

**Supporting Statement for the  
Recordkeeping and Disclosure Requirements in Connection with  
Regulation M (Consumer Leasing)  
(OMB No. 7100-0202) (Docket No. R-1283)**

**Summary**

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to revise, without extension, the recordkeeping and disclosure requirements of Regulation M, which implements the Consumer Leasing Act (CLA).<sup>1</sup> The Paperwork Reduction Act (PRA) classifies these regulatory requirements as an “information collection” and the Act requires the Federal Reserve to renew these requirements every three years.<sup>2</sup>

On April 30, 2007, a notice of proposed rulemaking was published in the *Federal Register* for public comment (72 FR 21135). The proposed rule would amend Regulation M by withdrawing the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The comment period expired June 29, 2007. The Federal Reserve received about 15 comment letters. On November 9, 2007, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by October 1, 2008 (72 FR 63456).

The CLA and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions.

The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised. There are no reporting forms associated with Regulation M. To ease the compliance cost (particularly for small entities) model forms are appended to the regulation. Lessors are required to “retain evidence of compliance” for twenty-four months, but the regulation does not specify types of records that must be retained.

The Federal Reserve proposes to amend Regulation M by withdrawing portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules

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<sup>1</sup> The CLA was enacted in 1976 as an amendment to the Truth in Lending Act and is codified at 15 U.S.C. § 1667-1667f. Regulation M is located at 12 C.F.R. Part 213.

<sup>2</sup> 44 U.S.C. § 3501 *et seq.* The collection of information under Regulation M is assigned OMB No. 7100-0202 for purposes of the PRA.

from the Code of Federal Regulations would reduce confusion about the status of the provisions and simplify the regulation. The Federal Reserve also proposes to amend Regulation M to state that when an advertisement is accessed by a consumer in electronic form, certain disclosures must be provided to the consumer in electronic form on or with the advertisement, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply.

Regulation M applies to all types of lessors of personal property. The Federal Reserve accounts for the paperwork burden associated with the regulation only for Federal Reserve-supervised institutions.<sup>3</sup> Other federal agencies account for the paperwork burden on other lessors for which they have administrative enforcement authority.

The Federal Reserve estimates that there will be 270 Federal Reserve-supervised institutions that are deemed respondents for purposes of the PRA, and an average frequency of 120 responses per respondent each year. The Federal Reserve also estimates that about fifteen of these institutions advertise their consumer lease programs approximately four times per year. The total amount of annual burden is estimated to be 3,535 hours for Federal Reserve-supervised institutions.

## **Background and Justification**

The CLA and Regulation M require lessors to disclose to consumers uniformly the costs, liabilities, and terms of consumer lease transactions. Disclosures are provided to consumers before they enter into lease transactions and in advertisements that state the availability of consumer leases on particular terms. The regulation 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 regulation. The CLA does not authorize exemptions for small entities.

In October 1996, the Federal Reserve substantially revised Regulation M pursuant to its policy of periodically reviewing its regulations.<sup>4</sup> The 1996 revisions updated the disclosure requirements to more effectively carry out the purposes of the CLA. In April 1997, Regulation M was amended to implement statutory amendments contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 that streamlined the advertising disclosures.<sup>5</sup> The Federal Reserve also revised the disclosures required for particular lease transactions to parallel the statutory changes for advertising disclosures.<sup>6</sup> In September 1998, the Federal Reserve

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<sup>3</sup> Appendix B – Federal Enforcement Agencies – of Regulation M defines the Federal Reserve-supervised institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

<sup>4</sup> 61 FR 52246 (October 7, 1996).

<sup>5</sup> Pub. L. 104-208, 110 Stat. 3009.

<sup>6</sup> 62 FR 15368 (April 1, 1997).

published amendments to Regulation M to implement statutory amendments clarifying the rules on disclosures for lease payments, advertisements, and rounding calculations.<sup>7</sup>

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective in October 2000, authorizes the use of electronic records to satisfy the legal requirement that documents be in writing.<sup>8</sup> The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions; such disclosures may be provided electronically only if the consumer provided affirmative consent after receiving certain information specified in the statute. The E-Sign Act did not require the Federal Reserve to adopt implementing regulations.

In March 2001, the Federal Reserve issued an interim final rule, authorizing depository institutions to provide disclosures electronically under Regulation M consistent with the requirements of the E-Sign Act.<sup>9</sup> The interim rule also provided uniform standards for satisfying the timing and delivery requirements of Regulation M when electronic disclosures are used. Compliance with the 2001 interim rule is optional.<sup>10</sup> Depository institutions must provide electronic disclosures in accordance with the consent requirements of the E-Sign Act, but they need not follow the additional requirements of the 2001 interim rule.

## **Description of Information Collection**

The purpose of Regulation M disclosures is to enable consumers to compare the costs and terms of different leases in order to make an informed decision and, where appropriate, to compare lease terms with those for credit transactions. The recordkeeping and disclosure requirements associated with Regulation M are described below. No other federal law mandates these disclosures, although some states may have similar requirements.

### **Lease Disclosures (Section 213.4)**

The CLA applies to persons who regularly lease, offer to lease, or arrange to lease personal property to consumers. Under the CLA and Regulation M, lessors are required to provide certain key information to consumers before they enter into the lease transaction. The requirements apply to leases of personal property for a period exceeding four months where the contractual obligation is \$25,000 or less. The frequency of response varies according to the lessor's level of consumer leasing activities.

