

# **FEDERAL RESERVE SYSTEM**

## **12 CFR 213**

### **Regulation M; Docket No. R-1170**

#### **Consumer Leasing**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed Rule.

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**SUMMARY:** The Board is proposing to amend Regulation M, which implements the Consumer Leasing Act, and the staff commentary to the regulation. Regulation M would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures, and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today’s Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

**DATES:** Comments must be received on or before January 30, 2004.

**ADDRESSES:** Comments should refer to Docket No. R-1170 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov), or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board’s Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

**FOR FURTHER INFORMATION CONTACT:** Jane E. Ahrens, Senior Counsel, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide lessees with uniform cost and other disclosures about certain consumer lease transactions. Disclosures are provided to consumers before they enter into lease transactions, when they renegotiate or extend a lease, and in advertisements that state the availability of consumer leases on particular terms. The act and regulation generally apply to consumer leases of personal property in which the contractual obligation does not exceed \$25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the regulation. The CLA is implemented by the Board's Regulation M (12 CFR part 213). An official staff commentary interprets the requirements of Regulation M (12 CFR part 213 (Supp. I)).

### **II. Proposed Revisions**

#### Section 213.2—Definitions

##### 2(q) Clear and Conspicuous

Section 182 of the CLA requires that lessors provide consumers with disclosures in a clear and conspicuous manner. *See* 15 U.S.C. 1667a. This standard is incorporated in Regulation M. *See* §§ 213.3(a) and 213.7(b). Guidance on how lessors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comments 3(a)-2 and 7(b)-1. The commentary states that under this standard, disclosures must be in a reasonably understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be “readily noticeable to the consumer.” In contrast, the Board’s Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance of the information” in the disclosure. 12 CFR § 216.3(b)(1).

Regulation P also provides examples of how to satisfy the standard. 12 CFR § 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation M by adding a definition for clear and conspicuous in § 213.2(q), consistent with the “clear and conspicuous” definition in Regulation P. The staff commentary to Regulation M also would be revised to add comments 2(q)-1 and -2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today’s Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the “clear and conspicuous” standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). See proposed comment 2(q)-2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement. The proposal also would not affect other format rules, such as the existing requirement for segregating disclosures. See 12 CFR 213.3(a)(2).

To eliminate redundancy with proposed § 213.2(q) and its accompanying commentary, the Board also proposes to revise comment 3(a)-2 and 7(b)-1. Guidance regarding the “clear and conspicuous” standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

### **III. Form of Comment Letters**

Comment letters should refer to Docket No. R-1170 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

#### **IV. Solicitation of Comments Regarding the Use of “Plain Language”**

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use “plain language” in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

#### **V. Initial Regulatory Flexibility Analysis**

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation M. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

#### **VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0202.

The collection of information that is revised by this rulemaking is found in 12 CFR part 213. This collection is mandatory (15 U.S.C 1667 *et seq.* and Public Law 104-208, 110 Stat. 3009) to evidence compliance with the requirements of Regulation M and the Consumer Leasing Act (CLA). The respondents are individuals or businesses that regularly lease, offer to lease, or arrange for the lease of personal property under a consumer lease. Records, required in order to evidence compliance with the regulation, must be retained for twenty-four months. Regulation M applies to all types of lessors of personal property, not just state member banks; however, under the Paperwork Reduction Act regulations, the Federal Reserve accounts for the paperwork burden associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide lessors with a more uniform definition of providing “clear and conspicuous” disclosures and examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation M and the staff commentary, it is expected that these revisions would not increase the paperwork burden of lessors. With respect to state member banks, there are 310 respondents and recordkeepers. Current annual burden is estimated to be 11,179 hours for state member banks.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0202), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

### **Text of Proposed Revisions**

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

### **List of Subjects in 12 CFR Part 213**

Advertising, Federal Reserve System, Reporting and record keeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

### **PART 213 — CONSUMER LEASING (REGULATION M)**

1. The authority citation for part 213 continues to read as follows:

**Authority:** 15 U.S.C. 1604 and 1667f.

2. Section 213.2 is amended by adding a new paragraph (q) to read as follows:

§ 213.2 Definitions.

For the purposes of this part the following definitions apply:

\* \* \* \* \*

► (q) Clear and conspicuous means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure. ◀

\* \* \* \* \*

3. In Supplement I to Part 213:

- a. Under Section 213.2—Definitions, a new paragraph title 2(q) Clear and conspicuous is added, and new paragraphs (q)1. and (q)2. are added.

- b. Under Section 213.3—General Disclosure Requirements, under 3(a) General Requirements, paragraph 2. is revised.

c. Under Section 213.7—Advertising, under 7(b) Clear and Conspicuous Standard, paragraph 1. is revised.

**SUPPLEMENT TO PART 213—OFFICIAL STAFF COMMENTARY TO REGULATION M**

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Section 213.2—Definitions

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▶ 2(q) Clear and conspicuous

1. Reasonably understandable. Examples of disclosures that are reasonably understandable include disclosures that:

- i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;
- ii. Use short explanatory sentences or bullet lists whenever possible;
- iii. Use definite, concrete, everyday words and active voice whenever possible;
- iv. Avoid multiple negatives;
- v. Avoid legal and highly technical business terminology whenever possible; and
- vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. Designed to call attention. Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

- i. Use a plain-language heading to call attention to the disclosure;
- ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
- iii. Provide wide margins and ample line spacing;
- iv. Use boldface or italics for key words; and
- v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures. ◀

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Section 213.3—General Disclosure Requirements

3(a) General Requirements.

\* \* \* \* \*

2. Clear and conspicuous standard. ► See § 213.2(q) and accompanying comments. ◀ [The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.]

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Section 213.7—Advertising

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7(b) Clear and Conspicuous Standard

1. Standard. ► See § 213.2(q) and accompanying comments. ◀ [The disclosures in an advertisement in any media must be reasonably understandable. For example,] Very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear[-]and[-]conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

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By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,  
Secretary of the Board