

FEDERAL RESERVE BANK  
OF NEW YORK

[ Circular No. 2310 ]  
November 7, 1941 ]

CONSUMER CREDIT

INTERPRETATIONS OF THE BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM REGARDING REGULATION W

*To all Banking Institutions and Others Concerned  
in the Second Federal Reserve District:*

For your convenience there are set forth on the following pages the contents of all interpretations regarding Regulation W issued by the Board of Governors of the Federal Reserve System through November 6, 1941. The catch line inserted immediately preceding each interpretation is not a part thereof as issued by the Board and should not be regarded as affecting the construction of the interpretation. Notations have been made regarding the interpretations which have been affected by the recent amendments to the regulation.

This circular supersedes our Circulars Nos. 2272, 2278, 2286 and 2295.

Additional copies of this circular will be furnished upon request.

ALLAN SPROUL,  
*President.*



**INTERPRETATIONS OF BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
REGARDING REGULATION W WHICH RELATES TO CONSUMER CREDIT**

**W-1 Performance after September 1, 1941 of valid contract made prior thereto**

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.

[Supplemented by W-12]

**W-2 Date to be used for calculating maximum maturity regarding modernization contract**

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.

[Supplemented by W-43]

**W-3 Household furniture**

[See "Status of Specific Articles", page 24]

**W-4 Ovens and broilers**

[See "Status of Specific Articles", page 24]

**W-5 Notes secured by instalment sales obligations trusteeed  
under collateral trust agreement**

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 trusteeed 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).

[Supplemented by W-29 and W-34]

#### **W-6 Frozen food cabinets and milk coolers**

[See "Status of Specific Articles", page 24]

#### **W-7 Tumbler clothes driers**

[See "Status of Specific Articles", page 24]

#### **W-8 Orders mailed prior to September 1, 1941 to mail order company**

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.

#### **W-9 Lamps designed for household use**

[See "Status of Specific Articles", page 24]

#### **W-10 Department store coupons sold on instalment basis**

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.

## **W-11 Regulation effective September 1, 1941**

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

## **W-12 Status of commitments made prior to September 1, 1941 to extend credit after September 1, 1941**

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.

## **W-13 Miscellaneous household furniture**

[See "Status of Specific Articles", page 24]

## **W-14 Miscellaneous electrical appliances**

[See "Status of Specific Articles", page 24]

## **W-15 Instalments at three month intervals**

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

[See section 9(f) as amended effective December 1, 1941, relating to "Farmer Plans"]

#### **W-16 Extension of instalment sale credit by seller who receives purchaser's note payable to bank**

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.

[Even if not instalment sale credit, transaction would involve a "purpose loan" under section 5(a) as amended effective December 1, 1941]

#### **W-17 Miscellaneous household furniture not included**

[See "Status of Specific Articles", page 24]

#### **W-18 Household electric organs**

[See "Status of Specific Articles", page 24]

#### **W-19 Status of renewals, revisions and consolidations during period until November 1, 1941**

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).

[Supplemented by W-28 and W-49. Effective date of sections 8(a) through 8(d) as amended postponed from November 1, 1941 to December 1, 1941. Note provisions of section 8(b) as amended effective December 1, 1941 relating to "add-ons", and provisions relating to "statement of necessity" contained exclusively in section 8(d) as amended effective December 1, 1941]

#### **W-20 Beverage coolers**

[See "Status of Specific Articles", page 24]

#### **W-21 Water pumps**

[See "Status of Specific Articles", page 24]

#### **W-22 Frozen food cabinets**

[See "Status of Specific Articles", page 24]

#### **W-23 Automobile trailers, ambulances and hearses**

[See "Status of Specific Articles", page 24]

#### **W-24 Instalment loan to purchase listed article not secured by a listed article**

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.

[Obsolete after November 30, 1941]

#### **W-25 First mortgage a "first lien" although subordinate to current tax lien**

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).

[Although this interpretation is not affected, note that section 6(a) has been broadened by amendment effective December 1, 1941]

## **W-26 "First lien"—one arising by agreement but not by operation of law**

"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).

[Although this interpretation is not affected, note that section 6(a) has been broadened by amendment effective December 1, 1941]

## **W-27 "First lien"—applicability of section 6(a) even though credit is to purchase listed article**

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.

[Although this interpretation is not affected, note that section 6(a) has been broadened by amendment effective December 1, 1941]

## **W-28 Status of renewals, revisions and consolidations made after November 1, 1941**

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.

[Supplemented by W-49. Effective date of sections 8(a) through 8(d) as amended postponed from November 1, 1941 to December 1, 1941. Note provisions of section 8(b) as amended effective December 1, 1941 relating to "add-ons", and provisions relating to "statement of necessity" contained exclusively in section 8(d) as amended effective December 1, 1941]

## **W-29 "Statement of transaction" need not be given to purchaser or pledgee of obligation or claim**

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).



### **W-30 "First lien" does not include second mortgage held by first mortgagee**

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).

[Although this interpretation is not affected, note that section 6(a) has been broadened by amendment effective December 1, 1941]

### **W-31 Violation of regulation by consumer**

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.

