FEDERAL RESERVE BANK
OF NEW YORK

REGULATION W

CONSUMER CREDIT

Interpretations of Regulation W
Issued by the Board of Governors
of the Federal Reserve System
through January 10, 1952

[Circular No. 3812
January 18, 1952
(Supersedes Circular No. 3687)]

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FEDERAL RESERVE BANK
OF NEW YORK

January 18, 1952

*To Lenders and Others Concerned With Regulation W
in the Second Federal Reserve District:*

This circular contains interpretations of Regulation W which were issued by the Board of Governors of the Federal Reserve System between September 18, 1950, the effective date of the regulation, and January 10, 1952.

We printed some of these interpretations in our Circular No. 3687, dated April 2, 1951; the remainder were issued after that date. We have printed this circular in a form similar to that of the regulation so that you may keep both together.

This circular supersedes our Circular No. 3687, dated April 2, 1951.

Additional copies of this circular will be furnished upon request.

ALLAN SPROUL,
President.

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NOTE

These interpretations should be used only as aids in studying the application of the regulation. Since the complete facts upon which these interpretations are based have not been given in every case, there can be no assurance that the facts in new situations will be identical with those condensed in the interpretations. Therefore, caution should be exercised against reaching a conclusion in a given case solely on the basis of similarity to any one of the interpretations.

Some interpretations have been omitted because later amendments to Regulation W have made them obsolete; others have been slightly altered to make them conform to later amendments.

The interpretations are arranged in the same order as the sections of the regulation to which they relate. Section numbers following the headings have been added in order to key the interpretations to the relevant sections of the regulation.

Each interpretation is followed by a reference to the Federal Register (F.R.), and in most cases to the Federal Reserve Bulletin, and circular, if any, of this Bank.

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REGULATION W

CONSUMER CREDIT

Interpretations

Refinancing of instalment sale of unlisted article—Sec. 1

A question has been presented concerning the application of Regulation W to the instalment refinancing by a bank or finance company of an instalment obligation which had been made payable to the vendor by the purchaser of an unlisted article and which thereafter had been purchased or discounted by the bank or finance company at a date subsequent to the sale of the article. In the case presented the refinancing would be accomplished by the Registrant taking an instalment note payable to itself which would replace the original obligation purchased or discounted. Inasmuch as the transaction between the purchaser and vendor was not regulated, the Board is of the view that such refinancing, whether or not evidenced by a new obligation, likewise would not be a regulated transaction. In all such cases, however, the Registrant would have a duty under section 8(*a*) of being able to demonstrate that any such refinancing on unregulated terms was permissible.

[15 F.R. 8559; Federal Reserve Bulletin, Dec. 1950, p. 1613.]

Statement of the Borrower—Sec. 4(*d*)

A recent inquiry received by the Board raised a question concerning the application of section 4(*d*) of Regulation W in the case of an instalment loan for the purpose of purchasing residential repairs, alterations, or improvements covered under Part 1, Group D of the Supplement to the regulation. The specific question is whether, in the case of any such loan for which FHA insurance is sought, the "FHA Title I Credit Application" form and the "FHA Title I Cash Down Payment Certificate" form, when both are properly completed by the borrower, are sufficient to satisfy the requirements of section 4(*d*) concerning the Statement of the Borrower. The aforementioned forms are designated, respectively, "Form FH-1, (Rev. 6-50)" and "Form FH-9, Rev. 7-50."

The Board's understanding is that a separate Credit Application to the lender is required to be executed by the borrower for each such loan, and that such Credit Application and a Down Payment Certificate executed by the borrower are required to be obtained by the lender prior to any disbursement of the loan. The Credit Application form specifically states that the proceeds of the loan applied for will be used to finance the repairs or improvements which the form requires the borrower to describe. It is understood also that the "total cost," exclusive of financing charges, required to be set out in the Down Payment Certificate represents the actual cost of

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the repairs or improvements described in the Credit Application, and that no discrepancy is permitted between this figure and the cost as revealed by the Credit Application. In addition, it is understood, and the Down Payment Certificate indicates, that the borrower must specify in such Certificate the amount of any trade-in or other allowance.

On the basis of the foregoing and from an examination of the FHA forms in question, the Board is of the view that such forms, when properly completed by the borrower, are sufficient to satisfy the requirements of section 4(*d*) of Regulation W. In such a case, the borrower states the purpose of the loan and indicates that the entire proceeds of the loan are to be used for that purpose. And, as the purpose is to purchase a listed article, the borrower identifies such article, supplies sufficient information with respect to its price and also with respect to any trade-in or allowance. Consequently, in cases of this kind section 4(*d*) would not require of the borrower an additional statement.

Of course, the information reflected in the aforementioned forms when completed by the borrower will not necessarily indicate compliance with requirements of Regulation W other than section 4(*d*). For example, in a given case, a down payment greater than the 10 per cent requirement specified by the Down Payment Certificate may be necessary under Regulation W. This would occur by virtue of Group B of the Supplement where a modernization job would include, for example, the installation of a kitchen sink unit incorporating a mechanical dishwasher.

[15 F.R. 8559; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1614.]

Revision by original or other Registrant—Sec. 5(*a*) [1]

Section 5 of Regulation W relates to renewals, revisions and additions. Subsection (*a*) of section 5 states the general requirements that apply in such cases, and other subsections of section 5 relate to certain special situations. In connection with several cases that do not qualify under any of those other subsections, questions have been received regarding the possible application of section 5(*a*).

Question—If Registrant A extends credit for the purchase of an automobile and the customer later asks to revise the credit, what is the maximum maturity permissible for the revised obligation?

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1 Wherever necessary, interpretations have been revised to reflect Amendment No. 4, effective July 31, 1951, which changed the required down payment and maximum maturities as follows:

Type of instalment credit	*Required down payment*	*Maximum maturity*
Automobiles	33⅓%	18 months
Household appliances, radio, and television sets	15%	18 months
Furniture	15%	18 months
Residential repairs and improvements	10%	36 months
Unclassified instalment loans	—	18 months

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Answer—18 months, because that is the maximum maturity applicable to a new automobile credit.

