

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 \$55,800 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 (“Board”) promulgated the original Regulation M (12 C.F.R. Part 213) to implement the CLA, as required by the statute. Under the Dodd-Frank Act, however, almost all rulemaking authority for the CLA transferred from the Board to the Bureau of Consumer Financial Protection (“BCFP”) on July 21, 2011 (“transfer date”). Although the Dodd-Frank Act transferred most rulemaking authority under CLA to the BCFP, the Board retained rulemaking authority for certain motor vehicle dealers.¹ The BCFP’s regulations for entities under its jurisdiction for Regulation M appear in 12 C.F.R. Part 1013.²

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

¹ 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).

² Because both the Board and the BCFP 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 Board-issued Regulation M; 12 C.F.R. 1013 refers to the BCFP-issued Regulation M. Generally, these two aspects of Regulation M are virtually identical, other than occasional minor technical differences, and citations.

except for certain motor vehicle dealers³ and certain state-chartered credit unions.⁴ 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.⁵

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 Board and BCFP 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* Board

³ *See* Dodd-Frank Act § 1029(a), as limited by subsection (b) as to motor vehicle dealers. Subsection (b) does not preclude BCFP regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses to consumers, where the contract is not routinely assigned to unaffiliated third parties.

⁴ The FTC's enforcement authority includes state-chartered credit unions. In varying ways, other federal agencies also have enforcement authority over state-chartered credit unions. For example, for large credit unions (exceeding \$10 billion in assets), the BCFP has certain authority. The National Credit Union Administration also has certain authority for state-chartered federally insured credit unions, and it additionally provides insurance for certain state-chartered credit unions through the National Credit Union Share Insurance Fund and examines state-chartered credit unions for various purposes. *See generally* Dodd-Frank Act, §§ 1061, 1025, 1026.

⁵ *See* Dodd-Frank Act, § 1029(a), -(c).

Official Staff Commentary to Regulation M (“Board Commentary”), Appendix C, Comment 1; 12 C.F.R. 213, Supp. I, Appendix C, Comment 1; BCFP Official Staff Commentary to Regulation M (“BCFP Commentary”), Appendix C, Comment 1; 12 C.F.R. 1013, Supp. I, Appendix C, Comment 1.

2. Use of the Information

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. The FTC, other agencies, and private litigants also use the recordkeeping information 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 and private actions brought by consumers. Without the Regulation M recordkeeping requirement and required disclosures, the FTC’s (and consumers’) ability to enforce the CLA would be significantly impaired.

3. Consideration of the Use of Improved Information Technology

The Board and BCFP 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.*, and Sections 213.3(a)/1013.3(a) of Regulation M. 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 Board Commentary; Section 1013.8-1 of the BCFP 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 Board and BCFP. 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 mandate 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 Board and BCFP. 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* 83 Fed. Reg. 14,273 (April 3, 2018). No relevant comments were received. Consistent with 5 C.F.R. 1320.12(c), the FTC is again seeking public comment 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 and Labor Cost Burden

Estimated Hours Burden: 101,953 (30,203 recordkeeping hours: 3,513 + 26,690 carve-out + 71,750 disclosure hours: 2,094 + 69,656 carve-out)⁶

Given their generally shared enforcement jurisdiction for Regulation M,⁷ the BCFP and FTC have divided the FTC's previously-cleared PRA burden between them, except that the FTC has wholly assumed the part of that burden associated with motor vehicle dealers and now is also doing so, when appropriate, regarding estimated burden for state-chartered credit unions (these respective assumptions of burden estimation are reflected in the burden summaries below and immediately above as a "carve-out").⁸ The division of PRA burden hours not attributable to motor vehicle dealers and, when appropriate, state-chartered credit unions, is reflected in the BCFP's PRA clearance requests to OMB,⁹ as well as in the FTC's burden estimates below.

⁶ Recordkeeping and disclosure burden estimates for Regulation M are more substantial for motor vehicle leases than for other leases, including burden estimates based on market changes and regulatory definitions of coverage. As noted above, for purposes of burden calculations, and in view of the different types of motor vehicle dealers, the FTC is including for itself the entire PRA burden for all motor vehicle dealers in the burden estimates below.

⁷ See *supra* notes 3 and 4 and accompanying text.

⁸ As of the third quarter of 2017, there were approximately the following number of state-chartered credit unions: 2,347 state-chartered credit unions - 2,106 federally insured, 125 privately insured, and 116 in Puerto Rico insured by a quasi-governmental entity. Because of the difficulty in parsing out PRA burden for such entities in view of agencies' overlapping enforcement authority (see *supra* note 4 and accompanying text), the FTC's figures include PRA burden for all state-chartered credit unions (rounded to 2,300). Similarly, because it is not practicable for PRA purposes to estimate the portion of motor vehicle dealers that engage in one form of financing versus another (and that would or would not be subject to BCFP oversight), the FTC staff's "carve-out" for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. These attributions of burden estimation for motor vehicle dealers and state-chartered credit unions do not bear on actual enforcement authority.

