

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 213

[Docket No. R-1591]

RIN 7100 AE-92

### Consumer Leasing (Regulation M)

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is proposing to revise its Regulation M, which was issued to implement the Consumer Leasing Act (CLA). Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws, including the CLA, from the Board to the Bureau of Consumer Financial Protection (Bureau). Under section 1029 of the Dodd-Frank Act, however, the Board retains authority to issue rules for motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, and are otherwise not subject to the Bureau's regulatory authority. The Board is proposing to revise its Regulation M and the accompanying Official Staff Commentary to reflect this change in the persons covered by the Board's Regulation M.

**DATES:** Comments must be received on or before March 5, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1591 and RIN 7100-AE-92, by any of the following methods:

- **Agency Website:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Street NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

#### FOR FURTHER INFORMATION CONTACT:

Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452-3667, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

#### SUPPLEMENTARY INFORMATION:

#### I. Background and Legal Authority

The Consumer Leasing Act of 1976 (CLA), 15 U.S.C. 1667-1667f, was enacted as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The purpose of the CLA is to ensure meaningful and accurate disclosure of the terms of personal property leases for personal, family, or household use "so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements." TILA Section 102(b), 15 U.S.C. 1601(b).<sup>1</sup> Before Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>2</sup> the CLA was implemented by the Board's Regulation M, published at 12 CFR part 213. An Official Staff Commentary interprets the

requirements of the Board's Regulation M (12 CFR part 213 (Supp. I)). The CLA and Regulation M have generally applied to consumer leases for the use of personal property in which the contractual obligation has a term of more than four months and the lessee's total contractual obligation under the lease does not exceed a specified dollar threshold.<sup>3</sup> They require lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions.

Title X of the Dodd-Frank Act transferred rulemaking authority for the CLA to the Bureau of Consumer Financial Protection (Bureau).<sup>4</sup> This transfer was effective on July 21, 2011. In connection with the transfer, the Bureau published its own version of Regulation M, 12 CFR part 1013, to implement the CLA (Bureau's Regulation M).<sup>5</sup> The Bureau's Regulation M substantially duplicates the Board's Regulation M and covers financial institutions and other persons for which the Bureau has rulemaking authority under section 1022 of the Dodd-Frank Act (12 U.S.C. 5512).

Under section 1029(a) and (c) of the Dodd-Frank Act (12 U.S.C. 5519(a) and (c)), the Board retains rulemaking authority under the CLA over certain motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.<sup>6</sup> Thus, except as described below,

<sup>3</sup> The threshold was \$54,600 for 2017. See 81 FR 86256 (Nov. 30, 2016). From January 1, 2018, through December 31, 2018, the threshold is set at \$55,800. See 82 FR 51977 (Nov. 9, 2017).

<sup>4</sup> Public Law 111-203, sections 1061 and 1100A, 124 Stat. 1376, 2035 and 2107 (2010).

<sup>5</sup> 12 CFR part 1013. See 76 FR 78500 (Dec. 19, 2011) (Interim Final Rule). In April 2016, the Bureau adopted the Interim Final Rule as final, subject to any intervening final rules published by the Bureau. See 81 FR 25323 (Apr. 28, 2016).

<sup>6</sup> Dodd-Frank Act section 1029(a) states as follows: "Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." 12 U.S.C. 5519(a).

Dodd-Frank Act section 1029(c) states as follows: "Except as provided in subsections (b) and (d) [concerning the Federal Trade Commission (FTC)], nothing in this title [X, Bureau of Consumer Financial Protection], shall be construed as modifying, limiting, or superseding the operation of any provision of Federal law, or otherwise affecting the authority of the Board of Governors, the Federal Trade Commission, or any other Federal agency,

<sup>1</sup> See also 12 CFR 213.1(b).

<sup>2</sup> Public Law 111-203, 124 Stat. 1376 (2010).

these motor vehicle dealers remain subject to the Board's Regulation M. Authority to enforce Regulation M against motor vehicle dealers subject to the Board's Regulation M is assigned by statute to the FTC.<sup>7</sup>

Section 1029(b) of the Dodd-Frank Act provides that the Bureau's rulemaking authority applies to motor vehicle dealers only to the extent that the dealer is engaged in any of the following activities:

- Providing consumers with services related to residential or commercial mortgages or self-financing transactions involving real property;
- Operating a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases is provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or
- Offering or providing a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

12 U.S.C. 5519(b).

As a result of the transfer of rulemaking authority under the CLA to the Bureau, the Board's Regulation M covers only motor vehicle dealers excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act (12 U.S.C. 5519). Consequently, the Board is publishing proposed revisions to Regulation M and the accompanying Official Staff Commentary to reflect the narrower scope of the Board's rulemaking authority. Specific proposed revisions are discussed in the section-by-section analysis below.

