

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9167]
[October 21, 1981]

REGULATION M — CONSUMER LEASING

Proposed Official Staff Commentary

To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board staff today (October 7, 1981) made public a proposed official staff commentary intended to apply and interpret the Board's Regulation M — Consumer Leasing.

Comment was requested by December 11, 1981.

The Board adopted Regulation M last April to implement the consumer leasing provisions of the Truth in Lending Act as revised by the Truth in Lending Simplification and Reform Act of 1980. The revision of Truth in Lending under the Simplification Act left provisions of the Act dealing with leasing almost unchanged. When the Board revised its Truth in Lending Regulation Z to conform to the Simplification Act it removed the leasing provisions of the regulation and incorporated them in separate Regulation M. Regulation M conforms almost verbatim to the leasing provisions of Regulation Z. Lessors are required to conform to the Simplification Act, and regulations under it, by April 1, 1982, but they may begin to comply at any time before that date.

The proposed commentary is intended to replace a large number of interpretive letters issued under the leasing provisions of Regulation Z, and it is expected that the Regulation M commentary will be the sole future vehicle for staff interpretations of the regulations. It will be updated at least annually. An official staff commentary on Regulation Z, as revised under the Simplification Act, has just been published in final form. This does not touch on leasing.

Creditors conforming to the commentary in its final form will be protected from liability under the Truth in Lending Act. In keeping with the Board's desire to minimize regulatory burdens, the staff commentary on Regulation M has departed as little as possible from the substance of outstanding interpretive letters. It concentrates on interpretations of broad applicability. Changes have been made in the three following instances:

- When a statutory change has resulted in a new or different regulatory provision (for example, Comment 4(c)-1 on the treatment of multiple lessors).
- When Supreme Court decisions have interpreted provisions of the act or regulation (for example, Comment 2(a)(8)-1 on the definition of "lessor").
- When an area of concern to consumers or lessors can be profitably addressed, and the benefit of adding a new interpretation outweighs any burden (for example, Comments 4(h)-1 and 4(h)-3 on renegotiations and extensions).

Interpretations have been dropped if they have been outmoded by circumstance or the passage of time, if they repeat information found elsewhere, or if they deal with issues of civil liability. The staff believes that civil liability is inappropriate for regulatory handling.

The staff welcomes comment on any aspect of the proposed commentary, and commenters may focus only on issues of particular interest to them without addressing the entire commentary. Comment on the staff's decision to retain the substance of existing interpretations is of particular interest. The staff will consider any proposed additional material for the commentary, but will not consider proposals for change in Regulation M.

The attached notice summarizes the intent and formation of the proposed commentary, and lists its content. The full text may be obtained from the Federal Reserve Bank or the Division of Consumer and Community Affairs of the Board.

Printed on the following pages is a summary of the proposed official staff commentary. The complete text of the proposed commentary has been published in the October 13, 1981 issue of the *Federal Register*, and will be made available upon request directed to the Circulars Division of this Bank.

Comments on the proposal should be submitted by December 11, 1981, and may be sent to our Consumer Affairs and Bank Regulations Department.

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Reg. M; CL-1]

Proposed Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: In accordance with 12 CFR 213.1(d), the Board's staff is publishing for comment a proposed official staff commentary to Regulation M. The commentary applies and interprets the requirements of the regulation and is intended to replace individual Board and staff interpretations. In final form, it will be an official staff interpretation providing creditors with protection under § 130(f) of the Truth in Lending Act.

DATE: Comments must be received on or before December 11, 1981.

ADDRESS: Comments should include a reference to CL-1 and should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, N.W., Washington, D.C. 20551, between 8:45 a.m. and 5:15 p.m. Comments regarding each section should begin on a separate page. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Barbara Ranagan or Steven Zeisel, Staff Attorneys (202-452-3667), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) Introduction. The Board adopted Regulation M (46 FR 20949), effective April 1, 1981, to implement the consumer leasing provisions of the Truth in Lending Act. The leasing rules were formerly contained in Regulation Z, 12 CFR 226. Compliance with the new regulation becomes mandatory on April 1, 1982. Until that time, lessors may comply with either Regulation M or the previous version of Regulation Z.

The Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221) made revisions to Truth in Lending, but it affected consumer leasing only slightly. When Regulation Z was revised earlier this year to implement the amended act, the leasing rules were removed and consolidated as Regulation M. Apart from a few minor changes necessitated by the amendments to the act, Regulation M adopted almost verbatim the leasing rules of Regulation Z.

The Board suggested that Congress simplify the Consumer Leasing Act in the near future. At the present time, however, congressional amendments to the act do not appear imminent. Because the Board and staff interpretations of previous Regulation Z will expire when compliance with Regulation M becomes mandatory (April 1, 1982), the Board's staff is publishing in proposed form a commentary that incorporates the interpretations.

The commentary, in its final form, will replace the individual opinion letters that were issued under previous Regulation Z as the vehicle for staff interpretations. It will concentrate on material of general application for use by the widest possible audience and will be updated annually or more often as the need arises.

