

Federal Trade Commission
Supporting Statement for Information Collection
Provisions of Regulation M
(Consumer Leasing Act)
12 C.F.R. 213; 12 C.F.R. 1013
(OMB Control Number: 3084-0086)

1. Necessity for Collecting the Information

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 (*e.g.*, with a residual due at lease end) and closed-end leases (*e.g.*, “walkaway” leases, with no substantial amount due at lease end). The CLA now applies to consumer leases up to \$50,000 plus an annual adjustment, based on changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. 111-203, 124 Stat. 1376 (2010).

Subject to the discussion below, the Federal Trade Commission (“FTC” or “Commission”) enforces the CLA as to all lessors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions). The CLA also contains a private right of action with a one-year statute of limitations for aggrieved consumers.

The Board of Governors of the Federal Reserve System (“FRB”) promulgated the original Regulation M (12 C.F.R. Part 213) to implement the CLA, as required by the statute. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. 111-203, 124 Stat. 1376 (2010), however, almost all rulemaking authority for the CLA transferred from the FRB to the Consumer Financial Protection Bureau (“CFPB”) on July 21, 2011 (“transfer date”). To implement this transferred authority, the CFPB has published for public comment interim final rules for new regulations in 12 C.F.R. Part 1013 (Regulation M) for those entities under its rulemaking jurisdiction.¹ Although the Dodd-Frank Act transferred most rulemaking authority under CLA to the CFPB, the FRB retained rulemaking authority for certain motor vehicle dealers.²

As a result of the Dodd-Frank Act, the FTC now share the authority to enforce Regulation M for entities for which the FTC had enforcement authority before the Act, except

¹ 12 C.F.R. 1013 (76 Fed. Reg. 78,500, Dec. 19, 2011) (corrected, 76 Fed. Reg. 81,789, Dec. 29, 2011). Because both the FRB and the CFPB have certain rulemaking authority under Regulation M – as discussed further below – citations to both aspects of the regulation are included in this document. Hence, 12 C.F.R. 213 refers to the FRB-issued Regulation M; 12 C.F.R. 1013 refers to the CFPB-issued Regulation M. Generally, these two aspects of Regulation M are virtually identical, other than occasional minor technical differences, and citations.

² Generally, these are dealers “predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” *See* Dodd-Frank Act, § 1029(a), -(c).

for certain motor vehicle dealers. The FTC generally has sole authority to enforce Regulation M regarding motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.³

Recordkeeping

Sections 213.8/1013.8 of Regulation M requires lessors to retain evidence of compliance with its requirements (other than its advertising rules), but it does not specify the particular records to be kept. Entities subject to the regulation 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.

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 C.F.R. 213.4/12 C.F.R. 1013.4; 15 U.S.C. 1667a; 15 U.S.C. 1667f (written disclosures); 12 C.F.R. 213.7/12 C.F.R. 1013.7; 15 U.S.C. 1667c; 15 U.S.C. 1667f (advertising disclosures).

The FRB and CFPB have issued model forms and clauses that can be used to comply with the written disclosure (non-advertising) requirements of the CLA and Regulation M. *See, e.g.,* Appendices A-1 - A-3 to Regulation M; 12 C.F.R. 213, Appendices A-1 - A-3; 12 C.F.R. 1013, Appendices A-1 - A-3. Correct use of these model forms and clauses insulates lessors from liability for the respective requirements under the CLA and Regulation M. *See* FRB Official Staff Commentary to Regulation M ("FRB Commentary"), Appendix C, Comment 1; 12 C.F.R. 213, Supp. I, Appendix C, Comment 1; CFPB Official Staff Commentary to Regulation M ("CFPB Commentary"), Appendix C, Comment 1; 12 C.F.R. 1013, Supp. I, Appendix C, Comment 1.

2. Use of the Information

The FTC, other agencies, 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 the FTC. Without the Regulation M recordkeeping requirement, the FTC's ability to enforce the CLA would be significantly impaired.

³ *See* Dodd-Frank Act, § 1029(a), -(c).

As noted above, consumers rely upon the disclosures for information to comparison shop among leases, as well as to ascertain the true costs and terms of lease offers. This information provides the primary evidence of law violations in CLA enforcement actions brought by the FTC and private actions brought by consumers. Without these requirements, and the resulting disclosures, the FTC (and consumers) would be unable to enforce the law.

3. Consideration of the Use of Improved Information Technology

The FRB and CFPB have issued rules to establish uniform standards for using electronic communication to deliver disclosures required under Regulation M, within the context of the Electronic Signatures in Global and National Commerce Act (“ESIGN”), 15 U.S.C. 7001 *et seq.* 72 Fed. Reg. 63,456 (Nov. 9, 2007); 12 C.F.R. 1013 (76 Fed. Reg. 78,500, Dec. 19, 2011) (corrected, 76 Fed. Reg. 81,789, Dec. 29, 2011). These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act (“GPEA”), codified at 44 U.S.C. 3504, note. ESIGN 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 a lessor to retain records by microfilm or microfiche or by any other method that reproduces records accurately (including computer programs). Lessors need only retain enough information to reconstruct the required disclosure or other records. Section 213.8-1 of the FRB Commentary; Section 1013.8-1 of the CFPB Commentary.