## II. Section-by-Section Analysis

### *Section 213.1 Authority, Scope, Purpose, and Enforcement*

Section 213.1 addresses matters relating to authority, scope, purpose, and enforcement for Regulation M. To reflect the changed scope of the Board's Regulation M, the Board is proposing revisions to § 213.1 and the Official Staff Commentary to § 213.1, as described below.

<sup>7</sup> with respect to a person described in subsection (a)." 12 U.S.C. 5519(c).

<sup>8</sup> See TILA section 108(c), 15 U.S.C. 1607(c). See also Dodd-Frank Act section 1029(c) and (d), 12 U.S.C. 5519(c) and (d).

### 1(a) Authority

Section 213.1(a) states that Regulation M is issued by the Board to implement the CLA. It also states that information collection requirements contained in Regulation M have been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Board proposes to remove the sentence referencing information collections. Under the PRA, collections of information are not approved one time; instead collections of information must be reapproved every three years. As discussed in Part V, below, the proposed rule would not impose additional information collections or revise existing information collections for covered entities.

### 1(b) Scope and Purpose

Section 213.1(b) states, in relevant part, that Regulation M applies to all persons that are lessors of personal property under consumer leases as those terms are defined in § 213.2(e)(1) and (h). The Board proposes to revise this section to state additionally that the Board's Regulation M covers only persons identified as persons excluded from the Bureau's rulewriting and other authorities under section 1029 of the Dodd-Frank Act, namely, "motor vehicle dealers to which 12 U.S.C. 5519(a) applies."

The Board also proposes to add a new comment 1-1. New comment 1-1 would follow the statutory language to explain the meaning of "motor vehicle dealers to which 12 U.S.C. 5519(a) applies." The proposed comment would clarify that section 1029 of the Dodd-Frank Act (12 U.S.C. 5519) excludes certain motor vehicle dealers from the authority of the Bureau, and that the persons excluded are subject to the rulemaking authority of the Board and the Board's Regulation M. The proposed comment would explain that the Board's regulation generally covers motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. The comment would further state that, for purposes of the CLA, a motor vehicle dealer is subject to the authority of the Bureau instead of the Board's Regulation M to the extent that the dealer operates a line of business that involves the extension of retail leases involving motor vehicles directly to consumers and the contract governing such extension of retail leases is not routinely assigned to an unaffiliated third party financing or leasing source.<sup>8</sup>

<sup>8</sup> See 12 U.S.C. 5519(b).

The proposed comment also would clarify that, for determining the persons covered by the Board's Regulation M, the terms "motor vehicle" and "motor vehicle dealer" have the meanings assigned to them by section 1029 of the Dodd-Frank Act.<sup>9</sup> Otherwise, in applying the Board's Regulation M, determining whether leased property is a motor vehicle would continue to be governed by state or other applicable law. See comment 4(f)-1.

The Board also proposes to re-number current comment 1-1 as comment 1-2 and revise it. Current comment 1-1 explains the applicability of Regulation M to foreign entities. This comment states that Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p). This comment further explains that Regulation M does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad. The Board proposes to revise comment 1-1 (which would be re-numbered 1-2) to reflect that the Board's Regulation M now applies solely to "motor vehicle dealers to which 12 U.S.C. 5519(a) applies." Thus, in the first sentence of proposed comment 1-2, the reference to U.S. branches of foreign banks and leasing companies and to foreign branches of U.S. banks would be replaced by a reference to "motor vehicle dealers to which 12 U.S.C. 5519(a) applies." The revised comment would state that the Board's Regulation M applies to "motor vehicle dealers to which 12 U.S.C. 5519(a) applies" that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p).

The Board proposes to remove the second sentence of the comment, which states that Regulation M does not apply to "a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad." This sentence addresses financial institution lessors that have worldwide branching networks. The Board does not believe that motor vehicle dealers intended to be covered by the Board's Regulation M operate in this way, and therefore believes that this guidance is inapplicable.