### **W-32 Side loan to make down payment on listed article**

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.

### **W-33 Down payment on listed article not exempted in emergency situations**

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).

[Note amendment of section 5(a) effective December 1, 1941 as to "purpose loans", and note amended section 4(e) relating to down payments effective December 1, 1941]

### **W-34 Bank loans to a finance company secured by instalment contracts on listed articles**

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.

### **W-35 Statement regarding use of proceeds of loan**

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.

[Obsolete after December 31, 1941. See section 5(d) as amended effective December 1, 1941]

**W-36 Loan secured by old listed article to make down payment for new listed article**

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.

[Obsolete after November 30, 1941]

**W-37 Loan secured by old listed article to make full payment for new listed article**

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.

[Obsolete after November 30, 1941]

**W-38 Purchases of listed articles on different days**

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.

**W-39 Agreement to renew note not payable in instalments**

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.

**W-40 Distinction between heating stoves and space heaters, and furnaces**

[See "Status of Specific Articles", page 24]

**W-41 Stationery gas-fired furnaces and portable electric heaters**

[See "Status of Specific Articles", page 24]

**W-42 Ice-cream sales cabinets**

[See "Status of Specific Articles", page 24]

**W-43 Delay in delivery of article or completion of job; progress payments under certain construction jobs**

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.

#### **W-44 Hand irons**

[See "Status of Specific Articles", page 24]

#### **W-45 Meaning of "principal amount" in section 5(b)**

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 receives \$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).

[Note that figure in section 5(b) as amended effective December 1, 1941, is increased to \$1,500]

#### **W-46 Miscellaneous musical instruments not included**

[See "Status of Specific Articles", page 24]

#### **W-47 Understanding regarding renewals**

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.

[Supplemented by W-107]

#### **W-48 First lien—credit in connection with construction to be secured by first mortgage**

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.

[Although this interpretation is not affected, note that section 6(a) has been broadened by amendment effective December 1, 1941]

#### **W-49 Renewal or revision of credit under section 6(f)**

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).

[Supplemented by W-65. Effective date of sections 8(a) through 8(d) as amended postponed from November 1, 1941 to December 1, 1941. Note provisions of section 8(b) as amended effective December 1, 1941 relating to "add-ons", and provisions relating to "statement of necessity" contained exclusively in section 8(d) as amended effective December 1, 1941]

#### **W-50 Classification of article, component parts of which fall in different classifications**

[See "Status of Specific Articles", page 24]

#### **W-51 Household furnaces and heating units for furnaces**

[See "Status of Specific Articles", page 24]

#### **W-52 Rental-purchase contracts**

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.

#### **W-53 Written statement referred to in section 8(c) not a "statement of necessity"**

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.

[Obsolete after November 30, 1941]

#### **W-54 Extension of credit to retire obligation made prior to September 1, 1941 and held elsewhere**

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.

#### **W-55 "Pack" to be excluded in determining credit value of automobile**

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 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.

#### **W-56 Instalments in declining amounts**

Inquiry has been received whether section 4(c) prohibits sale of automobile with first monthly instalment of \$65 and remaining 17 monthly instalments of \$23.

Section 4(c) is worded in the alternative, and instalments must either be substantially equal in amount or "be so arranged that no instalment is substantially greater in amount than any preceding instalment". Therefore answer to inquiry is negative.

#### **W-57 Sale of demonstrator by automobile salesman**

A question has been received regarding the application of Regulation W to a case in which an automobile salesman sells his demonstrator. The question also relates to the purchase of the resulting obligation by the dealer-employer of the salesman.

The dealer-employer in such a case, who presumably is a Registrant as described in section 3 and also familiar with the particular transaction, may not in any event purchase the obligation unless it complies with the requirements of section 4. This is true because no Registrant may knowingly purchase any instalment sale obligation which fails to comply with section 4, regardless of who made the original extension of credit.

The regulation does not apply to an isolated extension of credit by a person who is not "engaged in the business" as described in section 3(a). However, it is important to note that, whatever the form in which the arrangement may be set up, an automobile salesman's financial interest in his demonstrator may represent a relationship that is substantially different from that of the ordinary automobile ownership. It may have the formal appearance of a purchase of the automobile by the salesman, when actually the demonstrator is in effect the property of the dealer-employer rather than the salesman. In such a case the sale of the demonstrator by the salesman should, for the purposes of the regulation, be treated like any other sale made by the salesman, i.e. as a sale made by him as agent for the dealer-employer, and hence should comply with the requirements of section 4 regardless of whether the obligation is purchased by the dealer-employer.

#### **W-58 Bank discounting obligation not under duty to ascertain whether original lender is licensed**

In view of provisions of section 3(a)(2)(B), bank which discounts an obligation which is subject to the Regulation is not obliged to ascertain whether the original lender is a duly licensed Registrant.

