions to down payment requirements are those stated in section 6, none of which extend to the situation described, and the exception inherent in section 5(b).

34. Question—Suppose bank loans on instalment basis or otherwise to a finance company secured by instalment contracts on listed articles, must bank look to regularity of security? If bank is not required to examine each item of collateral, what is purpose of section 3(a) (2) (B)?

Answer—So long as bank's payments arise only out of the loan as distinguished from the underlying obligation, it need not investigate underlying collateral. This is so that lender who takes such collateral will not be in worse position than one who lent unsecured. However, if and when lender attempts to obtain payments which arise out of the underlying obligation, i.e., to enforce the underlying obligation as distinguished from the loan, the lender is forbidden to receive the payments unless requirements of section 3(a) (2) (B) were met. This is so that Registrant who loans upon instalment obligations will not be in more favorable position than one who discounts or purchases the obligation. To extent that Registrant is willing to assume the business risk, he may lend on instalment obligation without inspection, realizing the disabilities which may appear later if it should become necessary to disregard loan and rely upon underlying instalment obligations. See W-5.

35. Question—If bank makes instalment loan under $1,000, either secured by listed article or not secured at all, must bank take statement as to proposed use of proceeds of loan?

Answer—Registrant is not required to take statement as to proposed use of proceeds in such cases irrespective of whether loan is secured by listed article. However, statement accepted in good faith by Registrant will protect Registrant as mentioned in 8(c) and in similar provisions.

36. Question—May bank make loan secured by listed article owned more than 45 days in order to make down payment on new listed article?

Answer—Section 8(f) does not prohibit making a loan which will serve as down payment. It merely applies to Registrant who is required to obtain the down payment (or required to limit loan to maximum credit value) and prohibits him from making the extension of credit if he knows or has reason to know of side loan for making the down payment.

37. Question—May bank make loan secured by listed article owned more than 45 days in order to pay in full the cash purchase price of a new listed article?

Answer—Yes.

38. Question—Customer purchases from same seller listed articles on several different days. All purchases are put on open charge account without down payments with the understanding that when last article is purchased a definite contract will be made. If all purchases go into a single contract must the entire contract be dated back to the date of purchase of first article and must the 18 months run from that earliest date?

Answer—If intention is for instalment payments, down payments should be obtained at times of different purchases. Similarly, 18-month maximum maturities would date from different purchases and need not go back to purchase of first article.

39. Question—When borrower makes bank loan on straight note for six months not payable in instalments is there anything in Regulation to prohibit an agreement at the time of making the loan to renew the loan at the end of six months period or at subsequent due dates?

Answer—Question is not entirely clear and answer would depend on all relevant circumstances. There is nothing to prohibit agreement for renewal if renewal is to be made without reduction. However, if agreement is that renewal is to involve a reduction, loan would seem to be instalment credit and subject to requirements of the Regulation.

40. The Board has been asked to distinguish between "heating stoves and space heaters designed for household use" and "household furnaces?"

For purposes of Regulation W, the heat generating unit is a heating stove or space heater when it is designed to heat directly the space in which it is located; the head generating unit is a furnace when it is designed for the transmission of heat by means of piping or ducts to the space which is to be heated. If a unit is designed to heat directly the room in which it is located and other rooms by piping it is to be classified as a furnace.

41. The classification "heating stoves and space heaters designed for household use" includes gas-fired floor furnaces, even though they are permanently built into the floor. This classification also includes small portable electric heaters.

42. The classification "mechanical refrigerators" does not include mechanically refrigerated cabinets specifically designed for the storage of ice-cream or other food products offered for sale.

43. Questions have been received regarding the application of Regulation W to extensions of instalment sale credit in cases in which there is delay in the delivery of the article sold, or in which time is required for the completion of a job of installation or construction.

The general principle applicable to these cases is that if the delay in the delivery of the article or in the completion of the job is bona fide and is not for the purpose of evading any of the provisions of the Regulation, the date of delivery or completion may be used as the base for applying the requirements of the Regulation. Hence the down payment could be obtained in such cases at any time on or before such date of delivery or completion. Similarly, the 18-months maximum maturity in such cases could be calculated

from such date of delivery or completion with, of course, the usual option under section 9(b) of making the 15-day adjustment permitted by that section for calculating the maximum maturity.

For any such case in which any date later than the date of the contract between the seller and the purchaser is used as the base for applying the requirements of the Regulation, it would be advisable for the Registrant's records to indicate clearly the facts justifying such use of a later date.