Question—What would be the maximum maturity in the above case if the Registrant who was asked to revise the credit was not A, who had originally extended it, but B, a bank or finance company that had purchased the paper from A?

Answer—18 months, because it would still be the revision of an instalment credit "already outstanding."

Question—What would be the maximum maturity if the customer went to C, a bank or loan company that did not hold the original paper, and asked to obtain a loan to pay off the obligation referred to above?

Answer—18 months, the maximum maturity for an unclassified loan, because section 5(*a*) applies merely to the "renewal or revision of * * * credit already outstanding" and C could not be said to be renewing or revising a credit which he already has outstanding. This contrasts with the broader language of section 5(*b*) which applies to credit that "refinances" an outstanding obligation "whether or not such obligation is held by the Registrant," but which requires that certain conditions exist which were not present here.

[15 F.R. 6985; FEDERAL RESERVE BULLETIN, Nov. 1950, p. 1471.]

Bona fide trade-ins—Sec. 6(*c*) (3)

Since the amendment to Regulation W which was made following the amendment of the Defense Production Act, and which became effective July 31, 1951, questions have been received concerning trade-ins in connection with the instalment sale of listed articles, particularly articles listed in Groups B, C, and D of the Supplement to the regulation.

It should be noted that the new provisions of the statute and the regulation do not repeal the requirement that a down payment must be obtained. Two provisions of the regulation are of special importance here. One is section 6(*c*)(3) which requires that a trade-in be described in the Registrant's records and that the Registrant set out "the monetary value assigned thereto in good faith." The other is section 8(*j*)(7) which requires that "any rebate or sales discount" be deducted in calculating the "cash price" of the listed article, and that the required down payment be determined on the basis of the "cash price . . . net of any rebate or sales discount."

The provisions of the statute and regulation, especially those quoted above, prohibit certain practices which would attempt to use fictitious trade-in allowances to evade the down payment requirements. This is true even though the regulation does not necessarily require that trade-in allowances counted against down payments be limited to the actual market value

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of the trade-in or to the amount for which the Registrant expects to be able to sell it. Some of the more important principles forbidding fictitious trade-in allowances are indicated below.

1. It is evident that a transaction would involve a rebate or sales discount rather than a trade-in where the Registrant in fact did not receive delivery and possession of the property for which a so-called trade-in allowance was granted. In such a case an actual trade-in has not occurred, and labelling the transaction as a "trade-in" will not change its essential characteristic as a mere rebate or discount. The Registrant has received nothing in part payment by virtue of the so-called trade-in and has merely reduced the price of the article sold. Accordingly, the required down payment would have to be obtained on the basis of the "cash price" of the article net of such reduction.

2. A transaction would similarly conflict with the requirements of the regulation where there was applied against the required down payment a so-called trade-in allowance in substantial amount for property having a value that was nominal or negligible, or that bore no reasonable relationship to the so-called allowance. Among transactions that would thus conflict would be many made on the basis of a substantial uniform allowance for all so-called trade-ins irrespective of their make, model, or condition.

3. A trade-in could not be counted as a down payment to the extent that there had been any offsetting increase in the price of the article being sold. The price to be used as a standard here would be the actual value at which the Registrant at the time is selling the same or like articles with an all-cash down payment or on a comparable basis; that price might, of course, be lower than the "list" price.

4. From the foregoing it may be noted that a trade-in allowance cannot be counted against the down payment required under the regulation except to the extent that it reflects a bona fide trade-in or exchange of property. The regulation does not prevent a Registrant from giving rebates or discounts, or from calling them anything he may like; but no matter what he may choose to call them for his own purposes, they obviously cannot take the place of the down payment required by the regulation and cannot excuse the Registrant from the requirement that he actually obtain the required down payment. In other words, a Registrant is entirely free to give any trade-in allowances, rebates, or discounts that he desires; but such allowances, rebates, or discounts cannot be used as a cloak to conceal evasions of the down payment requirements of the regulation contrary to the principles here set out.

5. Under section 8(*a*) of the regulation the Registrant is required in any given case to keep such records as are relevant to establishing that his treatment of an allowance as a trade-in or exchange in payment or part

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payment of the required down payment is in conformity with the foregoing and with the requirements of the regulation.

[16 F.R. 9287; FEDERAL RESERVE BULLETIN, September 1951, p. 1134; FRBNY Circular No. 3755, September 7, 1951.]

"Over-allowances" on trade-ins—Sec. 6(*c*) (3)

Questions have been received concerning "over-allowances" on trade-ins in connection with automobile sales.

Section 6(*c*) (3) of the regulation requires that a trade-in be described in the Registrant's records, and that the Registrant set out "the monetary value assigned thereto in good faith." This requirement does not prohibit all over-allowances on trade-ins as such. If the Registrant can show that the price of the automobile being sold has not been increased to offset any part of the over-allowance on the car accepted in trade, section 6(*c*) allows the Registrant to show the trade-in at the value at which he accepts it in trade and to treat it as being a down payment to that extent, even though that may be more than the amount for which he expects to be able to sell it. In such a case the amount of the down payment requirement on the car being sold would, of course, be calculated on the basis of the price against which the trade-in was allowed.

Obviously, however, if any over-allowance on a trade-in were added to the cash price of the article being sold, the over-allowance on the trade-in then could not properly be said to be "assigned thereto in good faith" and the trade-in could not be counted as a down payment to the extent that there had been any offsetting increase in the price of the article being sold.

[15 F.R. 9383; FEDERAL RESERVE BULLETIN, Jan. 1951, p. 21.]

Sets and groups of articles—Sec. 6(*g*)

A question has been presented concerning the application of section 6(*g*) of Regulation W relating to sets and groups of articles.

In determining whether several articles constitute "a single listed article" under section 6(*g*)—(1) the articles must be so related as to constitute a set, group, or assembly, or (2) they must be merchandised as a single unit; and, in either case (3) they must be sold or delivered at substantially the same time.

