

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEMINTERPRETATION OF LAW OR REGULATION

December 20, 1941

W-118. The Board has been asked whether, in view of the provisions of sections 8(a), (b) and (c) of Regulation W, a Registrant "taking over an extension of instalment credit that has been made by a vendor and that has no connection whatever with the sale of a listed article, must be bound by the terms granted by that vendor".

The Board has answered that, since the obligation being retired in such case is neither "instalment loan credit" nor "instalment sale credit" as defined in the Regulation, and therefore was not itself subject to Regulation W, a Registrant making a loan to retire such an obligation is not bound by the terms granted by the vendor. This, of course, does not exempt the loan from the maximum maturity and other provisions of the Regulation applicable generally to instalment loan credit. Moreover, in such a case, if a Registrant making the loan wished to grant terms more liberal than those granted by the vendor, it would be necessary for him to ascertain that the credit being refinanced was in fact credit arising from the sale of an unlisted article.

In this connection, the "Statement of Borrower" prescribed by the Board provides a means for the Registrant to ascertain certain facts, including facts as to whether the proceeds are to be used to retire an instalment obligation, and it protects the Registrant in relying in good faith on such facts when so ascertained. However, the "Statement of Borrower" does not provide any means for ascertaining facts in addition to those developed in answering the questions contained in the prescribed form. Certain other provisions of the Regulation provide means for establishing certain pertinent facts by accepting in good faith a statement of the obligor with respect to such facts; but neither the "Statement of Borrower" nor any provision of the Regulation provides any means for ascertaining whether instalment credit being retired, instead of being "instalment loan credit" or "instalment sale credit", is some different type of instalment credit. Accordingly, if the Registrant wishes to disregard the terms of the instalment obligation being retired, he must ascertain the necessary facts independently of the "Statement of Borrower", and the treatment which he may accord to the instalment obligation being retired will be controlled by the facts themselves.

It may be noted that a similar problem arises in the case of a loan to retire an extension of "instalment sale credit" or "instalment loan credit" which was originally granted with a shorter maturity than that required by the Regulation and on which, therefore, the Regulation would permit the rate of payment to be reduced to that permissible in the first instance. The question whether a particular outstanding obligation is one on which the rate of payment could be reduced in this manner is another question which is not answered in the "Statement of Borrower" and on which the Registrant is not authorized to rely on any other statement of the obligor. Therefore, if the Registrant making the loan to retire the obligation wishes to reduce the rate of payment, he must act independently of the "Statement of Borrower", and the treatment which he may accord to the instalment obligation being retired will depend upon the facts themselves.