#### **W-59 Water meters**

[See "Status of Specific Articles", page 24]

#### **W-60 Part of excess down payment on one article may not be applied later towards down payment on another article**

The Board has received the following question relating to Regulation W:

"A purchaser buying a listed article makes a down-payment in excess of the amount required by the regulation. May he be permitted later, in purchasing a second listed article, to apply any part of the down-payment on the first article as the required down-payment on the purchase of the second article?"

He is not permitted to do so.

**W-61 Person engaged in business of making extension of instalment sale credit even though employees are only customers**

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

"The X Electric Company purchases substantial numbers of automobiles for cash and sells them to its salesmen on a monthly payment plan, with payments spread over 12 to 18 months. The X Electric Company does not make such sales to anyone except its salesmen. Is the X Electric Company 'engaged in the business' as described in section 3(a)? Must these extensions of credit comply with the down-payment and other requirements of the regulation?"

Both parts of the question should be answered in the affirmative.

**W-62 Replacement or repair parts for listed articles**

The Board has received the following inquiries:

"Does the term 'automobile' in Group A of Supplement, Regulation W include automobile engines purchased separately for installation in a used car chassis?"

"Does term 'mechanical refrigerator', Item 1, Group C, Supplement, include motor unit replacement, if purchased separately?"

These inquiries raise a general question with respect to the treatment of replacement or repair parts for listed articles. It is to be noted that certain parts are mentioned specifically in the list, as for example, motors for power driven boats, heating units for furnaces, and certain items that are included in Group D-4 and Group E. The regulation however does not treat replacement or repair parts as being included in the list merely by reason of the listing of the complete article, with the consequence that an automobile engine purchased separately would not by inference be classified as a listed article on the ground that automobiles are listed. On the other hand, if the Registrant knows or has reason to know that any purchase is part of a scheme to acquire a complete listed article by purchasing separate pieces, the Registrant is required to treat the credit extended as if the piece purchased were a listed article.

**W-63 Application of equity in used car against down payment on new car**

The following question has been received under Regulation W and has been answered in the affirmative:

"Used car has unpaid instalment contract. May dealer pay off unpaid contract, apply the equity in the used car against down payment on new car and finance the difference (assuming it is not more than  $66\frac{2}{3}$  per cent of the cash price) between the equity and the price of the new car over 18 equal payments?"

**W-64 Date of sale of article "on trial" determined when purchaser decides to purchase**

Inquiries have been received as to applicability of Regulation W to a case where vendor of a listed article requests a prospective purchaser to allow him to install it in prospective purchaser's home "on trial" or "on approval" for a 60-day period. The prospective purchaser agrees and at end of 60-day period decides to purchase the article. At what time is the sale of the article to be regarded as having been made?

Assuming that the transaction is entered into in good faith and not for the purpose of evasion, the Board is of the opinion that if the prospective purchaser has the unconditional right to return the article to the prospective vendor at any time within the 60-day period, and if the prospective purchaser does not make, and is not obligated to make, a deposit or payment of any kind to the prospective vendor unless and until he informs the prospective vendor that he has decided to purchase the article, the date of sale, for the purpose of Regulation W, may be regarded as the day on which the prospective purchaser informs the vendor of his decision to purchase the article.

### **W-65 Renewal or revision of credit under section 6(f)**

Regulation W does not require a Registrant to obtain down payment or otherwise to increase amount received through previous payments when a three months credit conforming to section 6(f) is renewed or revised in good faith as described in W-49.

[Effective date of sections 8(a) through 8(d) as amended postponed from November 1, 1941 to December 1, 1941. Note provisions of section 8(b) as amended effective December 1, 1941 relating to "add-ons", and provisions relating to "statement of necessity" contained exclusively in section 8(d) as amended effective December 1, 1941]

### **W-66 Pressure cookers**

[See "Status of Specific Articles", page 24]

### **W-67 Mechanical refrigerators**

[See "Status of Specific Articles", page 24]

### **W-68 Any sum allocated to music lessons does not constitute services rendered in connection with acquisition of instrument under section 4(f) (2)**

An inquiry has been received regarding an instalment sale contract of a musical instrument which states a single sum in payment of purchase price of instrument and lessons in playing thereof and carrying charge on deferred balance. In such case must amount allocable to lessons be regarded as being for services rendered in connection with acquisition of article under section 4(f) (2)?

Any sum actually allocated to music lessons is of course not to be regarded as the cost of services rendered in connection with acquisition of musical instruments.

### **W-69 Extension of instalment sale credit under section 6(j)**

Obligor who has received credit conforming to section 6(j) and who subsequently receives instalment sale credit on listed article priced at \$100 is not required to make down payment on original purchase. The 6(j) credit remains a separate transaction.

### **W-70 Under section 9(b) first instalment may fall due 45 days after date of contract or note**

Question has been asked whether section 9(b) of Regulation W permits first instalment to fall due 45 days after date of contract or note, assuming such date is date of sale, even though the result is that the obligation may show on its face that credit was extended for 18½ months. Answer is in the affirmative.