Requisites (1) and (2), it will be noted, are stated in the alternative. Consequently, if a given case meets either or both of these requisites, section 6(*g*) will apply, assuming that the third requisite, which is self-explanatory, is also satisfied.

If the items are functionally related as in the case of a dining room or bedroom suite, the first requisite would be met. However, even if the items are not functionally related, but are merchandised as a set, group,

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or assembly, the second requisite would be met and the absence of functional relationship would be immaterial.

With respect to the second requisite, important considerations are how the items are offered to customers, advertised, or ticketed, and the merchandising practices of a particular seller or practices in the particular trade. If listed articles are sold pursuant to an offering of the articles as a set, group, or assembly, the articles constitute a single listed article regardless of functional relationship and regardless of whether they are offered at a combination price which is lower than the price of each article if bought separately.

[15 F.R. 8075; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1612.]

Side loans prohibited—Sec. 6(*i*)

Questions have been received regarding section 6(*i*) of Regulation W. The section states that "a Registrant shall not extend any credit for financing the purchase of a listed article" if he knows or has reason to know of any other credit that would cause the total credit in connection with the purchase to exceed the amount of instalment credit permitted by the regulation.

(1) The requirements of the section apply to a Registrant only in a case in which he is extending instalment credit. This is because section 2(*a*) of the present regulation limits the application of the entire regulation to cases in which the Registrant is extending instalment credit.

(2) In any case in which the Registrant is extending instalment credit subject to the regulation for the purchase of a listed article, he must take into account under section 6(*i*) all credit, of which he knows or has reason to know, in connection with the purchase of the article. He must take into account not merely other credit that would be subject to the regulation, but also "other credit of any kind" in connection with the purchase of the article, including credit that is not itself subject to the regulation.

(3) Single-payment credit is one example of credit that is not itself subject to the present provisions of the regulation but that must be taken into account under section 6(*i*) when the Registrant extends instalment credit subject to the regulation for the purchase of a listed article.

(4) Similarly, credits exempted by section 7 of the regulation are also among the credits that must be taken into account under section 6(*i*). For example, section 7(*k*) exempts certain credits that are fully secured by withdrawable shares issued by or savings accounts held with the lender but such credits, like single-payment credits, must nevertheless be taken into account under section 6(*i*) by any Registrant extending any credit subject to the regulation for the purpose of purchasing a listed article.

[15 F.R. 6985; FEDERAL RESERVE BULLETIN, Nov. 1950, p. 1472.]

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Large quantity sales of listed articles—Sec. 7(*a*)

From time to time questions have been received under Regulation W concerning the provisions of sections 7(*a*), 8(*j*)(5) and 8(*j*)(6) which exempt from the regulation instalment credit "in a principal amount" exceeding $5,000 in the case of automobiles, and exceeding $2,500 in other cases.

Whether credits considered individually or collectively.—In certain circumstances, credits may be added and treated collectively as a single credit for the purposes of the foregoing dollar figures. To be considered collectively as a single credit, the indebtedness must not only be incurred between the same Registrant and one customer, but it also must be incurred pursuant to a basic contract between them which governs the indebtedness and which must be relied upon to enforce the indebtedness. Even if there is some kind of basic contract, various items under it cannot be added together to reach the $2,500 (or $5,000) figure if they are represented by individual notes or other evidences of indebtedness that would support an action for the debt without resorting to the basic contract.

The amount stated in the basic contract is not controlling except to the extent that articles have actually been delivered or funds actually been disbursed pursuant to the contract. This may be illustrated by an example in which a Registrant and a customer enter into a contract for the delivery and instalment sale to the customer of, say, 50 refrigerators. Suppose further that each delivery of refrigerators is represented only by a mere receipt that refers back to the original contract and would not support a separate action. In such a case, deliveries under the original basic contract would be subject to the regulation until the outstanding indebtedness exceeded $2,500. Once that figure was exceeded, the entire credit would be exempt. Additional deliveries under the contract while the indebtedness exceeded $2,500 would also be exempt.

The foregoing principles would apply also in the case of instalment leases or instalment loans.

Continuance of over-$2,500 ($5,000) exemption.—The over-$2,500 (or $5,000) exemption is not lost merely because the principal amount of instalment indebtedness falls below such figure as the obligation is paid down. However, when such indebtedness has fallen below the exemption figure, additions thereto do not get the benefit of the exemption unless they are sufficient to bring the total of the indebtedness above the exemption figure. When the outstanding credit under a leasing or similar contract for financing quantity merchandising has exceeded the exemption amount, substitutions or exchanges of articles that are contemplated by the contract may be

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made without regard to cash repayments that may in the meantime have reduced the amount of the credit.

[16 F.R. 5321; FEDERAL RESERVE BULLETIN, June 1951, p. 646; FRBNY Circular No. 3715, June 1, 1951. This interpretation supersedes the one on the same subject published in FRBNY Circular No. 3634, December 27, 1950, and restated at pages 5 and 6 in FRBNY Circular No. 3687, April 2, 1951.]

Loans for business purposes—Sec. 7(*b*)

A loan to a doctor or dentist to purchase medical or dental equipment is a "loan for business purposes to a business enterprise" within the meaning of section 7(*b*) of Regulation W if the doctor or dentist is engaged in performing services for various patients for individual fees. However, a doctor or dentist performing services only on a regular salary basis cannot be considered a "business enterprise" under section 7(*b*).

[15 F.R. 7316; FEDERAL RESERVE BULLETIN, Nov. 1950, p. 1472.]

House trailers—Sec. 7(*h*)

1. Instalment credit for the purchase of a house trailer designed for residential use is exempt under section 7(*h*) of the regulation. This is true whether the purchaser intends that the trailer remain mobile or whether he intends to detach the wheel assemblies and place the trailer on a foundation constructed on real property. In the latter event, the credit is exempt under either section 7(*h*)(1) or 7(*h*)(2). With respect to section 7(*h*)(3), it is the Board's view that extensions of credit in connection with sale of house trailers are subject to Regulation X governing real estate credit where the trailers are to be used for dwelling purposes and the wheel assemblies are to be detached and the trailer placed on a foundation constructed on real property.