These proposed changes are intended to reflect only the new scope of the Board's Regulation M under the Dodd-Frank Act and are not intended to

<sup>9</sup> See 12 U.S.C. 5519(f).

change the substantive principles of foreign applicability expressed in the comment. The Board invites comments on the proposed changes.

#### Section 213.2 Definitions

##### 2(e) Consumer Lease

Section 213.2(e) defines “consumer lease” under Regulation M. The Board proposes no changes to the current definition, but proposes to eliminate comment 2(e)–7 and comment 2(e)–8 as unnecessary because the regulation’s coverage is now limited to certain motor vehicle lessors and these comments address leases outside of motor vehicle and motor vehicle-related leasing. Accordingly, the Board also proposes to re-number comments 2(e)–9, 2(e)–10, and 2(e)–11 as comments 2(e)–7, 2(e)–8, and 2(e)–9, respectively, and make certain non-substantive technical revisions.

Current comment 2(e)–7 identifies the specific types of leases of personal property considered incidental to a service and therefore not subject to Regulation M. These are home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming; security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection; and propane gas service where the consumer must lease a propane tank to receive the service. Comment 2(e)–8 states that the lease of a safe deposit box is not a consumer lease under § 213.2(e).

#### Section 213.4 Content of Disclosures

Section 213.4 identifies the information that a lessor must disclose to a consumer before consummation of a consumer lease. The Board is not proposing any revisions to the content of disclosures for motor vehicle leases. Comment is solicited on whether any revisions to § 213.4 are appropriate in light of the narrower coverage of the Board’s regulation as a result of the Dodd-Frank Act.

##### 4(t) Non-Motor Vehicle Open-End Leases

Section 213.4(t) applies to non-motor vehicle, open-end leases and refers to the statutory requirement to provide certain disclosures if the lessee is liable at the end of the lease term for the anticipated fair market value of the leased property. The Board is proposing to delete this provision as unnecessary in light of the regulation’s application only to certain motor vehicle dealers.

The Board solicits comment on whether covered dealers might offer non-vehicle open-end leases for “related or ancillary products” that would be covered by the Board’s Regulation M<sup>10</sup> and, if so, whether such leases would have end-of-term liability as referenced in existing § 213.4(t).

#### Section 213.7 Advertising

##### 7(a) Authority

Section 213.7 prescribes rules for advertising consumer leases. Comment 7(a)–1 explains who is covered by the advertising rules. Currently, the comment states that all “persons” must comply with the advertising rules, not just those that meet the definition of a lessor. Thus, “automobile dealers, merchants, and others” must comply with the advertising rules if they advertise consumer lease transactions, even if they are not themselves lessors. The comment clarifies, however, that owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the CLA (15 U.S.C. 1667d(b)).

The Board proposes to revise this comment to reflect the limited scope of the Board’s Regulation M. Thus, the proposed comment would state that “motor vehicle dealers to which 12 U.S.C. 5519(a) applies” must comply with the advertising provisions in this section. The Board also proposes to revise the subsequent sentence, which would state that motor vehicle dealers to which 12 U.S.C. 5519(a) applies that are not themselves lessors also must comply with the advertising provisions of the regulation if they advertise consumer lease transactions.

In addition, the Board proposes to remove the last sentence of comment 7(a)–1, which states that owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations of the advertising provisions.<sup>11</sup> The sentence is no longer necessary because those persons are no longer covered by the Board’s Regulation M.

#### Appendix A to Part 213—Model Forms

##### Appendix A–3—Model Furniture Lease Disclosures

Appendix A–3 to part 213 contains model disclosures for furniture leases. The Board proposes to eliminate the model furniture lease disclosures in

<sup>10</sup> Dodd-Frank Act section 1029(b)(3), 15 U.S.C. 5519(b)(3).

<sup>11</sup> See 15 U.S.C. 1667c(b) and 1667d(b).

appendix A–3 and accompanying Official Staff comment 4 to appendix A as inapplicable given the limited scope of the Board’s Regulation M prescribed by section 1029 of the Dodd-Frank Act. 15 U.S.C. 5519. Furniture leases are no longer covered by the Board’s Regulation M because furniture leasing is not an activity related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or servicing of motor vehicles.<sup>12</sup>

#### Appendix B—Federal Enforcement Agencies

Appendix B to part 213 identifies which federal agency enforces Regulation M for particular classes of businesses. The Bureau eliminated this appendix in its Regulation M.<sup>13</sup> The Board proposes to simplify the regulation by also eliminating this appendix, which is not necessary to implement the CLA. Enforcement of Regulation M is appropriately addressed in § 213.1(c), which references the relevant CLA provisions on enforcement and liability.

