

**CONSUMER FINANCIAL PROTECTION BUREAU
REQUEST FOR EMERGENCY PROCESSING AND APPROVAL
CONSUMER LEASING ACT (REGULATION M) 12 CFR 1013**

EMERGENCY JUSTIFICATION

The Bureau of Consumer Financial Protection (CFPB) respectfully requests emergency processing and approval of the collection of information discussed below because the use of normal clearance procedures is reasonably likely to prevent and disrupt an existing collection of information.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), rulemaking authority for the Consumer Leasing Act (CLA), 15 U.S.C. 1667 *et seq.*, transferred from the Board of Governors of the Federal Reserve System (Board) to the CFPB on July 21, 2011. In addition to the transfer of rulemaking authority under the Dodd-Frank Act, the CFPB received certain enforcement authorities with respect to the CLA. The CFPB is in the process of publishing for public comment an interim final rule establishing a new regulation in 12 CFR Part 1013 (Regulation M). This interim final rule substantially replicates the Board's CLA rule and will not impose any new substantive obligations on regulated entities or any new information collection requirements.

As the CFPB now has enforcement authority over certain populations that have been under the jurisdiction of other agencies, the CFPB is requesting approval of a new OMB control number for its collection activities under Regulation M. To prevent a disruption of an approved information collection, the CFPB is requesting emergency processing and approval of the following information collection request. Upon receipt of emergency approval from the Office of Management and Budget, the CFPB will begin a standard approval process for this collection and will seek public input at that time.

**CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT
CONSUMER LEASING ACT (REGULATION M) 12 CFR 1013
(OMB CONTROL NUMBER: 3170-XXXX)**

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (CLA), an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, was enacted to foster comparison shopping and informed decision making by requiring accurate disclosure of the costs and terms of leases to consumers. Lessors are subject to disclosure requirements that apply to both open-end leases (*i.e.*, with a residual due at lease end) and closed-end leases (*i.e.*, “walkaway” leases, with no substantial amount due at lease end).

Disclosure

Regulation M imposes disclosure requirements on all types of lessors, including automobile lessors (such as auto dealers, independent leasing companies, and manufacturers’ captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, and diverse types of lease advertisers, and others. These requirements are intended to ensure that consumers are fully apprised of the terms of leases prior to consummation of the transaction. The written disclosures required by Regulation M are derived from statutory disclosures and directives mandated by the CLA. *See* 12 CFR 1013.4; 15 U.S.C. 1667a; 15 U.S.C. 1667f (written disclosures); 12 CFR 1013.7; 15 U.S.C. 1667c; 15 U.S.C. 1667f (advertising disclosures).

Regulation M includes model forms and clauses that can be used to comply with the written disclosure (non-advertising) requirements of the CLA and Regulation M. *See* Appendices A-1, A-2, and A-3 to Regulation M. Correct use of these model forms and clauses insulates lessors from liability under the CLA and Regulation M. *See* comment I-1.

Recordkeeping

Section 1013.8 of Regulation M requires lessors to retain evidence of compliance with its requirements (other than its advertising rules) but does not specify the particular records to be kept. Entities subject to Regulation M may choose the records they consider adequate to show compliance, and each entity may interpret the requirement differently. Records, however, must be retained for twenty-four months.

2. Use of the Information

Federal and state enforcement and private litigants use the records to ascertain whether accurate and complete disclosures of the cost of leases have been provided to consumers prior to consummation of the lease. This information provides the primary evidence of law violations in CLA enforcement actions brought by federal agencies. Without Regulation M’s recordkeeping

requirement, the agencies' ability to enforce the CLA would be significantly impaired.

As noted above, consumers rely upon the disclosures required by the CLA and Regulation M for information to comparison shop among leases, as well as to ascertain the true costs and terms of lease offers. Enforcement agencies and private litigants need the information in these disclosures and other requirements to enforce the CLA and Regulation M.

3. Use of Information Technology

The disclosures required by Regulation M may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.* Use of such electronic communications is consistent with the Government Paperwork Elimination Act (GPEA), Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504 note. The E-Sign Act and GPEA serve to reduce businesses' compliance burden related to federal requirements, including Regulation M, by enabling lessors to utilize more efficient electronic media for disclosures and compliance.

Regulation M also permits lessors to retain records on microfilm or microfiche or any other method that reproduces records accurately, including computer programs. Lessors need only retain enough information to reconstruct the required disclosure or other records. *See* 12 CFR 1013.8 and comment 8-1.

Most lessors use computer support to calculate the required information and generate the mandated disclosures, thereby limiting the burden on these entities.

4. Efforts to Identify Duplication

The recordkeeping requirement of Regulation M preserves the information provided by lessors to consumers considering the costs and terms of lease offers. The lessor is the only source of this information. No other federal law mandates retention of this information. No state law known to the CFPB imposes this requirement, although some states may have other rules applicable to consumer leases.

Similarly, the disclosures required by the CLA and Regulation M are not otherwise available. Although some lease cost information is contained in contractual documents, the information is not standardized. As a result, consumers cannot use it efficiently to comparison shop or fully appreciate lease terms. The lessor is the only source of this information. No other federal law mandates these disclosures. State laws do not duplicate these requirements, although some states may have other rules applicable to consumer leases.