In keeping with the Board's desire to avoid unnecessary regulatory changes, the proposed commentary is based largely on the existing staff opinion letters to previous Regulation Z. The staff has added new interpretations or altered existing interpretations as infrequently as possible. The categories in which such changes have been made can be summarized as follows:

- When a statutory change has resulted in a new or different regulatory provision (for example, Comment 4(c)-1 on the treatment of multiple lessors).
- When recent Supreme Court decisions have interpreted provisions of the act or regulation (for example, Comment 2(a)(8)-1 on the definition of "lessor").
- When an area of concern to consumers or lessors can be profitably addressed, and the benefit of adding a new interpretation outweighs any burden (for example, Comments 4(h)-1 and 4(h)-3 on renegotiations and extensions).

The proposed commentary adopts the substance of most of the individual leasing interpretations issued under previous Regulation Z. However, interpretations have not been incorporated if they repeat information found elsewhere, if they have been rendered valueless by the passage of time, or if they deal with facts that are unique or too particular to warrant treatment in the new commentary. In a few instances, the previous interpretations dealt with issues of civil liability, such as the applicability of the three-monthly payment limitation of § 183 of the act. These interpretations have not been incorporated in the proposed commentary because the staff believes that liability issues are inappropriate for regulatory treatment.

Comment is welcome on both the substance of the material and the format in which it is presented. Commenters are encouraged to focus on material of particular interest to them; they need not address every provision. The staff will consider for inclusion in the commentary any material appropriate for a staff interpretation of this scope. No comments that have the effect of revising or eliminating any requirements of the regulation itself will be considered. The staff particularly solicits comments on its decision to retain the

substance of existing interpretations whenever feasible. To expedite analysis of the comments, commenters are requested to identify portions of the commentary according to section and paragraph numbers and to begin discussion of each section on a separate page. After consideration of comments and possible revision of the commentary, the staff expects to issue official staff interpretation CL-1 in final form in the Federal Register.

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[NOTE: The complete text of the proposed commentary can be obtained from any Federal Reserve Bank or from the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.]

The proposed commentary...
When an act of Congress...
When a statutory change...
When recent Supreme Court...
When an act of Congress...
The proposed commentary...
Comment is welcome on both...
of particular interest...
staff will consider for...
for a staff interpretation...
revising or withdrawing...
denial. The staff particularly...

CONSUMER LEASING
PROPOSED OFFICIAL STAFF COMMENTARY
(Regulation M)

Reprinted from Federal Register
Vol. 46, No. 197
October 13, 1981

[Ref. Cir. No. 9167]

FEDERAL RESERVE SYSTEM**12 CFR Part 213****[Reg. M; CL-1]****Consumer Leasing; Proposed Official Staff Commentary****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed official staff interpretation.

SUMMARY: In accordance with 12 CFR 213.1(d), the Board's staff is publishing for comment a proposed official staff commentary to Regulation M (Consumer leasing). The commentary applies and interprets the requirements of the regulation and is intended to replace individual Board and staff interpretations. In final form, it will be an official staff interpretation providing creditors with protection under section 130(f) of the Truth in Lending Act.

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comply with either Regulation M or the previous version of Regulation Z.

The Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221) made revisions to Truth in Lending, but it affected consumer leasing only slightly. When Regulation Z was revised earlier this year to implement the amended act, the leasing rules were removed and consolidated as Regulation M. Apart from a few minor changes necessitated by the amendments to the act, Regulation M adopted almost verbatim the leasing rules of Regulation Z.

The Board suggested that Congress simplify the Consumer Leasing Act in the near future. At the present time, however, congressional amendments to the act do not appear imminent. Because the Board and staff interpretations of previous Regulation Z will expire when compliance with Regulation M becomes mandatory (April 1, 1982), the Board's staff is publishing in proposed form a commentary that incorporates the interpretations.

The commentary, in its final form, will replace the individual opinion letters that were issued under previous Regulation Z as the vehicle for staff interpretations. It will concentrate on material of general application for use by the widest possible audience and will be updated annually or more often as the need arises.

In keeping with the Board's desire to avoid unnecessary regulatory changes, the proposed commentary is based largely on the existing staff opinion letters to previous Regulation Z. The staff has added new interpretations or altered existing interpretations as infrequently as possible. The categories in which such changes have been made can be summarized as follows:

- When a statutory change has resulted in a new or different regulatory provision (for example, Comment 4(c)-1 on the treatment of multiple lessors).
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The proposed commentary adopts the substance of most of the individual

leasing interpretations issued under previous Regulation Z. However, interpretations have not been incorporated if they repeat information found elsewhere, if they have been rendered valueless by the passage of time, or if they deal with facts that are unique or too particular to warrant treatment in the new commentary. In a few instances, the previous interpretations dealt with issues of civil liability, such as the applicability of the three-monthly payment limitation of section 183 of the act. These interpretations have not been incorporated in the proposed commentary because the staff believes that liability issues are inappropriate for regulatory treatment.

