FEDERAL RESERVE BANK OF NEW YORK

[Circular No. 3910
October 27, 1952]

V-Loan Financing of Letter Contracts and Other Preliminary Contractual Instruments for Defense Production

To all Banks, Other Financing Institutions, and Others Concerned, in the Second Federal Reserve District:

We quote below from a memorandum of the Office of the Assistant Secretary of Defense to the Board of Governors of the Federal Reserve System, dated September 11, 1952:

a. For V-loan financing, in the absence of contrary provisions of any applicable loan agreement, Letter Contracts and all other preliminary instruments constituting "contracts" are regarded no differently than contracts which are fully definitive in their terms. This view is in line with past practice, and with paragraph 1-201.6 of the Armed Services Procurement Regulation which includes notices of award, letter contracts, and letters of intent within its comprehensive definition of the term "contracts". It is essential in each case that the particular instrument constitute a "contract" within the ordinary and usual sense of that term. As pointed out in the letter of October 29, 1942 (B-29624) from the Comptroller General to the Board of Governors, the answer to the question whether any particular preliminary instrument of this type constitutes a "contract" must depend upon the facts involved in each case. However, for all such preliminary instruments that are "contracts" the standards for V-loan financing (Section 301 of the Defense Production Act, Section 302 of Executive Order No. 10161, and Section 1 (K) of the standard form of Guarantee Agreement) would be the same as for other defense production contracts. Except as otherwise provided by the applicable loan agreement, the matter of inclusion of items under such preliminary contracts in the loan base of V-loans would not be affected by the absence of contract provisions concerning assignment of claims. It is of course expected that in the ordinary course of events financing institutions would customarily see to it that the standard assignment provisions, including the no-offset clause, are included in such instruments, and other contracts, expressly or by reference.

b. Unless the contract forbids assignment of claims, no provision for assignment is necessary to permit assignment of claims under the Assignment of Claims Act of 1940, as amended (41 U.S.C. Sec. 15). The statutory requirements for assignability are only that there be a "contract" and that the contract provide for payments aggregating $1,000 or more. This is clearly stated in an opinion of the Comptroller General (23 Comp. Gen. 989) and in the above-mentioned letter of October 29, 1942 from the Comptroller General to the Board of Governors. However, unless included in the contract or incorporated by appropriate reference, an assignee would not have the benefits of the "no-offset" clause, and the standard provision permitting further assignment and reassignment would not be applicable.

Additional copies of this circular will be furnished upon request.

ALLAN SPROUL,
President.