A related question received by the Board deals with progress payments under a contract for the installation of a heating system, or under a contract for a similar construction job. Payment is to be made for the installation or construction as the job progresses. Each payment is to be made at the completion of a specified portion of the job and is to be approximately equal to the cost of that portion, the final payment being made at the completion of the job. If such an arrangement is a bona fide business practice which is followed for the convenience of the parties concerned and is not an effort to evade any of the provisions of Regulation W, the Regulation does not require any change in the procedure.

44. The classification "ironers designed for household use" does not include hand irons, whether electrically or otherwise operated.

45. The phrase "principal amount" in section 5 (b) of Regulation W means the principal amount lent to the obligor, excluding any interest, finance charges, service charges and insurance costs, whether or not deducted in advance. For example, if a borrower received $975 but signs a note on a discount basis for $1,020, the loan is in a "principal amount" of less than $1,000 within the meaning of section 5(b).

46. The classification "musical instruments composed principally of metals" does not in general include violins, guitars, mandolins, accordions, clarinets, oboes or bassoons. Certain models of some of these instruments, however, have metal bodies or tubes, in which case they are included in the classification.

47. Questions have been received as to whether an extension of credit which, upon its face, is repayable in only one scheduled payment is an extension of instalment credit if, at its maturity, a partial payment is made and the balance is renewed?

    Answers to such questions depend upon whether or not there are any agreements or understandings between the parties at the time the extension of credit is made. For example, if at the time a particular extension of credit is made the Registrant and obligor have an understanding that the obligor will be required to make only a partial payment at maturity and that, upon making such partial payment, the balance will be renewed, the extension of credit is an extension of instalment credit notwithstanding the fact that the obligation, upon its face, provides for repayment in only one scheduled payment.

48. An inquiry has been received regarding the applicability of section 6 (a) of Regulation W to an extension of credit made by a builder covering the cost of building a home and secured by a first lien on the real estate upon which the home is to be constructed.

    The general principle applicable to these cases is that the mortgage and the contract or contracts for the extension of credit and the construction may be regarded as parts of a single transaction and that the facts existing on the date of completion may be used in determining the application of the Regulation. Consequently, the Board is of the opinion that the extension of credit may be regarded as secured by a first lien on improved real estate within the meaning of section 6 (a). The general principle is similar to that discussed in the second paragraph of W-43.

49. The Board has received a question under Regulation W which may be stated as follows:

    > "If an extension of credit which was originally made as a 3 months credit conforming to section 6 (f) is renewed or revised, must it be limited to a maturity of 3 months from the date of the renewal or revision, or may it have a maturity of as much as 18 months from the date of the renewal or revision as in the case of a credit which was not originally under section 6 (f)? If the renewal or revision of such a credit occurs on or after November 1, does it require a statement of necessity as specified in section 8 (a)?"

(1) A renewal or revision of a 6 (f) credit is not limited to a maturity of three months from the date of the renewal or revision, and is limited only to a maximum maturity of 18 months from the date of the renewal or revision as in the case of renewals or revisions of other credits under the Regulation. If the renewal or revision occurs on or after November 1, and alters the terms of repayment to terms which would not have complied with section 6 (f) in the first instance, the renewal or revision may not be made unless a statement of necessity is accepted in good faith as specified in section 8 (a).

(2) The preceding paragraph would not apply in the case of the first renewal or revision on or after September 1 of a credit which was originally extended before September 1. As indicated in W-19 and W-28 in discussing other pre-September credits, any pre-September credit may be renewed or revised once without the statement of necessity and on any terms which the Registrant would have granted in good faith in the absence of the Regulation.

(3) It is important to note, as pointed out in W-19, that section 8 (g) prohibits any extension of instalment credit in connection with which there is any evasive side agreement for the subsequent renewing or revising of the credit. Any renewal or revision beyond the period originally permissible for the credit must be the bona fide result of some development coming after the making of the original extension of credit. Unless it is such a bona fide result of a subsequent development, it is prohibited by section 8 (g).

50. The Board has been asked whether a piece of furniture, such as a table, lamp, or bed, having a radio built in and a composite part of the article, is to be classified as household furniture or as a radio.

The classification depends upon the relative value of the component parts. If the value of the radio is greater than the value of the table, lamp, or bed as a separate piece of furniture, then the article is to be classified as a radio.

51. The classification "household furnaces and heating units for furnaces (including oil burners, gas conversion burners, and stokers)" includes heat generating sources such as furnaces and boilers, and appurtenances which form a part of such sources, individually or collectively installed, when such sources or appurtenances are designed for actual net output of 240,000 B. T. U. per hour or less.