2. If the wheels of a house trailer are detached and it is placed on a foundation constructed on real property, then the trailer is an "existing structure" for purposes of Group D of the Supplement to Regulation W.

[15 F.R. 7755; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1612.]

Construction of or repairs to detached structure—Sec. 7(*h*)(1)

Questions have been received as to whether instalment credit (1) for the construction of a detached garage on a lot already occupied by a house, or (2) for repairs or alterations to such a garage previously built, is subject to Regulation W.

A garage so constructed would be in connection with an existing structure and would not be a structure "designed exclusively for nonresidential use" within the meaning of Group D of the Supplement. However, the Board's view is that such a garage would be an "other entire structure" within the meaning of the exemption in section 7(*h*)(1). Consequently, instalment credit for the construction of the garage would not be subject to the regulation.

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On the other hand, instalment credit for repairs or alterations to such a garage previously built would not be affected by section 7(*h*)(1) and, therefore, in the Board's view would be subject to the terms applicable in the case of a Group D article.

Whether or not a garage is "detached" must depend upon the facts and circumstances of the particular case. For example, the mere fact that a concrete sidewalk or fence may connect the house with the garage normally would not prevent the garage from being a detached garage and, therefore, an "other entire structure" within the meaning of section 7(*h*)(1). A rigid structural connection, however, such as an enclosed passageway or breezeway would prevent the garage from being an "other entire structure."

[15 F.R. 6630; FEDERAL RESERVE BULLETIN, Oct. 1950, p. 1309.]

Verification of loan value—Sec. 8(*e*)(2)

A bank or finance company purchasing or discounting an instalment obligation arising from the sale of a listed article is not required by section 8(*e*)(2) of the regulation to check the applicable maximum retail price, if any, prescribed by Federal price authorities, to verify that the instalment credit extended does not exceed the amount permissible under Part 4 of the Supplement to the regulation in cases where the "cash price" of the article might not be less than the maximum retail price. Of course, if it appeared from the face of the obligation or accompanying papers, or if the Registrant knew from any other source, that the maximum credit value was exceeded, then the Registrant would not be entitled to the benefits of section 8(*e*)(2) wtih respect to such obligation.

[17 F.R. 158. This interpretation supersedes the one on the same subject published in 15 F.R. 7830; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1619; and restated on page 8 (Summary No. 41) of FRBNY circular, Dec. 21, 1950.]

Pre-effective date transactions—Sec. 8(*h*)

Certain questions have been received regarding the status under Regulation W of contracts or commitments made prior to September 18, 1950, to extend credit after that date. Section 8(*h*) of the regulation exempts "any valid contract or obligation entered into prior to" September 18. In order to clarify the application of this provision certain general principles are set out below:

1. The exemption in section 8(*h*) for "any valid contract or obligation" entered into before September 18 applies not only to credit actually extended before that date, but also to any valid contract or obligation to make a contract. The exemption, therefore, includes a valid commitment made in good faith before September 18 to extend credit after September 18, and includes also the credit extended pursuant to such a commitment.

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2. In order for the exemption to apply there must have been a valid contract or obligation. The general test is that the party seeking the credit should, aside from the regulation, have been able to maintain a suit for damages if the credit had not been granted pursuant to the contract or commitment to extend the credit. Some of the requirements for such a contract may be briefly summarized:

(a) A contract to sell or even a contract of sale for future delivery is not necessarily an agreement to extend credit for the article involved. There must have been a valid contract relating to the credit for the purchase of the article.

(b) There must be considerably more than general negotiations or indefinite "understandings" that cerdit 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 credit itself is 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 18 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.

[15 F.R. 6540; FEDERAL RESERVE BULLETIN, Oct. 1950, p. 1309.]

Purchase or discount of credits extended pursuant to pre-effective date commitment—Sec. 8(*h*)

Section 8(*h*) permits the performance of any valid contract or obligation entered into prior to September 18, 1950 even though such performance may result in an extension of instalment credit subsequent to that date on terms which do not conform with the regulation. The interpretation headed "Pre-effective date transactions" set out certain general principles regarding the application of section 8(*h*). The question now asked relates to what evidence a Registrant shall hold in its files to establish the fact that a non-conforming contract it has purchased from an originating Registrant was the result of a pre-effective date contract between that Registrant and the obligor.

Section 8(*e*) provides that the prohibitions of the regulation (including the prohibitions of section 2(*a*)) shall not apply to a Registrant with respect to any failure to comply with Regulation W in connection with an obliga-

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tion purchased, discounted or acquired as collateral from another Registrant if when so purchased, discounted or acquired the obligation did not show on its face any failure to comply. Section 8(*a*) provides that every Registrant shall preserve for the life of the obligation to which they relate such records as are relevant to establishing whether or not a credit is in conformity with the requirements of the regulation.

Application of the sections mentioned above places on a Registrant holding paper which on its face does not conform with Regulation W the burden of proof that the paper does in fact conform. Accordingly, the Board feels that it is not practicable to lay down specific rules as to the evidence to be obtained in such cases. In that connection, statements from the originating Registrant that the non-conforming obligation resulted from a pre-September 18, 1950 commitment or the furnishing of dealer lists of pre-September 18, 1950 orders for listed articles may not in themselves be sufficient to satisfy the responsibility of the Registrant to have in its files evidence to show that the paper it holds subject to Regulation W is in conformity with the terms of the regulation.

[15 F.R. 6630; FEDERAL RESERVE BULLETIN, Oct. 1950, p. 1310.]