4. Efforts to Identify Duplication/Availability of Similar Information

The recordkeeping requirement of Regulation M preserves the information provided by the lessor to consumers considering the costs and terms of lease offers. The lessor is the only source of this information. No other federal law, nor is staff aware of any state law, that mandates retention of this information. Similarly, the disclosures required by the CLA and Regulation M are not required by any other provision of law. 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 Businesses

The 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. As previously noted, the FTC’s role in this area is limited to enforcement because the CLA vested rulemaking authority in the FRB and CFPB. Nonetheless, as also noted above, Regulation M provides model forms and clauses that may be used to comply with its disclosure requirements. Correct use of these forms and clauses

insulates a lessor from liability for the respective requirements.

6. Consequences of Conducting Collection Less Frequently

The current record retention period of two years supports the one-year statute of limitations for private actions, and the FTC's (and other administrative 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 the FTC (and other administrative agencies) could not fulfill their made to enforce the CLA.

7. Circumstances Requiring Collection Inconsistent with Guidelines

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

8. Consultation Outside the Agency

The disclosure and recordkeeping requirements of Regulation M were issued by the FRB and CFPB. Before the regulation was initially issued and prior to each amendment, the amendments were published for public comment in the Federal Register.

More recently, the Commission sought public comment in connection with its latest PRA clearance request for these regulations, in accordance with 5 C.F.R. 1320.8(d). *See* 77 Fed. Reg. 6114 (Feb. 7, 2012); corrected for misaligned columnar information, 77 Fed. Reg. 13,127 (Mar. 5, 2012). The Commission received one comment from the National Automobile Dealer's Association ("NADA") pertaining to regulatory burden affecting Regulation M.⁴

NADA stated, as a general matter, that the FTC staff estimates greatly underestimate Regulation M's recordkeeping and disclosure requirements for NADA members.⁵ NADA provided one illustration of this point for Regulation M, regarding lease advertising by motor vehicle dealers, but did not provide sufficient specific information from which staff could revisit and revise its estimates. In its comment, NADA observed that preliminary reports from dealers suggest that the FTC estimate for Regulation M advertising compliance, is understated. NADA,

⁴ NADA's comment is available at <http://www.ftc.gov/os/comments/regsbemzpra/index.shtm>.

⁵ NADA states that it represents approximately 16,000 new car and truck dealers, both domestic and import, with over 32,500 separate franchises. *Id.*

however, focused on the FTC estimate of 15 seconds for required disclosures in individual transactions, here, for advertisements. It is “setup/monitoring” burden, however, that addresses the time (and associated labor cost) applicable to systems review and monitoring for continued compliance. For lease advertising, estimated setup/monitoring burden is a half hour.

The Commission’s jurisdiction covers a highly diverse universe of entities. Affected motor vehicle dealers are but one component of a much larger universe of entities over which the FTC has jurisdiction. Thus, the FTC’s estimates may understate some entities’ actual experience and perhaps overstate others’. On balance, though, FTC staff believes these estimates are a fair reflection for the overall universe affected, and the estimates factor into consideration that PRA “burden” does not include effort extended in the ordinary course of business independent of regulatory requirements.⁶

Pursuant to OMB rules, 5 C.F.R. 1320.12(c), the FTC is providing a second opportunity for NADA and the general public to comment while the FTC seeks OMB approval to renew the pre-existing clearance for Regulation M. The Commission is seeking such comments contemporaneously with this submission.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

The required recordkeeping and written disclosures 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 FTC would be covered by the protections of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. 46(f) and 57b-2, by Section 4.10 of the Commission's Rules of Practice, 16 C.F.R. 4.10, and by the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

12. Estimated Hours Burden: 122,845 (54,442 recordkeeping hours: 40,558 + 13,884 carve-out for motor vehicles + 68,403 disclosure hours: 42,139 + 26,264 carve-out for motor vehicles)⁷

⁶ For example, some entities may advertise leases but may not promote the lease terms covered by Regulation M; instead, they may make general statements about offering leases, which do not trigger advertising compliance responsibilities under Regulation M.

⁷ This also reflects an adjustment to the associated Federal Register notice, 74 Fed. Reg. 10,584 (March 11, 2009), in which hours for advertising-related setup/monitoring disclosures were overstated -- shown there as 10,500 hours instead of 10,000 hours -- which, in turn, led to a rounding up to 225,000 hours. Likewise, labor costs calculations were mildly overstated by that input error, and are adjusted accordingly herein.

Because of their shared enforcement jurisdiction for Regulation M, the CFPB and FTC have divided the FTC’s previously-cleared PRA burden between them,⁸ except that the FTC retained all of the part of that burden associated with certain motor vehicle dealers (for brevity, referred to in the burden summaries below as a “carve-out”).⁹ The division of PRA burden hours not attributable to certain motor vehicle dealers is reflected in the CFPB’s recent PRA clearance requests to OMB.¹⁰ The FTC’s burden estimates below reflect both the shared enforcement jurisdiction and the FTC’s separate accounting under the PRA for its exclusive jurisdiction to enforce Regulation M for such motor vehicle dealers.