### **W-71 Calculation of basis price of listed article when customer owes Registrant unpaid balance on article traded in**

A question which may be stated as follows has been received under Regulation W:

A Registrant sells a \$100 radio, receiving in trade or exchange a used radio which he has previously sold to the customer and on which the customer owes the Registrant an unpaid balance. The Registrant allows the customer \$15 for his equity. What is the basis price, the maximum credit value and the down-payment requirement of the new radio? How should the maximum maturity be calculated for such a transaction?

Under Part 2 of the Supplement, the basis price of the new radio would be \$85 (\$100 minus the \$15 equity traded in by the customer). Hence the maximum credit value would be \$68 (80% of \$85) and the required down-payment would be \$17, which would be in addition to the \$15 allowance for the customer's equity. The maximum maturity would be 18 months from the date of the sale of the \$100 radio, with the usual option under section 9(b) of making the 15-day adjustment permitted by that section for calculating the maximum maturity.



#### **W-72 Transfer of equity in listed article by one purchaser to another**

Inquiries have been received regarding cases in which the original instalment purchaser of an automobile or other listed article arranges the transfer of his equity to another purchaser, the transfer of the equity being arranged directly between the parties and not by or through any dealer or other Registrant, and the Registrant holding the obligation is in effect asked to recognize or approve the transfer.

The Board is of the opinion that such a transfer of the automobile or other listed article subject to the original debt and lien may be made without restriction under the regulation provided the original purchaser (who is not a Registrant) remains liable on the contract and there is no change in the contract except the addition of the signature of the new purchaser.

However, if the original purchaser is released from his obligation under the contract, or if the terms of the contract are altered except by including the subsequent purchaser, or if a new contract is entered into between the Registrant and the subsequent purchaser, the same requirements would apply as if the Registrant were making an ordinary instalment sale of the listed article. In such event, if the listed article involved was, for example, an automobile and the subsequent purchaser agreed to pay \$600 for the automobile, the Registrant could not extend credit to him in excess of \$400.

It may be noted, of course, that under section 8(a) of the regulation the requirements stated in the preceding paragraph would not apply to action taken by the Registrant in good faith (1) with respect to any obligation of a member of the armed forces of the United States incurred prior to his induction into the service, or (2) for the Registrant's own protection in connection with any obligation which is in default and the subject of bona fide collection effort by the Registrant.

#### **W-73 Warmer drawer in electric range not a heating surface**

[See "Status of Specific Articles", page 24]

#### **W-74 Refrigerators not "seasonal goods"**

Refrigerators are not "seasonal goods" within the meaning of section 4(d) or 5(c)(3).

#### **W-75 Inclusion of certain taxes and fees in purchase price of automobile**

Taxes and fees payable as prerequisite to obtaining license plates in name of purchaser of automobile or motorcycle may be included in purchase price of automobile or motorcycle under section 4(f)(2) and under Parts 2, 3(a), and 3(b) of Supplement.

#### **W-76 "Bona fide cash purchase price" of automobile sold at discount**

If a new automobile is sold at a discount, and the "bona fide cash purchase price" is therefore less than the sum of items 1 through 4 of Part 3(a) of the Supplement, the maximum credit value is limited to  $66\frac{2}{3}$  per cent of the "bona fide cash purchase price".

#### **W-77 Trade-in allowance on old automobile not fully paid for**

An inquiry which may be stated as follows has been received under section 8(f) of Regulation W:

"A purchaser buys an automobile costing \$600 and tenders his old car, which is worth \$200, as the required down payment. Purchaser owed a finance company \$100 on the old car, which was part of its unpaid purchase price, but the purchaser was able to make arrangements with the finance company whereby the automobile was released as collateral to this loan and there was substituted therefor miscellaneous collateral other than listed articles and he was able to obtain a clear title for the purpose of making a trade-in. Assuming in each case that the Registrant involved knows or has reason to know of the \$100 transaction: (1) May a finance company, other than the one which extended credit on the old car, lend  $66\frac{2}{3}$  per cent of the purchase

price of the new car when the loan is secured by the new car? (2) May the finance company which extended credit on the old car make a separate loan to the same individual equal to  $\frac{2}{3}$  of the purchase price of the new car when the collateral for the loan is the new car? (3) May a finance company make two loans to the purchaser, one secured by the new car equal to  $\frac{2}{3}$  of its purchase price, the other secured by miscellaneous collateral other than listed articles, to pay the \$100 which the purchaser owes the other finance company?"

Section 8(f) in effect prohibits extensions of instalment sale credit under section 4, or of secured instalment loan credit under section 5(a), in any case in which "the Registrant making such extension of instalment credit knows or has reason to know that there is, or that there is to be, any other extension of credit in connection with the purchase of the listed article which would bring the total amount of credit extended in connection with such purchase beyond the maximum credit value of such article."

The down payment in the present case is represented by the old car, which is not sufficient for this purpose unless taken at its full value without regard to the amounts still owed by the customer for its purchase. The down payment therefore includes the \$100 of credit which is outstanding for the purchase of the old car, and the result is that this \$100 brings the total credit in connection with the transaction beyond the maximum credit value of the new car. Accordingly, when, as stated in the question, the Registrant knows or has reason to know of these facts, the extension of credit is prohibited in each of the three cases presented in the question.