Revisions of and additions to pre-effective date credit—Sec. 8(*h*)[2]

Section 8(*h*) of Regulation W permits performance of valid contract or obligations entered into prior to effective date of regulation but provides that when any such credit is combined with new credit extended after effective date it shall be treated as if it were extended on the date of consolidation. If a pre-effective date obligation to purchase an automobile has been paid down to $900 and after the effective date the Registrant desires to combine it with an additional $1,700 loaned for an exempt purpose, section 8(*h*) would require the remainder of the automobile credit to be scheduled for repayment within the maximum maturity applicable to automobiles. Since the example involves a mixed credit, section 6(*d*) would apply and under the present provisions of the regulation the Registrant could schedule the consolidated obligation so that at least $900 would be repaid within 18 months from date of consolidation; the $1,700 new credit could be scheduled for payment without regard to Regulation W.

In the case described above, if the new $1,700 credit were for the purchase of a listed article such as a Group D article, the entire $2,600 would have to be scheduled in accordance with the regulation. However, the $1,700 arising from the Group D article and subject to 36 months maximum maturity would, of course, be larger than the $900 arising from the automobile and subject to 18 months maximum maturity. Therefore, under the

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[2] See footnote on page 2. In addition to changing maximum maturities to conform to those now in effect, different amounts and articles than the ones originally set forth in this interpretation have been substituted in order to make the example pertinent.

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option in section 6(*d*) relating to the major part of the credit, the Registrant, if he desired, could give the entire $2,600 credit the 36 months maximum maturity applicable to the listed article giving rise to the major part of the credit.

[15 F.R. 6985; FEDERAL RESERVE BULLETIN, Nov. 1950, p. 1471.]

Pre-effective date "balloon" notes or payments—Sec. 8(*h*)

The Board has considered certain questions concerning instalment credits involving so-called "balloon" notes or payments that were written before September 18, 1950, the effective date of Regulation W. In a typical case of the kind, there would be 11 notes followed by a 12th "balloon" note which may be in an amount several times the amount of each of the preceding notes. It appears that in most cases, because of the special nature of such financing, it was necessarily anticipated that the "balloon" note or payment written before September 18, 1950, would be refinanced when due so that the future instalment payments of the obligor would be approximately in the same amounts as the earlier payments.

In the circumstances, the Board is of the view that it may be presumed that arrangements for such refinancing were made between the parties at the time of the original transaction, and that section 8(*h*) of the regulation permits the carrying out of any such arrangement.

[16 F.R. 5538; FEDERAL RESERVE BULLETIN, June 1951, p. 646; FRBNY Circular No. 3716, June 4, 1951. This interpretation supersedes the one on the same subject published in 15 F.R. 7756; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1612; and restated at page 10 of FRBNY Circular No. 3687, April 2, 1951.]

Leasing or rental arrangements—Sec. 8(*j*) (3)

A transaction does not cease to be subject to Regulation W merely because the parties choose to call it a "rental" rather than a "sale." Without attempting to describe all the various arrangements that are subject to the regulation, it should be noted that the definition of credits that are subject to the regulation, includes, among other things, "any contract for the bailment or leasing of property under which the bailee or lessee either has the option of becoming the owner thereof or obligates himself to pay as compensation a sum substantially equivalent to or in excess of the value thereof; * * * and any transaction or series of transactions having a similar purpose or effect."

[15 F.R. 8075; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1613.]

Since the amendment to Regulation W adopted effective October 16, 1950 (15 F.R. 6118, 6931), the Federal Reserve Banks and the Board of Governors of the Federal Reserve System have received a number of inquiries concerning the applicability of Regulation W to various proposed arrangements for leasing automobiles or other listed articles.

Many of these inquiries seem to reflect a failure to appreciate the fact

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that Regulation W and the legislation under which it is issued extend to a great many transactions besides the ordinary conditional or instalment sale.

Leasing arrangements, other than those limited to a single payment, in general are subject to Regulation W and the legislation in the same manner as instalment sales. They are not exempt, and they are not a privileged class of transactions.

In the past when Regulation W was not in effect, there have been certain highly specialized operations which have been found somewhat more suited to leasing or rental arrangements than to other methods of financing. That fact does not exclude them from the operation of Regulation W and the legislation. Of course, a lessor could comply with Regulation W by obtaining the required down payment and monthly payments (or deposits in equal amounts), and later could return to the customer any portion of such payments or deposits when the article is returned and the lease terminated. The lease might even provide in advance for such refunds.

However, the Board is examining further into the characteristics of the various proposed arrangements for leasing automobiles or other listed articles and will consider whether or not any of them are of such a special character as to make it desirable or feasible to relax any of the provisions of Regulation W to any extent for their benefit.

[15 F.R. 8856; Federal Reserve Bulletin, Jan. 1951, p. 20; FRBNY Circular No. 3627. December 15, 1950.]

(a) *Certain transactions exempt.*—Three different classes of leasing or rental arrangements are exempt from Regulation W. These are outlined below:

1. Single-payment arrangements are exempt. This exempts the usual drive-it-yourself arrangement that contemplates a rental of a car for merely a day or a week or so, with the car to be returned, the arrangement terminated, and the single-payment made, at the end of the brief period.

2. Auto leasing contracts that exceed the ceiling figure of $5,000 (the ceiling figure for listed articles other than autos is $2,500) are exempt if there is a single obligation rather than a number of separate obligations. This exempts a number of large scale "fleet operations." It also exempts over-$5,000 leases covering both trucks and automobiles in combination even if the auto portion would be less than $5,000.

3. Certain temporary short-term, nonrenewable rentals are exempt under section 7(*l*) of the regulation if they do not extend beyond 3 months and, briefly, also are not related to any subsequent leasing or sale arrangements. Certain other rental, leasing or bailment contracts or assignments are exempt under section 7(*l*)(2).

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(b) *Other leasing or rental arrangements.*—Other types of rentals or leases of listed articles should be considered subject to the regulation. With the exception of those indicated above, there is no appreciable difference between leases that were in use before Regulation W and those proposed for use now in an effort to avoid the regulation.

The absence of an option to purchase or of an obligation to pay substantially the value of the article does not exempt a contract from the regulation. Regardless of whether or not the lease contains an option to purchase and regardless of the amount the customer undertakes to pay, leasing contracts can supply a person with the continuous use of an automobile in substantially the same way as a conditional sale contract. Banks or finance companies also can finance them in substantially the same way as conditional sale contracts.

