

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

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 notice of interim final rule was published in the Federal Register (76 FR 78500), on December 19, 2011, and provided the public a 60-day period in which to review and provide public comments relating to any aspect of the interim final rule. A correction notice was also published in the Federal register notice on December 29, 2011 (76 FR 81759).

In response to the Federal Register notice (77 FR 2685), dated January 19, 2012, we received no comments during the comment period regarding this interim final rule.

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: 100,058

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

As suggested by OMB, our Federal Register notice dated January 19, 2012, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and

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.

purchase of services to provide information. However, we did not receive any responses from individuals on this subject. As a result, estimates of these cost burdens are not available at this time.

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

There were no changes made to the document that resulted in any change to the burden previously reported to OMB.

We are making this submission to renew the OMB approval.

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.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.