

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-1004]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The proposed rule would allow lessors to deliver by electronic communication the disclosures required by the act and regulation, if the consumer agrees to such delivery. For purposes of the regulation, an electronic communication is a message transmitted electronically that allows visual text to be displayed on equipment such as a modem-equipped computer. In addition, the proposal contains several technical amendments that would be made to the regulation and commentary.

DATES: Comments should be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1004, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Obrea Poindexter or Kyung Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452-3544.

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 Board's Regulation M (12 CFR 213) implements the act. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies 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 act.

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication to deliver information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example, in May 1996 the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation M to allow lessors to provide Regulation M disclosures electronically. Any electronic communication would remain subject to the timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed rules to address electronic communication under Regulations DD (Truth in Savings), B (Equal Credit Opportunity), and Z (Truth in Lending), published elsewhere in today's Federal Register. In addition, the Board has issued an interim rule under Regulation E so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The CLA and Regulation M require disclosures to be provided to consumers in writing. Under Regulation M, the requirement that disclosures be in writing has been presumed to require that lessors provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing at least where text is involved.

Pursuant to its authority under section 187 of the CLA, the Board proposes to amend Regulation M to permit lessors to use electronic communication where the regulation calls for information to be provided in writing. Few lessors currently consummate lease agreements electronically; however, as standards are developed for establishing legal agreements by electronic communication, more lease contracts may be entered into by that means.

The term "electronic communication" is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of "electronic communication" for purposes of this regulation because they do not have the feature generally associated with a writing--visual text.

Section 213.3--General Disclosure Requirements

3(a) General requirements

Definition

Section 213.3(a) would be revised to address electronic communications under § 213.3(a)(5). Electronic communication is a visual text message electronically transmitted between a lessor and a consumer's home computer or other electronic device used by a consumer.

Agreements Between Lessors and Consumers

Section 213.3(a)(5) permits lessors to send electronic disclosures if the consumer agrees. There may be various ways that a lessor and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a lessor and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of CLA and Regulation M disclosures electronically.

Delivery Requirements for Electronic Communication

Regulation M provides that a lessor make disclosures to a consumer. The requirement is satisfied when the institution ensures that the disclosures will be presented to the consumer in a

timely manner. Electronic disclosures remain subject to the format, timing, and other applicable requirements under Regulation M.

The "Clear and Conspicuous" Standard

Regulation M requires lessors to present required information "clearly and conspicuously" in writing. The "clear and conspicuous" requirement applies to electronic disclosures. The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, the disclosures provided by electronic communication must meet the "clear and conspicuous" standard. A lessor must satisfy this requirement, but is generally not required to ensure that the consumer has the equipment to read the disclosures.

Consumer Ability to Retain Disclosures

Regulation M requires that written disclosures be in a form the consumer may keep. This requirement applies to disclosures provided by electronic communication. Lessors satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. Thus, lessors would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that, where appropriate, a lessor will inform consumers of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive disclosures in paper form. As electronic commerce increases and technology advances take place, obtaining disclosures by electronic communication may likely become more commonplace. Compliance and other issues will arise that suggest further interpretations. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that lessors will provide sufficient details about the delivery of disclosures electronically. The Board plans to closely monitor the development of the electronic delivery of Regulation M disclosures, and will address compliance or other issues that may arise as appropriate.

Section 213.4--Content of Disclosures

4(f)(8) Lease term

In September 1996, Regulation M was revised to require, among other things, that lessors show consumers a mathematical progression of how a scheduled payment is derived in a motor vehicle lease. In deriving a scheduled payment, the "total of base periodic payments" is divided by the number of lease payments. The caption in the regulation and on the model forms refers to the number of lease payments as the "lease term."

For leases with monthly payments, typically the lease term and the number of payments are the same. For leases with other payment arrangements, the number of payments and the lease term typically are not the same, for example, single-payment leases. In reflecting the consumer's legal obligation to make one payment under a single-payment lease, the figure disclosed under § 213.4(f)(8) should be one, not the lease term of 24 months or 36 months, for example.