(c) *Leases can comply with Regulation W.*—Regulation W does not prohibit leasing or rental arrangements—it merely requires that specified payments (or deposits) be obtained. When arrangements are subject to the regulation, the lessor can comply with the regulation by obtaining the required down payment and monthly payments (or deposits in equal amounts). He can return to the customer any portion of such payments or deposits when the article is returned and the lease terminated. The lease can even provide in advance for such refunds.

(d) *Determining whether contract exceeds $5,000 (or $2,500) ceiling.*[3] —In determining whether leasing arrangements exceed the $5,000 (or $2,500) ceiling, and also in determining the size of payments or deposits required on contracts that are subject to the regulation, it is helpful to consider the analogy of leasing contracts to chattel purchase-money mortgages. For example, suppose that A sells B three $2,000 automobiles, getting a total down payment of $600, and a $5,400 purchase-money mortgage that is payable in 18 monthly instalments of $300 each. Assuming that there is a single obligation for all three cars rather than a separate one for each car, the contract would obviously be exempt from the regulation because it would be over the $5,000 ceiling.

Suppose that the contract were slightly different. Instead of paying the $5,400 purchase-money mortgage in eighteen monthly instalments of $300 each, B is to pay eighteen monthly instalments of $250 each, and at the end of the 18-month period is to reconvey the three cars to A. The contract would still be exempt as over $5,000, because the proper test of the amount of credit would still be the $6,000 value of the cars minus the $600 down payment, rather than merely the $4,500 of cash monthly payments.

Similarly, a lease of the three $2,000 cars for 18 months with a $600

[3] See footnote on page 2. Figures in this paragraph have also been revised to reflect down payment requirements now in effect.

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payment (or deposit) in advance and 18 monthly payments of $250 each would be considered exempt from the regulation as an over-$5,000 contract rather than subject as a $4,500 contract.

(e) *Payments that comply.*[4]—If the instalment contract referred to above were for only two $2,000 cars instead of three, it would lose the benefit of the over-$5,000 exemption and would be subject to the regulation. The similarity between a lease and a chattel purchase-money mortgage also is helpful in showing the amounts of payments required in such cases.

For example, suppose A sells B two $2,000 cars and takes a chattel purchase-money mortgage payable in instalments. He must get a down payment of $1,334 and the remaining $2,666, plus any insurance and finance charges, must be paid in 18 monthly instalments.

Suppose that the contract were changed slightly. The down payment and monthly payments are to be as before, but at the end of the 18-month period B is to reconvey the car to A and receive $600 from A in return. That payment of $600 to B when the car is reconveyed to A at the conclusion of the transaction would not conflict with Regulation W. On the other hand, the provision for reconveyance of the car at the end of the period would not exclude the arrangement from the operation of the regulation, nor would it reduce the amount of the down payment or monthly payments that must be obtained.

Similarly, if the contract were for a lease—rather than a chattel purchase-money mortgage followed by a reconveyance—the payments (or deposits) made initially and each month of the 18-month period would have to be the same as in the cases indicated above.

In some cases, the parties might wish to set up the arrangement so that the car would be reconveyed (or returned) to A in some reasonable period shorter than 18 months, say twelve months or six months. In such a case, the dollar payments (or deposits) initially and for each month of the period would not have to be increased above those applicable on an 18-month basis.

[16 F.R. 2439; FEDERAL RESERVE BULLETIN, Mar. 1951, p. 270.]

Suction cleaner attachments—Sec. 8(*j*) (7)

Questions have been raised concerning the status under Regulation W of certain devices or attachments frequently offered for sale and usable in connection with suction cleaners.

"Suction cleaners designed for household use," whether tank-type or upright brush-type, are articles listed in item 10 of Group B of the Supplement to the regulation. Devices or attachments which may be fitted to a suction cleaner power unit by means of a flexible hose, wand, or by other

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[4] See footnote on page 2. Figures in this paragraph have also been revised to reflect down payment requirements now in effect.

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means, are "accessories" within the meaning of section 8(*j*)(7) of the regulation and must be included in the "cash price" of the listed article when sold in connection with the suction cleaner power unit. Such attachments include nozzles, sometimes equipped with bristles, adapted for cleaning rugs, furniture, floors, walls, draperies, radiators and the like.

To be so classified as "accessories" within section 8(*j*)(7), it is not necessary that the device or attachment be usable exclusively with the suction cleaner power unit or for cleaning in the more ordinary sense. It is sufficient that the device or attachment is usable in connection with the suction cleaner power unit. The fact that the device or attachment may be operated manually or with other power units is immaterial. Thus, attachments for scrubbing or polishing floors, vaporizing moth crystals, or spraying rugs, fabrics, etc., are likewise "accessories" within the meaning of section 8(*j*)(7). The same would be true, for example, of a garment bag equipped with a fitting to accommodate an attachment for vaporizing moth crystals, a self-winding extension cord device or attachment, and a device especially designed for holding or storing some or all of the attachments mentioned above.

The fact that some or all such devices or attachments may be available for purchase independently of the suction cleaner power unit also is immaterial, as is the fact that they may be priced separately.

[16 F.R. 5950; Federal Reserve Bulletin, July 1951, p. 813; FRBNY Circular No. 3725, June 21, 1951.]

Contest prizes—Sec. 8(*j*)(7)

A question recently arose concerning the status under Regulation W of so-called "Merchandise Certificates" to be awarded as prizes in contests open to the public and sponsored by a manufacturer and its local dealers on a nation-wide scale as a sales promotion program for the products of the manufacturer which include refrigerators, freezers, ranges, kitchen equipment, water heaters, radios, and television receivers.