#### **W-78 Ice refrigerators**

[See "Status of Specific Articles", page 24]

#### **W-79 Meaning of "bona fide cash purchase price" in section 6(b)**

The phrase "bona fide cash purchase price" in section 6(b) means the bona fide cash purchase price of the article and accessories purchased, including any sales taxes thereon and any bona fide delivery and installation charges.

#### **W-80 Special lease of automobile to contractor working for War Department with option in Government to take title at any time**

An inquiry has been received regarding the applicability of Regulation W to a special type of lease contract covering an automobile. The lessor is a dealer in automobiles and the lessee is a contractor who has a cost-plus-a-fixed-fee contract with the War Department. The lease calls for monthly payments of 10% of the purchase price of the automobile and provides that when 10 payments have been made title to the automobile will vest in the Government with the option in the Government at any time to pay the unpaid balance and take title to the automobile. The contract further provides that the automobile may be transferred to another construction project and in that event the lessor must enter into a new lease agreement with the holder of the construction contract at the new location, payments made under the first lease being credited to the second lease. The contract does not provide any means whereby the lessee can acquire title to the automobile.

The Board is of the opinion that in such circumstances the lease is not subject to the requirements of the Regulation.

#### **W-81 Coin-operated phonograph not a listed article**

[See "Status of Specific Articles", page 24]

#### **W-82 Prefabricated fireplaces**

[See "Status of Specific Articles", page 24]

### **W-83 Purchase of 24-month note made after September 1, 1941 pursuant to commitment made prior thereto**

Section 3(a)(2)(B) permits purchase or discount of 24-month note if note was signed after September 1 pursuant to pre-September commitment.

Similarly, where contractor and home owner have made pre-September contract for repairs to be financed by a bank, bank may finance the repairs on terms provided in contract even though request for financing is not presented to bank until after September 1.

### **W-84 Contents of "statement of transaction"**

The Board has received several questions regarding the application of sections 4 (f) and 5 (c) (1) of Regulation W, which become effective October 1, 1941, and relate to the "statement of transaction" required in connection with extension of instalment sale credit or instalment loan credit. The answers are given below:

1. It is not necessary that all of the information required by section 4 (f) or 5 (c) (1) be included on a single sheet of paper, but if parts of the information appear on two or more sheets it is necessary that these sheets be attached together, and that copies of all of them be given to the obligor together. The statement referred to in these sections, and the copy required to be given the customer, need not be identical in form.

2. It is not necessary that the particular terminology used in the regulation ("bona fide cash purchase price," "deferred balance", and "time balance") be used in the statement of transaction, as long as the statement contains the required information. When the contract is in the form of a lease agreement, such terminology as is applicable to a lease, giving the corresponding information, may be used.

3. The bona fide cash purchase price of a particular article and accessories, including relevant taxes, may be shown as a total without being itemized into various parts. Although section 4 (f) (2) requires itemization of (1) the article, (2) the accessories and (3) the services referred to in the section, the items themselves may be itemized without stating the portion of the total purchase price that relates to each. Accessories which are standard equipment for the article need not be individually itemized, and a group of accessories which are sold as a single group by the manufacturer may be shown in the statement as a unit.

4. The itemization for a new automobile follows this same rule, and need not show separately the matters referred to in paragraphs 1 through 4 of Part 3 (a) of the Supplement. As indicated above, however, the accessories should be indicated, and so should the relevant services.

5. In the case of an extension of instalment sale credit subject to section 4 of the regulation, Item 2 under section 4 (f) requires that the statement of transaction show the bona fide cash purchase price of the article—the price at which the seller would sell the article for full cash payment—even though the sale will be made at a "time price" which includes carrying charges.

6. The information referred to in each of the seven paragraphs of section 4 (f) must be set forth, and it is not sufficient that an item of information may be obtained by mathematical derivation from other information in the statement. However, if the interest or finance charge is not included in the face amount of the obligation but is an additional amount calculated pursuant to an arithmetic formula plainly set forth in the statement, paragraphs 5 and 6 do not require this amount to be shown in dollars and cents or to be included in the statement of the time balance.

7. In any case in which a State law or local regulation requires that sales taxes be shown separately or requires in any other respect more detail than that required by Regulation W, the regulation does not prohibit such further itemizing.

### **W-85 Gas heating units suspended from ceiling**

[See "Status of Specific Articles", page 24]

**W-86 Refrigeration cabinets serviced by separate refrigeration unit**

[See "Status of Specific Articles", page 24]

**W-87 Automatic gas systems**

[See "Status of Specific Articles", page 24]

**W-88 Seller's services in connection with delivery of new automobile**

Part 3(a) of the Supplement to Regulation W provides that the maximum credit value of a new automobile shall be  $66\frac{2}{3}$  per cent of the purchase price but that such maximum credit value shall in no event exceed  $66\frac{2}{3}$  per cent of the sum of items numbered 1 through 4 as set forth under part 3(a). In this connection, the Board has received several questions as to the amounts which may be included under that portion of item 4 which permits the inclusion of "Any bona fide charges for delivery \* \* \* not included in the foregoing items."