To avoid confusion, references to the "lease term" in § 213.4(f)(8) would be changed to "lease payments" with corresponding changes to the model forms in appendix A. Despite the proposed revision to the model forms, lessors would continue to use the existing form until the supply is exhausted. If properly completed, those forms comply with the requirements of the act and regulation, protecting lessors from civil liability under sections 130 of the Truth in Lending Act and 185 of the Consumer Leasing Act.

The disclosure of the lease term is not a required disclosure. If they choose, however, lessors may disclose the lease term among the segregated disclosures along with the number of lease payments, but should note that the calculation under § 213.4(f)(8) calls for the number of payments.

Section 213.7--Advertising

In April 1997, the Board revised Regulation M to implement amendments to the act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which streamlined the advertising disclosures for lease transactions. (62 FR 15364, April 1, 1997) Under the act, certain terms in an advertisement will trigger the disclosure of additional information. One of them is a statement in a lease advertisement that no initial payment is required, which triggers the disclosure of additional information. This "triggering" term was inadvertently omitted from § 213.7(d)(1)(ii), and is being added.

Appendix A--Model Forms

The Board is proposing several technical changes to the model forms in appendix A. The model forms for open-and closed-end leases in appendix A-1 and A-2 would be revised to change the reference under the payment calculation from "Lease term. The number of months in your lease." to "Lease payments. The number of payments in your lease." Page 2 of the open-end model form would be revised by adding "value" after "actual" in the "end of term liability"

disclosure (a)(3), line 3. Model form A-3 for a furniture lease would be revised by adding "or delivery " after the heading "Amount due at lease signing."

III. Proposed Commentary Provisions

Section 213.4--Content of Disclosures

4(f) Payment Calculation

4(f)(7) Total of Base Periodic Payments.

For motor vehicle leases, lessors are required under § 213.4(f) to provide a mathematical progression of how scheduled lease payments are derived. Some lessors are concerned about exposure to civil liability because if one divides the total of the base periodic payments disclosed under § 213.4(f)(7) by the number of payments in the lease disclosed under § 213.4(f)(8) and then multiplies the base periodic payment disclosed under § 213.4(f)(9) by the number of payments in the lease disclosed under § 213.4(f)(8), the result is different because of rounding.

This anomaly may be avoided by making adjustments to the rent charge. However, some lessors have requested a small tolerance for the total of base periodic payments disclosure. They believe that a tolerance of \$1 would be sufficient to remedy differences due to rounding.

In response to issues concerning rounding, proposed comment 4(f)(7)-1 would be added to clarify that if the periodic payment calculation under § 213.4(f) is calculated correctly, the disclosed total of base periodic payments is correct for disclosure purposes even if it varies from the base periodic payments multiplied by the number of payments in the lease, when the difference is solely due to rounding.

4(n) Fees and Taxes

Several examples are provided in comment 4(n)-1 to illustrate when taxes are disclosed under this section. The treatment of taxes paid as a part of regularly scheduled payments is unclear. This comment would be revised to clarify that taxes that are part of the regularly scheduled payments are required to be disclosed under § 213.4(n).

Appendix A--Model Forms

Comment 2 to Appendix A provides examples of acceptable changes that may be made to the model forms. At the request of lessors, the comment would be revised to clarify that inapplicable disclosures may be deleted.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-1004 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation M. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden. The proposed rule would also give lessors flexibility in providing disclosures. 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 section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Lessors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to make the information available in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden of lessors or merely may reduce the dollar cost.