Recordkeeping

Staff estimates that Regulation M’s recordkeeping requirements affect approximately 54,442 firms leasing products to consumers and subject to the Commission’s jurisdiction, at an average annual burden of one hour per firm, for a total of 54,442 hours.

Disclosure

Regulation M applies to 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. Below is staff’s best estimate of burden applicable to this very broad spectrum of covered entities.

Regulation M: Disclosures – Burden Hours

Disclosures	Respondents	Setup/Monitoring		Transaction-related			
		Average Burden per Respondent (hours)	Total Setup/Monitoring Burden (minutes)	Number of Transactions	Average Burden per Transaction (minutes)	Total Transaction Burden (hours)	Total Burden (hours)
Motor Vehicle Leases ¹	29,442	1	29,442	1,972,614	.50	16,438	45,880
Other Leases ²	25,000	.50	12,500	250,000	.25	1,042	13,542
Advertising	13,471	.50	6,736	538,840	.25	2,245	8,981

⁸ The CFPB also factored into its burden estimates respondents over which it has jurisdiction but the FTC does not.

⁹ These are dealers specified by the Dodd-Frank Act under § 1029 (a), but as limited by subsection (b). Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offer is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff’s “carve-out” for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

¹⁰ OMB Control Number 3170-0008 (Regulation M).

¹ This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. § 1667(1); 12 C.F.R. § 1013.2(e)(1). Leases up to \$50,000 (plus an annual adjustment) are now covered, which increases the breadth of transactions subject to the FTC's jurisdiction under Regulation M. This increase, however, is more than offset by the FTC now sharing PRA burden with the CFPB, which thus yields a net decrease from past FTC estimates of the number of transactions.

² This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. § 1667(1); 12 C.F.R. § 1013.2(e)(1). The figures shown for respondents and transactions reflect a net decrease from prior FTC estimates, given current market conditions and the new PRA burden sharing with the CFPB while also recognizing that the CLA and Regulation M now cover leases up to \$50,000 (plus an annual adjustment).

Associated labor costs: \$3,129,338 (\$947,288 recordkeeping costs: \$705,712 + \$241,576 carve-out for motor vehicles + \$2,182,050 disclosures costs: \$1,344,228 + \$837,822 carve-out for motor vehicles)

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$49 for managerial or professional time, \$30 for skilled technical time, and \$16 for clerical time) are averages.

Recordkeeping

For the 54,442 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is \$947,288.

Disclosure

For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial or professional time and 90 percent require skilled technical time. As shown below, the total disclosure cost is \$2,182,050.

Regulation M: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		-----Skilled Technical-----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
Recordkeeping	0	\$0	5,444	\$163,320	48,998	\$783,968	\$947,288
Disclosures:							
Motor Vehicle Leases	4,588	\$224,812	41,292	\$1,238,760	0	\$0	\$1,463,572
Other Leases	1,354	\$66,346	12,188	\$365,640	0	\$0	\$431,986
Advertising	898	\$44,002	8,083	\$242,490	0	\$0	\$286,492

Total Disclosures	\$2,182,050
Total Recordkeeping and Disclosures	\$3,129,338

13. Estimated Capital and Other Non-Labor Costs

The applicable requirements impose minimal start-up costs, as lessors and/or advertisers generally have or obtain necessary equipment for other business purposes. For the same reason, staff believes that the cost of printing and copying needed to comply with Regulation M is minimal. Staff anticipates that the requirements noted above necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates. However, this training would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with collecting information to comply with Regulation M.

14. Estimated Cost to the Federal Government

The FRB and CFPB issued the recordkeeping requirement of Regulation M, so there is no cost to the FTC for that purpose. Enforcement of the recordkeeping requirement of Regulation M is incidental to overall enforcement of the CLA. Staff estimates that enforcing this requirement will cost the FTC Bureau of Consumer Protection no more than \$78,909, which is a representative years' cost of enforcing Regulation M's requirement during the three-year clearance period sought. This estimate is based on the assumption that one-half of one attorney work year will be expended. Clerical and support services are included in this estimate.

The FRB and CFPB issued the Regulation M disclosure requirements, so there is no cost to the FTC for that purpose. Regarding enforcement, staff estimates that the cost to the FTC Bureau of Consumer Protection for these requirements will approximate \$315,633. This estimate is based on the assumption that two attorney work years will be expended. Clerical and other support services are included in this estimate.

15. Program Changes or Adjustments

Staff has adjusted downward the FTC's previous annual burden estimate by approximately 101,530 hours (from 224,375 to 122,845). Although consumer leases up to \$50,000 (plus an annual adjustment) are now covered, which increases the breadth of transactions subject to the FTC's jurisdiction under Regulation M, this is more than offset by countervailing reductions for the burden splitting noted above regarding shared enforcement authority with the CFPB, and, secondly, reduced activity among non-vehicle leases due to current market conditions.

16. Publishing Results of the Collection of Information

Not applicable.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for PRA Submissions

Not applicable.

