

Supporting Statement for the Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation M (FR M; OMB No. 7100-0202)

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation M (FR M; OMB No. 7100-0202). Since 2011, the Consumer Financial Protection Bureau (CFPB) has been responsible for issuing Consumer Leasing Act (CLA)¹ regulations that apply to depository institutions and other lessors. However, the Board continues to be responsible under the Paperwork Reduction Act (PRA) for renewing every three years the information collections mandated by the CFPB's regulation for institutions supervised by the Board.²

The Board proposes to revise the methodology for estimating burden for disclosures to provide additional clarity and transparency into the calculation. Five Board-supervised institutions are estimated to be respondents and their current collective annual burden is estimated to be 50 hours.³ With the proposed revisions, the paperwork burden is estimated to increase to 258 hours.

Background and Justification

The CLA and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The CLA and Regulation M also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions.

¹ The CLA was enacted in 1976 as an amendment to the Truth in Lending Act (TILA) and is codified at 15 U.S.C. 1667-1667f. Regulation M is located at 12 CFR Part 213.

² The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for the CLA to the CFPB except for certain motor vehicle dealers that are excluded from the CFPB's authority, which remain subject to the Board's Regulation M. See section 1029 of the Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 (2010), 12 U.S.C. 5512, 5519, 5581. The CFPB's Regulation M is published at 12 CFR Part 1013 and the Board's Regulation M is published at 12 CFR Part 212.

³ The Board has supervisory authority regarding the CFPB's Regulation M for the following institutions: state member banks with assets of \$10 billion or less that are not affiliated with an insured depository institution with assets over \$10 billion (irrespective of the consolidated assets of any holding company); non-depository affiliates of such state member banks; and non-depository affiliates of bank holding companies that are not affiliated with an insured depository institution with assets over \$10 billion. See 12 U.S.C. 5515-5516. Notwithstanding the foregoing, the CFPB and not the Board has supervisory authority for Regulation M with respect to automobile leasing over non-banks defined as "larger participants" in the automobile finance market pursuant to 12 U.S.C. 5514 (implemented by 12 CFR 1090.108).

The CFPB's Regulation M applies to all types of lessors of personal property (except motor vehicle dealers excluded from the CFPB's authority under Dodd-Frank Act section 1029, which are covered by the Board's Regulation M).⁴ The CLA and Regulation M require lessors uniformly to disclose to consumers the costs, liabilities, and terms of consumer lease transactions. Disclosures are provided to consumers before they enter into lease transactions and in advertisements that state the availability of consumer leases on particular terms. The regulation generally applies to consumer leases of personal property in which the contractual obligation does not exceed \$50,000, adjusted annually for inflation, and has a term of more than four months.⁵ The CLA does not provide exemptions for small entities.

Description of Information Collection

The information collection under Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised. No reporting forms are associated with Regulation M, but certain disclosures must be provided in a manner substantially similar to the applicable model form in the appendix to the regulation. To ease the compliance cost (particularly for small entities) model forms are appended to the regulation. Lessors are required to "retain evidence of compliance" for 24 months, but the regulation does not specify the types of records that must be retained. Regulation M's recordkeeping and disclosure requirements are described in greater detail below.

Section 1013.4 - Lease disclosures.

Under the CLA and Regulation M, lessors are required to provide certain key information to consumers before they enter into a transaction to lease personal property for consumer (not business) purposes. Lessors are persons who regularly lease, offer to lease, or arrange to lease personal property to consumers. The costs and terms of the lease must be disclosed to consumers clearly and conspicuously and must be in writing in a form the consumer may keep. Disclosures may be in electronic form, subject to the consumer consent and other provisions of the Electronic Fund Transfer Act (E-Sign Act).⁶ Lessors must disclose, among other things, the total amount due at lease signing or delivery; the number, amount, due dates or periods of payments under the lease, and the total amount of these payments; and other terms relating to the rights and responsibilities of both parties to the lease.

Section 1013.7 - Advertising rules.