For purposes of determining the maximum amount of credit, the bona fide cash purchase price of such equipment is considered to include the cost of installation and the cost of accessories such as fuel oil storage tanks, heat control units, or coils for heating domestic hot water installed at the time of the installation of the furnace, boiler or heating unit. The classification does not include piping, ducts, radiators, convectors, or registers installed in connection with such equipment, but it is to be noted that these items may fall within the classification of materials and services referred to in Group E of Part 1 of the Supplement.

52. The Board has been asked several questions about the application of Regulation W to a case in which a Registrant rents a piano or other listed article to a customer and the rental contract includes an option giving the customer the right to purchase the article.

Executive Order No. 8843, under the authority of which Regulation W is issued, and section 2(b) of the Regulation, define "Extension of Credit" as including "any rental-purchase contract, or any contract for the bailment or leasing of property under which the bailee or lessee . . . has the option of becoming the owner thereof . . ." Therefore, the type of contract to which the inquiry relates is subject to the provisions of Regulation W.

Under these provisions it is necessary that, under such a contract, the Registrant obtain, at or before the delivery of the article to the lessee, a deposit equal to the amount of the down payment which the Regulation would require upon an instalment sale of the listed article, and that the lease call for periodic payments in an amount not less than the amount of the instalments which Regulation W would require on an extension of instalment sale credit arising out of the sale of the article. In the event that the lessee decides to exercise his option to purchase the article, these payments, including the deposit, under the lease will serve in lieu of both the necessary down payment and the instalments which would have been due between the date of the original lease and the date the option to purchase is exercised, and the balance of the

sale price may be paid in instalments subject to the final maturity of 18 months from the date of the original lease. In the event that the lessee decides not to exercise his option to purchase, the Registrant may return to him the difference between the payments, including the deposit, which the lessee has made and the amount of rental that may have been agreed upon for the period that the lessee has retained the article, and it is permissible for the lease to contain a provision to this effect.

It should be noted that the Regulation does not apply to a bona fide rental agreement under which the lessee does not receive a transfer of ownership, does not obligate himself to pay as compensation a sum substantially equal to or in excess of the value of the article, and does not receive an option to purchase.

53. An inquiry which may be stated as follows has been received under Regulation W:

> "Section 8(d) refers to statements of necessity as provided in paragraphs (a), (b) and (c) of section 8. However, paragraph (c) does not contain the words 'statement of necessity.' Is the 'written statement' described in section 8(c) to be regarded as a 'statement of necessity'? If the answer is in the affirmative, would it be desirable as a practical precaution for any bank or other lender extending instalment loan credit to take, in every case, the written statement referred to in section 8(c)?"

The written statement referred to in the last sentence of section 8(c) is not a "statement of necessity" of the kind referred to in section 8(d). Section 8(c) refers to statements of necessity only to the extent that it incorporates by reference certain requirements of "section 8(a) or 8(b), including the provisos thereof." With respect to last part of inquiry, see W-35.

54. An inquiry which may be stated as follows has been received under Regulation W:

> "Section 8(e) provides that the requirements of sections 8(a), (b) and (c) do not apply 'to any renewal or revision' of an extension of credit made prior to September 1, and provides in effect that any such extension of credit may be renewed or revised once on or after September 1. Do the same principles apply to an extension of credit to retire an obligation held elsewhere, assuming the latter covers an extension of credit made prior to September 1?"

Section 8(e) refers specifically to section 8(c), and therefore the same principles apply as in the case of a renewal or revision by the original obligee. These principles are discussed in W-19 and W-28.

55. A question has been received under Regulation W concerning a sum of $50 to $100, sometimes called a "pack," which a dealer may at times include in the price of an automobile as quoted to customers. When the automobile is sold, all or part of this sum may be eliminated from the price actually paid by the purchaser, either by an increase in trade-in allowance or by way of discount on cash purchases. The question is whether, in determining the maximum credit that can be extended to the customer, such an extra sum of $50 to $100 may be included, either as a part of the "bona fide cash purchase price" of the automobile and accessories or, in the case of a new automobile, as part of item 1 or item 4 of Part 3 (a) of the Supplement.

In determining what is the "bona fide cash purchase price" of a given automobile to be used in determining the maximum amount of credit under Part 3, padding of any kind —such as the "pack" referred to in the question if it is to be eliminated from the price actually paid by the customer by an increase in trade-in allowance or by some other device—must be excluded. In the specific case of a new automobile the maximum credit value can in no event exceed 66⅔ per cent of the sum of items 1 through 4 of Part 3(a) of the Supplement, and a $50 to $100 sum such as that described in the present question could not be included in any of these four items.

From time to time, as interpretations are made by the Board, they will be printed in this form and mailed to you by this bank.

Yours very truly,

R. R. GILBERT

President

ADDITIONAL COPIES OF THIS CIRCULAR WILL BE FURNISHED UPON REQUEST