In general this provision permits only the inclusion of bona fide charges for services which are actually rendered by the seller in connection with the delivery of a new automobile and which are not included in the manufacturer's retail quotation (item 1) or in transportation charges (item 2). For example, charges for such services as lubricating, cleaning, polishing, or otherwise conditioning the car may not be included under item 4 if these services are included in item 1 or 2; but in case any such services are not included in items 1 and 2, a charge which is reasonably related to the value of such services may be included in item 4. Likewise, where the contract of sale includes any additional services connected with the delivery of the car, such as greasing the car for a certain period or providing antifreeze, a reasonable charge for such services may be included in item 4. On the other hand there may not be included in item 4 a charge which the dealer may make for "advertising" or for "warehousing", nor any other charges which the dealer may make except bona fide charges for services which are actually rendered by the seller to the purchaser and are not included in items 1 and 2.

**W-89 Water heaters with storage tank capacity of 85 gallons or less**

[See "Status of Specific Articles", page 24]

**W-90 Cooking stoves designed for commercial use**

[See "Status of Specific Articles", page 24]

**W-91 Materials and services for new structure on improved real estate**

Question has been received as to whether materials and services for building a new garage are included in Group E if the garage is on improved real estate upon which other buildings are located but is itself a separate new structure. For purposes of Regulation W, materials and services in such circumstances are not considered to be "in connection with existing structures" but are considered to be for new structures, and hence not included in Group E.

**W-92 Purchase of house containing listed articles previously installed**

A 24-month note for \$650 secured by a second mortgage on a house is not subject to Regulation W if it is given by the purchaser to the seller as part of the purchase price of the house; and the note may be discounted by a bank under section 3(a)(2)(B). This would be true even if plumbing fixtures and other listed articles had been incorporated in the house, because for the purposes of Regulation W the sale would be regarded as the sale of a house and not as the sale of plumbing fixtures.

Similarly, the fact that a \$1500 instalment loan is secured by a second mortgage on a house that was purchased within 45 days and which at the time of purchase contained plumbing fixtures or other listed articles previously installed, would not cause the loan to be subject to section 5(a) as a loan secured by a "listed article which has been purchased within 45 days". The recent pur-

chase is considered to be the purchase of a house rather than the purchase of a listed article, and the case would not be altered by the fact that the seller of the house might have purchased and installed the listed article only shortly before he sold the house and within 45 days prior to the loan. On the other hand, section 5(a) would apply if the mortgagor had owned the house for some time and had purchased and installed the listed articles within 45 days prior to the loan, since in such a case the mortgagor's recent purchase would be a purchase of a listed article rather than the purchase of a house.

[Note that section 6(a) has been broadened by amendment effective December 1, 1941, and that figure in section 5(b) as amended effective December 1, 1941 is increased to \$1,500]

### **W-93 Portable air-conditioner units of one horsepower or less**

[See "Status of Specific Articles", page 24]

### **W-94 Home improvement involving several listed articles carried out as single job**

In the case of a home improvement that is carried out as a single job totaling \$995, of which \$550 is for a furnace and other Group D items while \$445 is for Group E items, the question has been asked whether a Registrant financing the entire job may divide the financing into \$445 on an instalment basis subject to the requirements of Regulation W and \$550 on a single-payment basis not subject to the regulation.

This is a single transaction and may not be divided by the Registrant in this manner.

### **W-95 Agreement to renew final balloon maturity of instalment note**

Questions have been received as to whether a certain plan of repayment meets the requirements of Regulation W regarding 18 months' maximum maturity and equal monthly payments for instalment loan credit. There is provision for 11 equal monthly payments, and a larger twelfth payment at the end of the twelfth month for the remainder. However, there is an express agreement between the parties that when the twelfth payment falls due, unless the borrower has defaulted on an earlier payment or unless there is a material impairment of his credit, only a portion of the twelfth payment will actually be paid and the remaining portion will be refinanced into six equal monthly payments in such manner that the net result will be eighteen substantially equal monthly payments.

Such an arrangement complies with the specified requirements of the regulation.

### **W-96 Meaning of "bona fide cash purchase price" in sections 5(a)(1) and 5(c)(1)**

The phrase "bona fide cash purchase price" in section 5(a)(1) and section 5(c)(1) means the bona fide cash purchase price of the article and accessories purchased, including any sales taxes thereon and any bona fide delivery and installation charges.

### **W-97 Section 6(b) inapplicable where cost of Group D articles exceeds 50 per cent of deferred balance**

A Registrant makes an extension of instalment sale credit arising out of the sale of materials and services (including certain Group D articles) in connection with repairs, alterations or improvements upon urban, suburban or rural real property in connection with an existing structure. The bona fide cash purchase price of all the materials and services is \$1500 and the bona fide cash purchase price of the Group D articles is \$700. The purchaser makes a cash payment of \$150 and remains indebted to the seller in the amount of \$1350. Is the transaction exempt under section 6(b) of the regulation?