The advertising requirements apply to all persons that promote consumer leases through commercial messages in any form, including messages in print or electronic media, direct mailings, or on any sign or display. Advertising certain terms triggers the requirement for additional disclosures. For television or radio advertisements, special rules allow alternative disclosures using toll-free telephone numbers or written advertisements in a publication of general circulation.

⁴ See 12 U.S.C. 5519; 12 CFR Part 213.

⁵ For 2018, the Regulation M threshold is \$55,800.

⁶ See 15 U.S.C. 1693 *et seq.*

Proposed Revisions

The Board proposes to revise the methodology for estimating burden for disclosures to provide additional clarity and transparency into the calculation. Specifically, the Board proposes to estimate disclosure burden using the estimated average number of lease contracts each Board-supervised institution initiates annually, assuming it takes approximately 6.5 minutes to populate and provide each disclosure.

Time Schedule for Information Collection

The information collection pursuant to Regulation M is triggered by specific events. Disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised. There is no reporting form associated with the requirements of Regulation M. Lease-specific disclosures are not collected by the Board, are not publicly available, and are not published. Disclosures of lease terms that appear in advertisements are available to the public.

Legal Status

Sections 105(a) and 187 of TILA (15 U.S.C. 1604(a) and 1667f respectively), authorize the CFPB to issue regulations to carry out the provisions of the CLA. The CFPB's Regulation M, 12 CFR Part 1013, implements these statutory provisions. An institution's recordkeeping and disclosure obligations under Regulation M are mandatory. Because the Board does not collect any information pursuant to the CFPB's Regulation M, no issue of confidentiality normally arises. In the event the Board were to retain information regarding consumer leases during the course of an examination, the information regarding the consumer and the lease would be kept confidential pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 522 (b)(8)).

Consultation Outside the Agency

On April 5, 2018, the Board published an initial notice in the *Federal Register* (83 FR 14639) requesting public comment for 60 days on the extension, with revision, of the FR M. The comment period for this notice expired on June 4, 2018. The Board did not receive any comments. On June 20, 2018, the Board published a final notice in the *Federal Register* (83 FR 28640). The revisions will be implemented as proposed.

Estimate of Respondent Burden

The current total annual burden for Board-supervised institutions for this information collection is estimated to be 50 hours, and with proposed revisions is estimated to increase to 258 hours, as shown in the table below. The Board estimates that only five Board-supervised

institutions engage in consumer leasing⁷ with an estimated average of 456 transactions per institution per year. The Board also estimates that the five Board-supervised institutions advertise their leasing program approximately four times per year. These recordkeeping and disclosure requirements represents less than 1 percent of total Federal Reserve System paperwork burden.

No paperwork burden is deemed to be associated with the recordkeeping requirement in Regulation M that lessors “retain evidence of compliance” for a minimum of two years after the date disclosures are required to be made (section 213.8). The regulation does not specify the kind of records that must be retained for this purpose.

FR M	<i>Number of respondents⁸</i>	<i>Annual frequency</i>	<i>Estimated average minutes per response</i>	<i>Estimated annual burden hours</i>
<i>Current Disclosure</i>				
Section 1013.4 Lease disclosures	5	4	125	42
Section 1013.7 Advertising rules	5	4	25	<u>8</u>
<i>Total</i>				50
<i>Proposed Disclosure</i>				
Section 1013.4 Lease disclosures	5	461	6.5	250
Section 1013.7 Advertising rules	5	4	25	<u>8</u>
<i>Total</i>				258
<i>Change</i>				208

The current cost to the public is estimated to be \$2,803 and with proposed changes the cost to the public is estimated to increase to \$14,461.⁹

⁷ Federal Financial Institutions Examination Council Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 and FFIEC 041; OMB No. 7100-0036), Schedule RC-C, data item 10.a, Leases to individuals for household, family, and other personal expenditures.

⁸ Of these respondents, one is considered a small entity as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/document/support-table-size-standards.

⁹ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$18, 45% Financial Managers at \$69, 15% Lawyers at \$68, and 10% Chief Executives at \$94). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2017*, published March 30, 2018, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

Sensitive Questions

This information collection contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

Since the Board does not collect any information, the cost to the Federal Reserve System is negligible.