The Federal Reserve requests comments from lessors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information

technology. 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 to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed revised regulation are found in 12 CFR Parts 213.3, 213.4, 213.5, 213.7, 213.8, and Appendix A. This information is mandatory (15 U.S.C. 1667 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit, including small businesses. Records, required to evidence compliance with the regulation, must be retained for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation M (OMB No. 7100-0202) for three years. The current estimated total annual burden for this information collection is 11,179 hours, as shown in the table below. The proposed clarifications of some leasing terms are not estimated to affect the paperwork burden. These amounts reflect the burden estimate of the Federal Reserve System for the state member banks under its supervision, of which relatively few engage in consumer leasing. This regulation applies to all types of lessors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	<i>number of respondents</i>	<i>estimated annual frequency</i>	<i>estimated response time</i>	<i>estimated annual burden hours</i>
Disclosures	310	120	18 minutes	11,160
Advertising	15	3	25 minutes	<u>19</u>
<i>Total</i>				11,179

Consumer lease information in or referred to by advertisements is available to the public. Disclosures of the costs, liabilities, and terms of consumer lease transactions relating to specific leases are not publicly available. Because the Federal Reserve does not collect any information, no issue of confidentiality under the Freedom of Information Act normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)). An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation M is 7100-0202.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation M. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

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 would continue to read as follows:

Authority: 15 U.S.C. 1604

2. Section 213.3 would be amended by adding a new paragraph (a)(5) to read as follows:

§ 213.3 General disclosure requirements.

(a) General requirements. * * *

<(5) Electronic communication. For purposes of this regulation, the term electronic communication means a message transmitted electronically between a consumer and a lessor in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A lessor and a consumer may agree to send by electronic communication the disclosures required by this regulation to be provided in writing. Any electronic communication must comply with § 213.3(a).=

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3. Section 213.4 would be amended by revising paragraph (f)(8) to read as follows:

§ 213.4 Content of disclosures.

* * * * *

(f) Payment calculation.***

(8) [Lease term. The lease term with a description such as "the number of periods of repayment in your lease."] <Lease payments. The lease payments with a description such as "the number of payments in your lease."=

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4. Section 213.7 would be amended by revising paragraph (d)(1)(iii) to read as follows:

§ 213.7 Advertising.

* * * * *

(d) Advertising of terms that require additional disclosure. (1) Triggering terms. * * *
(iii) A statement of any capitalized cost reduction or other payment <or that no payment is= required prior to or at consummation or by delivery, if delivery occurs after consummation.

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5. Appendix A to part 213 would be amended by revising Appendix A-1, Appendix A-2, and Appendix A-3 to read as follows:

6. In Supplement I to Part 213 -- Official Staff Interpretation, under Section 213.4--Content of Disclosures, the following amendments would be made:

a. A new paragraph heading “4(f)(7) Total of base periodic payments” would be added in numerical order and a new paragraph 1. would be added immediately below the new heading.

b. Under (4)(n) Fees and taxes, paragraph 1.ii. would be revised.

The addition and revision would read as follows:

Supplement I to Part 213--Official Staff Interpretation

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SECTION 213.4--Content of Disclosures

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<4(f)(7) Total of base periodic payments

1. Accuracy of disclosure. Lessors are deemed to be in compliance with § 213.4(f)(7) of the regulation if due to rounding in a manner the lessor arrives at the base periodic payment, the amount disclosed under § 213.4(f)(7), the total of base periodic payments, differs from the base periodic payment disclosed under § 213.4(f)(9), multiplied by the number of payments under the lease disclosed under § 213.4(f)(8).=

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4(n) Fees and taxes.

1. Treatment of certain taxes. * * *

ii. Taxes that are part of regularly scheduled payments are reflected in the disclosure under §§ 213.4(c) <and 213.4(n)= and itemized under § 213.4(f)(10).

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7. In Supplement I to Part 213, under Appendix A--Model Forms, paragraph 2.v. would be revised as follows:

APPENDIX A--Model Forms

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2. Examples of acceptable changes. * * *

v. Deleting <or blocking out= inapplicable disclosures [by blocking out], filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms[.]<.=

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By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

 (Signed)
William W. Wiles,
Secretary of the Board.