The exemption in 6(b) does not apply since the \$700 purchase price of the Group D articles is more than 50 per cent of the over-all deferred balance of \$1350.

### **W-98 Single transaction divided into two parts for F.H.A. insurance**

Facts similar to W-97, but the bona fide cash purchase price of all the materials and services is \$3,000 and the bona fide cash purchase price of the Group D articles is \$1400. The purchaser does not make any down-payment and remains indebted in the full amount of \$3,000. Inasmuch as \$2500 is the maximum amount of a loan which may be insured by the Federal Housing Administration under Title I of the National Housing Act, the customer's obligation totaling \$3,000 is divided into two parts, one in the amount of \$2500 which is insured by the Federal Housing Administration, and the other in the amount of \$500 which is not insured. The \$1400 of Group D items exceeds 50 per cent of the \$2500 but is less than 50 per cent of the \$3,000. Is the transaction exempt under section 6(b)?

Since the \$3,000 represents a single transaction and is divided into two parts merely for convenient treatment under the National Housing Act, it is permissible to treat the \$3,000 as a unit, and hence as an exempt transaction under section 6(b).

### **W-99 Small deficiency in down payment**

The Board was recently asked whether the phrase "maximum credit value in per cent of basis price" in the Supplement to Regulation W should be interpreted literally or whether down payments which are short a reasonable amount are permissible.

The Board replied that the "maximum credit value" provided in the Supplement is a figure which should be calculated mathematically and not be arrived at by approximation and, therefore, the regulation does not authorize an extension of credit which is even a few cents in excess of the maximum provided by the regulation.

[Note amended section 4(e) relating to down payments effective December 1, 1941]

### **W-100 Method of furnishing "statement of transaction" under section 4(f)**

The Board has been asked whether the following procedure complies with section 4(f) of Regulation W.

The seller gives no statement of the transaction to the purchaser but authorizes the finance company which discounts the obligation to furnish the statement to the purchaser in its normal course of business, with the result that the purchaser receives the statement approximately two weeks after the obligation is discounted by the finance company.

The Board replied that this procedure does not comply with the requirements of section 4(f).

### **W-101 Rescission of instalment sale contract**

Regulation W does not prohibit the rescission of an instalment sale contract by agreement of the parties at any time if the seller refunds all amounts received and the purchaser returns the article; as, for example, where the article is found to be defective and the seller is unable to replace it. However, if the purchaser returns the article several months after the date of sale on the ground that it is defective and if the seller does not replace the article but instead agrees with the purchaser to rescind the sale and sell the purchaser another article of the same kind or a similar article of a higher price, these facts may indicate that the rescission was merely a formality used for the purpose of evading the Regulation and that the transaction should have been treated as a trade-in as described in W-71.

### **W-102 Conversion of single payment credit into instalment credit**

A Registrant sells a listed article under a bona fide agreement that the purchase price will be paid in a single payment 60 days after the date of purchase. By reason of a change in circumstances and not in pursuance of any previous agreement or arrangement, at about the time the payment is to be made the purchaser asks that the purchase be changed to an instalment basis. Is it necessary to get a down payment? From what date must the maximum maturity be calculated?

Since the sale was made under a bona fide agreement and there were no evasive side agreements between the parties, it is not necessary under the present terms of the regulation to get a down payment, and the maximum maturity is 18 months from the date on which the credit is changed to an instalment basis.

#### **W-103 Air cooling units with central air circulating system**

[See "Status of Specific Articles", page 24]

#### **W-104 Water softeners**

[See "Status of Specific Articles", page 24]

#### **W-105 Sale of listed and unlisted articles at the same time**

Section 4(g) of Regulation W provides that where a listed and an unlisted article are sold at the same time, the permissible terms shall be determined by dividing the transaction into two parts, so that the sale of the listed article will comply with Regulation W and the sale of the unlisted article will be on terms which the seller would have granted on that sale if standing alone.

Some sellers have established their own minimum down payment or minimum periodic payment requirements in connection with instalment sales, but when two or more articles are sold at the same time these requirements apply to the total. The Board has been asked whether section 4(g) requires such a seller to apply his minimum payment requirements to the sale of the unlisted article as though the listed article had not been sold to the customer. The Board replied that the Regulation does not require him to do so, but permits him to give the same terms on the part of the sale represented by the unlisted article which he would have given, in a similar combination sale, in the absence of the Regulation.

#### **W-106 "Seasonal" nature of goods dependent upon typical use**

The determination of whether listed articles are "seasonal goods" within the meaning of sections 4(d) and 5(c)(3) of Regulation W depends on their typical use, rather than on the distribution of their sales during the year or the use to which the article is put in a particular case.

For these reasons, Group D-1 listed articles (furnaces, etc.) and Group C-6 articles (heating stoves, etc.) are winter "seasonal goods", even though occasionally such articles may be used the year round. Similarly, Group C-8 articles (room-unit air conditioners), Group D-5 articles (home air conditioning systems), and Group D-6 articles (attic ventilating fans) are summer "seasonal goods" even though occasionally they may be used throughout the year.