The costs and terms of the lease must be disclosed to consumers in a standard, uniform manner. Information must include the total amount due at lease signing or delivery; the number, amount, due dates or periods of payments under the lease, and the total amount of these payments; and other terms relating to the rights and responsibilities of both parties to the lease.

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<sup>7</sup> 63 FR 52109 (September 29, 1998).

<sup>8</sup> 15 U.S.C. § 7001 *et seq.*

<sup>9</sup> 66 FR 17795 (April 4, 2001).

<sup>10</sup> 66 FR 41439 (August 8, 2001).

An alternative source of information available to consumers is the lease contract, which might contain many of the same items, but not all of them and not in the same terminology or form.

### **Advertising Rules (Section 213.7)**

The purpose of the advertising rules is to provide potential shoppers with uniform and accurate information. The frequency of response varies according to the level of advertising activity by the lessor. The advertising requirements apply to all persons that promote the availability of consumer leases through commercial messages in any form, including messages in print or electronic media, direct mailings, or on any sign or display. Advertising certain terms triggers the requirement for additional disclosures. For television or radio advertisements, special rules allow alternative disclosures using toll-free telephone numbers or written advertisements in a publication of general circulation.

### *Proposed Revisions*

### **General Disclosure Requirements (Section 213.3)**

Section 213.3(a) generally requires lessors to provide disclosures in writing and in a form that the lessee may keep. The Federal Reserve proposes to revise § 213.3(a) to clarify that lessors may provide disclosures to lessees in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some lessors may provide disclosures to lessees both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those lessors, the duplicate electronic form of the disclosures may be provided to lessees without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 213.3(a) would also be revised to provide that the advertising disclosures required by § 213.7 must be provided to the consumer in electronic form if the consumer accesses the advertisement electronically. Under those circumstances, those disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The Federal Reserve believes that, for an advertisement accessed by the consumer in electronic form, permitting lessors to provide lease advertising disclosures in electronic form without regard to the consumer consent and other provisions of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers.

### **Sensitive Questions**

This information collection contains no questions of a sensitive nature, as defined by OMB guidelines.

## **Consultation Outside the Agency**

On April 30, 2007, a notice of proposed rulemaking was published in the *Federal Register* for public comment (72 FR 21135). The proposed rule would amend Regulation M by withdrawing the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The comment period expired June 29, 2007. The Federal Reserve received about 15 comment letters. On November 9, 2007, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by October 1, 2008 (72 FR 63456).

## **Time Schedule for Information Collection**

The information collection pursuant to Regulation M is triggered by specific events. Disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised. There is no reporting form associated with the requirements of Regulation M. Lease-specific disclosures are not submitted to the Federal Reserve, are not publicly available, and are not published. Disclosures of lease terms that appear in advertisements are available to the public.

## **Legal Status**

The Board's Legal Division has determined that sections 105(a) and 187 of TILA (15 U.S.C. §§ 1604(a) and 1667(f)) authorize the Federal Reserve to issue regulations to carry out the provisions of the Consumer Leasing Act. The information collections are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises.

## **Estimate of Information Collection Burden**

The estimated total annual burden for Federal Reserve-supervised institutions for this information collection is 3,535 hours, as shown in the table below. The Federal Reserve has found that few of these institutions engage in consumer leasing and that while the prevalence of leasing has increased in recent years, it has not increased substantially among Federal Reserve-supervised institutions. The Federal Reserve has estimated that only 270 institutions engage in consumer leasing with an average frequency of 120 transactions per year. The Federal Reserve also estimates that about fifteen institutions advertise their leasing program approximately four times per year. This represents less than 1 percent of total Federal Reserve System paperwork burden.

No paperwork burden is deemed to be associated with the requirement in Regulation M that lessors "retain evidence of compliance" for a minimum of two years after the date disclosures are required to be made (section 213.8). The regulation does not specify the kind of records that must be retained for this purpose. As mentioned in the proposed rule the Federal Reserve requests specific comment on whether the revisions would change the burden on respondents, no comments specifically addressing the burden estimate were received.

	<i>Estimated number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
Disclosures (213.4) <sup>11</sup>	270	120	6.5 minutes	3,510
Advertising (213.7)	15	4	25 minutes	<u>25</u>
<i>Total</i>				3,535

The total cost to the public is estimated to be \$217,933.<sup>12</sup>

### **Estimate of Cost to the Federal Reserve System**

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

### **Financial Industry Burden Averages**

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.<sup>13</sup> They may, but are not required to, use the Federal Reserve’s burden estimates. Using the Federal Reserve’s method, the total estimated annual burden for all financial institutions subject to Regulation M, including Federal Reserve-supervised institutions, would be approximately 252,669 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, such as retailers, finance companies, mortgage bankers, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

<sup>11</sup> The estimated annual burden has been rounded up to the nearest whole number in order to accommodate OMB’s online information collection inventory application.

<sup>12</sup> Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% - Clerical @ \$25, 45% - Managerial or Technical @ \$55, 15% - Senior Management @ \$100, and 10% - Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.

<sup>13</sup> Appendix B – Federal Enforcement Agencies – of Regulation M lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Packers and Stockyards Administration, Farm Credit Administration, and Federal Trade Commission.