5. Efforts to Minimize Burdens on Small Entities

The CLA and Regulation M recordkeeping and disclosure requirements are imposed on all lessors. The recordkeeping requirement is mandated by Regulation M. The disclosure requirements are mandated jointly by the CLA and Regulation M.

Most lessors today utilize some measure of computerization in their business, and Regulation M permits lessors to rely on computer support, among other alternatives, to meet their recordkeeping and disclosure requirements. This flexibility presumably yields reduced recordkeeping and disclosure costs. (See #3 above.) Regulation M also provides model forms and clauses that may be used to comply with its requirements. Correct use of these forms and clauses insulates a lessor from liability for the respective requirements.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

The current record retention period of two years supports the one-year statute of limitations for private actions, and enforcement agencies' need for sufficient time to bring enforcement actions regarding lease transactions. If the retention period were shortened, consumers who sue under the CLA, and the administrative agencies, might find that lessor records needed to prove violations of the CLA no longer exist.

The disclosure requirements are needed to facilitate comparison cost shopping and to spur informed lease decision making. If these requirements were eliminated, consumers would not have access to this critical information. Their right to sue under the CLA would be undermined, and enforcement agencies could not fulfill their made to enforce the CLA.

7. Circumstances Requiring Special Information Collection

The recordkeeping and disclosure requirements in Regulation M are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

This Supporting Statement is based on the FTC's most recent Supporting Statement for OMB Control Number 3084-0086 (Supporting Statement for Information Collection Provisions of Regulation M (Consumer Leasing Act)). The CFPB has consulted with the FTC with respect to burden allocations. As this is a request for emergency processing and approval of the transfer of certain burdens from existing information collections to the CFPB, the CFPB has not sought public comment on this information collection request. Upon receipt of OMB's emergency approval, the CFPB will begin the standard approval process and will seek public input and input from other agencies at that time.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Justification for Sensitive Questions

The recordkeeping and written disclosure requirements contain private financial information about consumers who apply for and/or obtain consumer leases. Such information is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* Such records may also constitute confidential customer lists. Any of these records provided to the CFPB would be covered by the protections of the CFPB's rules on Disclosure of Records and Information,

12 CFR Part 1070, and by the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

12. Estimated Burden of Information Collection

Hours: 100,000

CFPB's estimate of the burden for ongoing recordkeeping and disclosure requirements under Regulation M is based on the assumption that the total ongoing burden for this regulation, across all agencies, remains the same as it was before the regulation was restated by the CFPB. Prior to the passage of the Dodd-Frank Act, the ongoing recordkeeping and disclosure burdens for Regulation M allocated to the prudential regulators and the FTC were approximately 455,000 hours.¹ In light of the changes made by the Dodd-Frank Act, roughly 100,000 hours of that burden is being reallocated to the CFPB. Specifically, CFPB is being allocated burden for 180 depository institutions (comprising depository institutions with total assets of more than \$10 billion and their depository affiliates) which is the approximate number of such depository entities that the CFPB now has primary enforcement authority for with respect to Regulation M.² The CFPB is also being allocated half of the Federal Trade Commission (FTC) burden amount after subtracting the burden which the FTC has attributed to itself for motor vehicle dealers.³

Associated Labor Costs: \$ 2,430,000

The CFPB calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used are those associated with the burden hours assumed from the other regulatory agencies, which differ by agency.

The CFPB estimates that the ongoing recordkeeping and disclosure costs allocated to the CFPB under Regulation M are \$2,430,000. This estimate was calculated by summing the CFPB's share of costs from the supporting statements of the other agencies, following each agency's own cost analysis. For a detailed breakdown of the cost analysis, please reference the other agencies' supporting statements for Regulation M.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

¹For purposes of the current request for emergency review and approval, the CFPB has relied on the estimates previously developed by the Board, OCC, OTS, FDIC, NCUA, and FTC concerning the number of entities subject to Regulation M and the hours of paperwork burden under the statute (for a detailed breakdown of the burden estimates of the prudential regulators and the FTC, please reference the other agencies' supporting statements for Regulation M, which can be found at www.reginfo.gov). The CFPB's enforcement authority is not necessarily limited to the entities covered by these agencies' estimates. In some instances, information regarding actual burden hours or dollar costs, or breakdowns of these hours or costs was not available from the other agencies. In these cases, CFPB has estimated the relevant figures based on data provided by the OCC and in some cases by the Board. The CFPB will conduct a more detailed review of burden allocations and provide more detailed estimates in its follow-up application to OMB for a standard approval of this information collection.

²These include 27 from the Board, 70 from the OCC, 24 from the OTS, 3 from the NCUA, and 56 from the FDIC.

³The Dodd-Frank Act exempts certain motor vehicle dealers from CFPB's enforcement authority. However, due to the difficulty of making a reliable estimate of those dealers, the FTC has attributed to itself the PRA burden for all motor vehicle dealers. This attribution does not change actual enforcement authority.

None.

14. Estimated Cost to the Federal Government

As the CFPB does not collect any information, the cost to the agency is negligible.

15. Program Changes or Adjustments

Not applicable.

16. Plans for Tabulation, Statistical Analysis, and Publication

Not applicable.

17. Display of Expiration Date

Not applicable.

18. Exceptions to the Certification Requirement of OMB Form 83-I

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.