However, as pointed out in W-74, a refrigerator is not a "seasonal good", since refrigerators are typically used the year round. The fact that some refrigerators may go unused during winter months does not alter this general classification.

#### **W-107 Ordinary bank loan—understanding on renewals**

In response to several inquiries regarding W-47, the Board said that an ordinary bank loan evidenced by a promissory note repayable in full at maturity is not subject to Regulation W, even though the bank may anticipate that at the maturity of the note it may accept a partial payment and a renewal note for the balance; provided the bank makes no commitment to do so and the transaction is entered into in good faith and not as a means of avoiding or evading the Regulation.

#### **W-108 Effect of Amendment No. 2 on certain interpretations**

[The information contained in this interpretation has been set forth in the footnotes under the interpretations affected]

## STATUS OF SPECIFIC ARTICLES

The following information is consolidated from several interpretations of the Board in response to inquiries regarding the status of particular articles. The group headings *A*, *C*, *D* and *E* below correspond with the similarly lettered Groups in Part 1 of the Supplement to Regulation W.

### *Group A*

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

### *Group C*

The classification "mechanical refrigerators" includes frozen food cabinets of the specified capacity designed for the home freezing of foods or for the home storage of frozen foods but does not include frozen food cabinets designed for the display of frozen foods offered for sale. It does not include milk coolers, assuming that they are not designed for household use. It 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, nor mechanically refrigerated cabinets specifically designed for the storage of ice cream or other food products offered for sale. It does not include an electrically operated portable unit for cooling and dispensing drinking water.

The classification "mechanical refrigerators" includes certain refrigerating systems consisting of (1) one or more cabinets of which each has less than 12 cubic feet rated capacity, and (2) a separate mechanical refrigeration unit servicing these cabinets. This is true even though the aggregate capacity of the cabinets included in the system may be 12 cubic feet or more.

Regarding the classification "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. A warmer drawer in electric ranges is not considered a heating surface. This classification does not include cooking and baking equipment that is clearly designed for commercial use and not suitable for use in households, even though having less than seven heating surfaces. A cooking stove or range or oven, which is designed for commercial use in restaurants and hotels, and which has a single or continuous heating surface or heating unit, is not included. A deep-fat fryer designed for such use is not included.

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, but it does not include gas heating units designed to be suspended from the ceiling and operated with a fan circulator.

The classification "room-unit air conditioners" includes portable units of one horsepower or less.

The classification "radio receiving sets, phonographs, or combinations" does not include coin-operated phonographs.

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.

### *Group C and Group D*

A distinction has been made between "heating stoves and space heaters designed for household use" and "household furnaces" as follows: For the 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 heat 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.

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.

#### *Group D*

The classification "water heaters designed for household use" includes all water heaters with a storage tank capacity of 85 gallons or less.

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  $\frac{1}{3}$  horsepower or less. The actual use to which the pumps are put does not affect the classification.

The classification "plumbing and sanitary fixtures designed for household use" includes water softeners having a rated capacity of 120,000 grains or less of hardness removal between regenerations. It does not include water meters.

The classification "home air conditioning systems" includes air cooling units that have a rated capacity of 5 tons or less of refrigeration and that are designed for use with a central air circulating system. The classification does not include circulating fans unless they are incorporated in the unit. The classification of such a unit is not affected by the character of building in which it is to be used.

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. The classification "household furniture" includes lamps designed for household use, mirrors, unpainted furniture, stools, kitchen or breakfast room sets, porch tables, chairs, and swings, and kitchen cabinets, but does not include pictures, clothes hampers, china dinner sets, stainless steel cooking utensil sets or silver-plated flatware. It includes a prefabricated fireplace, sold as a complete unit, that is decorative only and not usable for heating purposes.

The inclusion or exclusion of articles under the classification "ice refrigerators", which is a part of Group D-7 "New household furniture" in the Supplement, is determined by the same general principles that have been applied in connection with "mechanical refrigerators". Refrigerators of less than 12 cubic feet rated capacity are included, no matter what the use to which they are to be put, unless their design and construction is such that they are clearly usable only for commercial purposes.

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 specifically designed for use in churches or for similar use.

#### *Group D and Group E*

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 I of the Supplement.

*Group E*

Butane, propane, or similar automatic gas systems or containers are included in Group E of the Supplement.

*Miscellaneous*

The following articles are not included in any of the classifications of "listed articles":

Toasters, food mixers, roasters, pressure cookers, air circulating or ventilating fans other than attic fans or air conditioners, waffle irons, clocks, carpet sweepers not electrically operated, tumbler clothes driers, and hand irons whether electrically or otherwise operated.

For information concerning replacement or repair parts for listed articles, refer to W-62.

Please forward to us ..... additional copies of your Circular No. 2310, dated November 7, 1941, entitled "Consumer Credit—Interpretations of the Board of Governors of the Federal Reserve System Regarding Regulation W".

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**FEDERAL RESERVE BANK OF NEW YORK**

**Federal Reserve Station, P. O.,**

**New York, N. Y.**