### III. Request for Comment

The Board requests comment on the proposed revisions, which are not intended to alter the substantive requirements of the CLA and existing Regulation M, and invites commenters to identify any additional revisions to the Board’s Regulation M that commenters believe are necessary in light of section 1029 of the Dodd-Frank Act (12 U.S.C. 5519).

### IV. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* Title X of the Dodd-Frank Act transferred rulemaking authority for a number of

<sup>12</sup> Dodd-Frank Act section 1029(b)(3), 15 U.S.C. 5519(b)(3).

<sup>13</sup> 76 FR 78500 (Dec. 19, 2011) (“Appendix B, entitled ‘Federal Enforcement Agencies,’ has been eliminated, because it was designed to be informational only and is unnecessary for purposes of implementing the CLA.”). See also 81 FR 25323 (Apr. 28, 2016).

consumer financial protection laws from the Board to the Bureau, effective July 21, 2011, including the CLA. The Bureau issued the Bureau Interim Final Rule to implement CLA in connection with the transfer of CLA rulemaking authority to the Bureau. Pursuant to Section 1029 of the Dodd-Frank Act, however, the Board retains rulemaking authority for consumer financial protection laws to the extent that such laws could cover motor vehicle dealers identified in Section 1029(a) of the Dodd-Frank Act. The Board does not believe that any motor vehicle dealers identified in Section 1029(a) would incur any additional compliance burden as a result of the Board’s proposal, because these entities are already subject to the Board’s Regulation M and no substantive changes to Regulation M’s requirements are proposed.

2. *Small entities affected by the proposed rule.* The Board does not believe that any motor vehicle dealers identified in Section 1029(a) would incur additional compliance burden as a result of the Board’s proposal, because these entities are already subject to the Board’s Regulation M. Therefore, the Board believes the proposed rule would not affect any entity, including any small entity.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would re-state, without substantive revisions, the Board’s Regulation M, 12 CFR part 213, and would therefore not impose any new recordkeeping, reporting, or compliance requirements on any entities.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed restatement of the Board’s Regulation M, 12 CFR part 213.

5. *Significant alternatives to the proposed revisions.* The Board is not aware of any significant alternatives that would further minimize any significant economic impact of the proposed rule on small entities, but solicits comment on this matter.

**V. Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), federal agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule and determined that it does not create any new or revise any existing collection of information under section 3504(h) of title 44.

**List of Subjects in 12 CFR Part 213**

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons discussed in the Supplementary Information, the Board proposes to amend Regulation M, 12 CFR part 213, as follows:

**PART 213—CONSUMER LEASING (REGULATION M)**

■ 1. The authority citation for part 213 is revised to read as follows:

**Authority:** 12 U.S.C. 5519; 15 U.S.C. 1604 and 1667f; Sec. 1100E, Pub. L. 111–203, 124 Stat. 1376 (15 U.S.C. 1603 *note*).

■ 2. Section 213.1 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follows:

**§ 213.1 Authority, scope, purpose, and enforcement.**

(a) *Authority.* The regulation in this part, known as Regulation M, is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending Act, which is title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Scope and purpose.* This part applies to all persons that are lessors of personal property under consumer leases as those terms are defined in § 213.2(e)(1) and (h) and that are motor vehicle dealers to which 12 U.S.C. 5519(a) applies. The purpose of this part is—

\* \* \* \* \*

**§ 213.4 [Amended]**

■ 3. Section 213.4(t) is removed.

**Appendix A to Part 213—[Amended]**

■ 4. Appendix A to part 213 is amended by removing and reserving section A–3.

**Appendix B to Part 213—[Removed and Reserved]**

■ 5. Appendix B to part 213 is removed and reserved.

■ 6. In supplement I to part 213:

■ a. *Section 213.1—Authority, Scope, Purpose, and Enforcement* is revised.

■ b. Under *Section 213.2—Definitions*, subsection 2(e) *Consumer lease* is revised.