Among other things, it appears that the "Merchandise Certificates," which range in value from $25 to $500, are to be awarded to contestants who are judged to have given the best answers to certain questions concerning the manufacturer's products and who also have written the best short essay on a specified topic of general interest. A description of the contests states that "a winner may, at his option, apply all or part of the value of his prize Certificate toward a down payment on a higher priced" product of the manufacturer. In addition, a winner may receive "up to $15 in 'change' after a Certificate has been partially redeemed for" any such product. Furthermore, in the case of a purchase "during the Contest, such Merchandise Certificate will be redeemed in cash by the dealer from

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whom the purchase was made up to either the face amount of the Certificate or the price of the product so purchased during the Contest, whichever shall be less, and any balance may be applied against the purchase of additional'' products of the manufacturer.

Insofar as the use of the ''Merchandise Certificate'' in connection with instalment credit for the purchase of a listed article is concerned, the Board is of the view that, on the basis of the facts as presented, such use of a Certificate would constitute a ''rebate or sales discount,'' as specified in section 8(*j*)(7) of the regulation. Consequently, the down payment to be obtained on the listed article purchased must be net of the amount of the ''Merchandise Certificate'' used in connection with the transaction in accordance with the principle stated on page 21 under the heading ''Free merchandise and rebates.'' This applies whether the ''Merchandise Certificate'' is applied in its entirety toward the purchase of a listed article or whether so applied in part with a cash payment for any balance of the value of the Certificate. It would also apply where the balance of the value of a Certificate remaining after a cash payment to a contestant who purchased a listed article during the Contest, would be applied in connection with instalment credit for an additional article. As to instalment credit outstanding in connection with an article purchased during the Contest, cash payments to the purchaser of such article receiving a Certificate would constitute either refund of down payment or payment of instalment payments contrary to the regulation, including section 6(*h*).

A Registrant who is an instalment vendor of a listed article is not prohibited by the regulation from giving a rebate or sales discount on the sales price of the listed article, but such rebates or discounts must be treated in the manner required under the regulation. In addition, a Registrant is free to make such payments as he may wish to make to the customer upon the termination of the instalment obligation, including refund of the entire amount paid by the customer. However, payment by an instalment vendor, for example, of all or part of any instalment prior to the last instalment, would not be permissible under the regulation, in cases such as that described herein.

[16 F.R. 12666.]

"Used" automobiles—Supplement–Part 1–Group A

An automobile becomes a ''used'' car for the purposes of Regulation W when it is (1) first sold to any person not engaged in the business of selling automobiles, or (2) used and driven as a ''demonstrator'' by an automobile dealer or salesman even though the automobile has not been previously sold.

[15 F.R. 7755; Federal Reserve Bulletin, Nov. 1950, p. 1472.]

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Refrigerators and food freezers—Supplement–Part 1–Group B

The substitution of "designed for household use" for the previous cubic foot capacity demarcation in the listing of refrigerators and food freezers has resulted in questions relating to the applicability of Regulation W. In one case certain food freezers have been designated by the manufacturer as "commercial models." They are similar in appearance and function to the freezers manufactured by the same company and designated by that company as "home freezers," although the home model uses a smaller horsepower compressor and at least one of the commercial models is equipped with a sliding glass lid.

The Board believes, however, that because the food freezers in question are of a type readily adaptable to household use, and are not designed exclusively for commercial use, they are listed articles under Regulation W.

[15 F.R. 6985; FEDERAL RESERVE BULLETIN, Nov. 1950, p. 1471.]

Home improvement incorporating Group B combination unit—Supplement–Part 1–Group B[5]

The Board understands instalment financing of combination units including a kitchen sink and dishwasher may be covered by FHA Title I insurance. As you know, Regulation W establishes a minimum down payment of 10 per cent and a maximum maturity of 36 months for home improvement credits which do not include articles listed in Group B of Part 1 of the Supplement to Regulation W. Item 6 in Group B reads "Combination units incorporating any listed article in the foregoing classifications of this Group B" and one article "in the foregoing classification" is "Dishwashers, mechanical, designed for household use." The effect of this listing in Group B is that a minimum down payment of 15 per cent is required and the maximum maturity is 18 months for such a combination unit as a sink including a dishwasher.

Where a credit insured under Title I arises from the installation, in an existing residential structure, of a combination unit included as item 6 in Group B of Part 1 of the Supplement to Regulation W, that portion of credit is subject to the minimum down payment and the maximum maturity specified for Group B articles although the balance of the credit, if any, may be subject to the minimum down payment and maximum maturity applicable to Group B. In that connection, where a credit is partly subject to one section of Regulation W and partly subject to another, section 6(*d*) of Regulation W is applicable.

[15 F.R. 8075; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1613.]

Tape or wire recorders—Supplement–Part 1–Group B

Tape or wire recorders not designed exclusively for commercial use are listed articles under item 8 of Group B of the Supplement.

[15 F.R. 6985; FEDERAL RESERVE BULLETIN, Nov. 1950, p. 1472.]

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5 See footnote on page 2.

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Evaporative air coolers—Supplement–Part 1–Group B

Evaporative air coolers which do not incorporate a refrigerating unit are not "air conditioners, room unit," within meaning of Regulation W, Group B, item 7.

[16 F.R. 2439; FEDERAL RESERVE BULLETIN, Mar. 1951, p. 270.]

Air conditioners, room unit—Supplement–Part 1–Group B

The classification "air conditioners, room unit" in Group B of Part 1 of the Supplement to Regulation W does not include units of 2 horsepower or more rated capacity.

[16 F.R. 4320; FEDERAL RESERVE BULLETIN, May 1951, p. 510.]

Cooking stoves and ranges—Supplement–Part 1–Group B

The classification "Cooking stoves and ranges" does not include cooking equipment designed for commercial use in restaurants and hotels; nor does it include any cooking equipment with less than 3 heating surfaces.

[16 F.R. 5950; FEDERAL RESERVE BULLETIN, July 1951, p. 813; FRBNY Circular No. 3725, June 21, 1951. This interpretation supersedes the one on the same subject published in 15 F.R. 7827; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1620; and restated on page 10 (Summary No. 49) of FRBNY circular, Dec. 21, 1950.]