⁹ OMB Control Number 3170-0006 (Regulation M).

The following discussion and tables present FTC estimates under the PRA of recordkeeping and disclosure average time and labor costs, excluding that which the FTC believes entities incur customarily in the normal course of business¹⁰ and information compiled and produced in response to FTC law enforcement investigations or prosecutions.¹¹

Recordkeeping

Staff estimates that Regulation M’s recordkeeping requirements affect approximately 30,203 firms within the FTC’s jurisdiction leasing products to consumers at an average annual burden of one hour per firm, for a total of 30,203 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 -----		Number of Transactions	----- Transaction-related-----		
		Average Burden per Respondent (hours)	Total Setup/Monitoring Burden (hours)		Average Burden per Transaction (minutes)	Total Transaction Burden (hours)	Total Burden (hours)
Motor Vehicle Leases ¹	26,690	1	26,690	4,000,000	.50	33,333	60,023
Other Leases ²	3,513	.50	1,757	60,000	.25	250	2,007
Advertising ³	14,615	.50	7,308	578,960	.25	2,412	9,720
Total							71,750

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). While the number of respondents for vehicle leases has decreased with market changes, the number of vehicle lease transactions has remained about the same, compared to past FTC estimates. Leases up to \$55,800 plus an annual adjustment are now covered. The resulting total burden has decreased.

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 number of respondents has decreased, based on market changes in companies and types of transactions they offer; the number of such transactions has also declined, based on types of transactions offered that are covered by the CLA. Leases up to \$55,800 plus an annual adjustment are now covered. The resulting total burden has decreased.

¹⁰ PRA “burden” does not include “time, effort, and financial resources” expended in the normal course of business, regardless of any regulatory requirement. See 5 C.F.R. 1320.3(b)(2).

¹¹ See 5 C.F.R. 1320.4(a) (excluding information collected in response to, among other things, a federal civil action or “during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities”) pertinent to this submission.

³ Respondents for advertising have decreased as have lease advertisements, based on market changes, from past FTC estimates. The resulting total burden has decreased.

Associated labor costs: \$5,566,638 (\$1,649,088 recordkeeping costs: \$191,814 + \$1,457,274 carve-out + \$3,917,550 disclosure costs: \$114,394 + \$3,803,156 carve-out)

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$56 for managerial or professional time, \$42 for skilled technical time, and \$17 for clerical time) are averages.¹²

Recordkeeping

For the 30,203 recordkeeping hours, staff estimates that 90 percent of the burden hours require managerial time and 10 percent require skilled technical time. As shown below, the total recordkeeping cost is \$1,649,088.

Disclosure

For each notice or information item listed, staff estimates that 90 percent of the burden hours require managerial time and 10 percent require skilled technical time. As shown below, the total disclosure cost is \$3,917,550.

Regulation M: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		-----Skilled Technical-----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$56/hr.)	Time (hours)	Cost (\$42/hr.)	Time (hours)	Cost (\$17/hr.)	
Recordkeeping	27,183	\$1,522,248	3,020	\$126,840	0	0	\$1,649,088
Disclosures:							
Motor Vehicle Leases	54,021	\$3,025,176	6,002	\$252,084	0	0	\$3,277,260
Other Leases	1,806	\$101,136	201	\$8,442	0	0	\$109,578
Advertising	8,748	\$489,888	972	\$40,824	0	0	\$530,712
Total Disclosures							\$3,917,550
Total Recordkeeping and Disclosures							\$5,566,638

13. Estimated Capital and Other Non-Labor Costs

¹² These inputs are based broadly on mean hourly data found within the “Bureau of Labor Statistics, Economic News Release,” March 31, 2017, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2016.” <http://www.bls.gov/news.release/ocwage.t01.htm>.

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 Board and BCFP 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 \$86,805, which is a representative year's 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 Board and BCFP 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 \$520,830. This estimate is based on the assumption that three attorney work years will be expended. Clerical and other support services are included in this estimate.

15. Program Changes or Adjustments

Estimated net annual burden, cumulative of recordkeeping and disclosure, has decreased by 4,557 hours (from 106,510 hours to 101,953 hours). Given market changes, FTC staff has reduced its prior estimates of the number of affected respondents and, save for motor vehicle leases, the estimated number of transactions per disclosure category. However, estimated burden per respondent and per transaction is unchanged from currently cleared estimates.

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.