■ c. Under *Section 213.7—Advertising*, subsection 7(a) *General rule* is revised.

■ d. *Appendix A—Model Forms* is revised.

The revisions read as follows:

**Supplement I to Part 226—Official Staff Commentary to Regulation M**

\* \* \* \* \*

*Section 213.1—Authority, Scope, Purpose, and Enforcement*

1. *Motor vehicle dealers to which 12 U.S.C. 5519(a) applies.* Section 1029 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), excludes certain motor vehicle dealers from the authority of the Bureau of Consumer Financial Protection (Bureau). See 12 U.S.C. 5519. The persons excluded from the authority of the Bureau by that provision are subject to the authority of the Board and this part, and generally are motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. However, for purposes of the Consumer Leasing Act, 15 U.S.C. 1667–1667f, a motor vehicle dealer is subject to the authority of the Bureau instead of the Board’s Regulation M to the extent that the dealer operates a line of business that involves the extension of retail leases involving motor vehicles directly to consumers and the contract governing such extension of retail leases is not routinely assigned to an unaffiliated third party financing or leasing source. See 12 U.S.C. 5519(b). Accordingly, for determining the persons covered by the Board’s Regulation M, “motor vehicle” and “motor vehicle dealer” have the meanings assigned to them by section 1029 of the Dodd-Frank Act. See 12 U.S.C. 5519(f). Otherwise, in applying the Board’s Regulation M, whether leased property is a motor vehicle is determined by state or other applicable law. See comment 4(f)–1.

2. *Foreign applicability.* Regulation M applies to motor vehicle dealers to which 12 U.S.C. 5519(a) applies that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p).

*Section 213.2—Definitions*

\* \* \* \* \*

2(e) Consumer lease.

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must

be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation.

However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–9 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–9 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI–W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI–W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

8. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

9. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is \$25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is \$50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is \$51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is \$53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is \$53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is \$54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is \$54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is \$54,600.

ix. From January 1, 2017 through December 31, 2018, the threshold amount is \$55,800.

\* \* \* \* \*

#### Section 213.7—Advertising

##### 7(a) General rule.

1. *Persons covered.* Motor vehicle dealers to which 12 U.S.C. 5519(a) applies must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in § 213.2(h). Thus, motor vehicle dealers to which 12 U.S.C. 5519(a) applies who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions.

2. *“Usually and customarily.”* Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

3. *Total contractual obligation of advertised lease.* Section 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). Under § 213.2(e), a consumer lease is exempt

from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). For example

i. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised lease exceeds the threshold amount in effect when the advertisement is made.

Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with § 213.7 because it refers only to an exempt lease.

ii. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to terms for consumer leases that are not exempt.

iii. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to a consumer lease that is not exempt.

\* \* \* \* \*

#### Appendix A—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be

deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

#### 2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using “lessee,” “lessor,” or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state “plain English” requirements.

v. Deleting or blocking out inapplicable disclosures, filling in “N/A” (not applicable) or “0,” crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms).

vi. Adding language or symbols to indicate estimates.

vii. Adding numeric or alphabetic designations.

viii. Rearranging the disclosures into vertical columns, except for § 213.4(b) through (e) disclosures.

ix. Using icons and other graphics.

3. *Model closed-end or net vehicle lease disclosure.* Model A–2 is designed for a closed-end or net vehicle lease. Under the “Early Termination and Default” provision a reference to the lessee's right to an independent appraisal of the leased vehicle under § 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's realized value.

By order of the Board of Governors of the Federal Reserve System.

**Ann E. Misback,**

*Secretary of the Board.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release Nos. 34–82373; FOIA–192; File No. S7–09–17]

RIN 3235–AM25

### Freedom of Information Act Regulations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission” or “SEC”) is publishing for comment proposed amendments to the Commission's regulations under the Freedom of Information Act (“FOIA”). This rule proposes revisions to the Commission's regulations under the FOIA to reflect changes required by the FOIA Improvement Act of 2016 (“Improvement Act”); and clarify, update, and streamline the language of several procedural provisions.

**DATES:** Comments should be received by February 2, 2018.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form located at <http://www.sec.gov/rules/proposed.shtml>;
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov), including File Number S7–09–17 on the subject line; or
- Use the Federal eRulemaking Portal located at <http://www.regulations.gov>, following the instructions for submitting comments.

#### *Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–17. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington DC 20549, on official working days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change.