Hotel or motel repairs or improvements—Supplement–Part 1–Group D

A structure is not "designed exclusively for nonresidential use" within the meaning of Group D of the Supplement to Regulation W merely because it is used, or designed for use, as a motel, tourist court or ordinary hotel. Of course, repairs, alterations and improvements upon such structures will be exempted from the regulation in many cases by the $2,500 ceiling applicable to such credits under section 7(*a*) of the regulation.

[15 F.R. 8075; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1613.]

Home improvement "materials and articles"—Supplement–Part 1–Group D

Certain questions have been received concerning the application of Group D of the Supplement to Regulation W. The Board is of the view that Group D includes, but is not limited to, the following:

Air conditioning systems
Attic ventilating fans
Garbage disposal units and garbage incinerators
Water heaters
Entire heating systems and heating units for furnaces (including oil burners, gas conversion burners, and stokers)
Lighting fixtures
Electric generating plants
Electric wiring
Gas or water piping
Butane, propane, or similar automatic gas systems or containers

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Water pumps and pumping systems
Plumbing and sanitary fixtures
Fencing
Landscaping
Sidewalks and driveways
Awnings, marquees, storm doors and windows, screens, venetian blinds, and shades
Septic tanks

In answer to other inquiries, the Board is of the view that Group D does not include the following:

Space heaters (heat generating units designed to heat directly the space in which they are located and not deisgned to transmit heat to other spaces by means of pipes or ducts) (*See "Floor or wall furnace," below*)
Portable window fans

[15 F.R. 6630; FEDERAL RESERVE BULLETIN, Oct. 1950, p. 1310.]

The Board has expressed the view that a floor or wall furnace which transmits heat to a room from a recess in which the furnace is located and which is installed as a permanent part of the realty, is not a space heater, even though the heat is not transmitted by means of pipes or ducts. Space heaters, referred to above, does not include such furnaces. Accordingly, when sold for installation in an existing residential building, a floor or wall furnace as described herein constitutes a listed article under Group D, Part 1, of the Supplement to the regulation.

[17 F.R. 158.]

Draperies or curtains are not listed articles under Group D of the Supplement to Regulation W.

[15 F.R. 7316; FEDERAL RESERVE BULLETIN, Nov. 1950, p. 1472.]

Exclusion of "self-labor"—Supplement–Part 1–Group D

A question has been presented as to whether there may be included in the cash price of "materials, articles, and services" comprising a listed article under Group D of the Supplement to Regulation W, any amount for services or labor performed by the instalment obligor himself or with gratuitous assistance of his family and friends.

For example, a home owner finds it necessary to enlarge his house to provide additional living quarters. In order to hold the cost to him of the project to a minimum, he plans to undertake the necessary labor or services himself. Must the maximum loan value of an instalment credit to finance the project be calculated on the basis of a cash price limited to the cost of

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the necessary materials, or may such loan value be calculated on the basis of a cash price which, in addition, includes an amount reflecting the value of the necessary labor and services?

The Board is of the view that in such cases where materials or articles and services are required, the regulation would permit including in the cash price of the Group D project only the amount to be paid for the necessary materials or articles. Consequently, there could not be included in the cash price of such project any amount usable to compensate the instalment obligor for the service or labor performed by himself or with gratuitous assistance of others in connection with the project.

[16 F.R. 280; FEDERAL RESERVE BULLETIN, Jan. 1951, p. 21.]

Tax or fee prerequisite to auto tags—Supplement–Part 4

A question has been presented concerning the treatment under Regulation W of a tax or fee payable as a prerequisite to obtaining license plates in the name of the purchaser of an automobile. The Board is of the view that such tax or fee may be included in the "cash price" of the automobile, and may be added in computing the "appraisal guide value" under Part 4 of the Supplement. To this extent the credit extended may cover such tax or fee whether the transaction is an instalment sale or instalment loan. This is in accordance with interpretations issued under earlier versions of the regulation. The Board is of the further view, however, that such tax or fee may not be treated separately and added in its entirety as part of the time or loan balance subject to maximum maturity limitations.

[15 F.R. 8075; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1613.]

Free merchandise and rebates—Supplement–Part 4

An instalment vendor of a listed article is not prohibited by the regulation from giving a discount or rebate on the sales price of a listed article or from making a bona fide "free" gift of other merchandise to the buyer of a listed article. However, in the case of a cash discount or rebate, and also in the case of a "free" gift which allows the customer to make a selection among a variety of merchandise or which is otherwise similar or equivalent to cash, the down payment to be obtained on the article must be net of the amount received by the purchaser from the vendor. In the case of other "free" gifts, the down payment must be obtained on the gross price of the listed article without any deduction for the "free" gift.

[16 F.R. 5950; FEDERAL RESERVE BULLETIN, July 1951, p. 813. This interpretation supersedes the one on the same subject published in 15 F.R. 7827; FEDERAL RESERVE BULLETIN, Dec. 1950, p. 1615; and restated on page 2 (Summary No. 8) of FRBNY circular, Dec. 21, 1950.]

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**Refund of finance charges at time of add-on sale—
Supplement–Part 4**

An inquiry has been received concerning the application of Regulation W to a sales promotional proposal of a Registrant doing business on a nation-wide basis to refund, by cash payment or check, a portion of the finance charges originally included in an outstanding instalment sale obligation held by him. Such refund would be made at or about the time of an instalment add-on sale to the same customer. It is understood that such refund may include some of the finance charges already paid, as well as the portion thereof not yet paid at the time of the add-on transaction and the resulting consolidation of indebtedness.

There would, of course, be no objection under the regulation to a cancellation of the unearned portion of the finance charges on the outstanding obligation at the time of the consolidation of the obligation with the new credit. However, the Board is of the view that a transaction pursuant to the proposal in question would effect a reduction or refund of the down payment required on the instalment add-on purchase or a total extension of credit in connection therewith in an amount greater than that permissible under the regulation.

[16 F.R. 9032; FEDERAL RESERVE BULLETIN, Sept. 1951, p. 1134.]

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