Comment is welcome on both the substance of the material and the format in which it is presented. Commenters are encouraged to focus on material of particular interest to them; they need not address every provision. The staff will consider for inclusion in the commentary any material appropriate for a staff interpretation of this scope. No comments that have the effect of revising or eliminating any requirements of the regulation itself will be considered. The staff particularly solicits comments on its decision to retain the substance of existing interpretations whenever feasible. To expedite analysis of the comments, commenters are requested to identify portions of the commentary according to section and paragraph numbers and to begin discussion of each section on a separate page. After consideration of comments and possible revision of the commentary, the staff expects to issue official staff interpretation CL-1 in final form in the Federal Register.

(2) *Authority.* 15 U.S.C. 1640(f).

PROPOSED OFFICIAL STAFF COMMENTARY—CL-1**Introduction**

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M, effective April 1, 1981. Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Pursuant to § 213.1(d) of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until April 1, 1982, only insofar as they interpret that regulation. When compliance with Regulation M becomes mandatory on April 1, 1982, the Board and staff interpretations of the previous Regulation Z leasing provisions will be entirely superseded by Regulation M and this commentary except with regard to liability under the previous regulation.

4. *Rules of construction.* Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, the comments to § 213.8 are designated as Comments 8-1 through 8-3, while the comments to § 213.4 are further broken down and designated according to the particular subsection addressed, such as Comment 4(a)(2)-1 and Comment 4(h)-2. This introduction may be cited as Comments I-1 through I-6. The appendices may be cited as, for example, Comments App. C-1 and App. C-2.

6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (1) "Statute"—those sections of the Truth in Lending Act on which the regulatory provision is based; (2) "Previous regulation"—parallel provisions in previous Regulation Z; and (3) "1981 changes"—a brief description of the major regulatory changes made when the leasing rules were moved from previous Regulation Z to Regulation M. Where appropriate, a fourth category ("Other sections") provides cross-references to other provisions in the regulation necessary to understand that section.

Section 213.1—General Provisions

1. *Foreign applicability.* The regulation applies to all persons (including branches of foreign banks or leasing companies located in the United States) that extend consumer leases to residents (including resident aliens) of any state as defined in § 213.2(a). The regulation does not apply to a foreign branch of a U.S. bank or leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

2. *Issuance of staff interpretations.* This commentary is the method by which the staff provides interpretations that afford formal protection under section 130(f) of the act. This commentary may be amended periodically.

References

Statute: Sections 102(b), 105, and 130(f).

Previous regulation: § 226.1—
1981 changes: None.

Section 213.2—Definitions and Rules of Construction

2(a) Definitions.

2(a)(2) "Advertisement".

1. *General coverage.* Only commercial messages that promote consumer lease transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of consumer leases, whether in visual, oral, or print media, are covered by the definition. The list of examples in the definition is not exhaustive; telephone solicitations and letters sent to customers as part of an organized solicitation of business, for example, are also advertisements. The term does *not* include the following:

- Direct personal contacts, such as follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a special transaction.
- Informational material distributed only to business entities.
- Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.
- News articles, the use of which is controlled by the news medium.
- Market research or educational materials that do not solicit business.

2. *Persons covered.* See the commentary to § 213.5(a).

2(a)(4) "Arrange for lease of personal property".

1. *General.* The definition of lessor in § 213.2(a)(8) includes one who regularly, in the ordinary course of business, arranges for the leasing of personal property. One example of an arranger is an automobile dealer who completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution. When there are multiple lessors, § 213.4(c) discusses who must make disclosures.

2(a)(6) "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 some question exists as to the primary purpose for a lease, the lessor is, of course, free to make the disclosures. The fact that disclosures are made in such circumstances is not controlling on the question of whether the transaction was exempt.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than 4 months. Thus, a lease of personal property for 4 months, 3 months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond 4 months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. A lease with a penalty for canceling during the first 4 months is considered to have a term of more than 4 months. A month-to-month or week-to-week extension of a lease that was originally for 4 months or less is not a consumer lease, even if the extension actually lasts for more than 4 months. For example, a 3 month lease extended on a month-to-month basis and terminated after 1 year does not require consumer lease disclosures.

3. *Organization.* A consumer lease does not include a lease made to an organization, as defined in § 213.2(a)(9). A lease to an organization is outside the requirements of the regulation even if the property is used (by an employee, for example) primarily for personal, family or household purposes. Likewise, a lease made to an organization is not a consumer lease even if it is subsequently assigned to a natural person.

4. *Credit sale.* A lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), is not a consumer lease. Regulation Z defines a credit sale, in part, as "a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer: (1) 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 (2) 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."

2(a)(8) "Lessor".

1. *Assignees.* An assignee may be a lessor in certain circumstances. For example:

- An automobile dealer and a bank have a business relationship in which the bank supplies the dealer with lease contracts that are initially payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and the lessee execute the contract only after the bank approves the "creditworthiness" of the lessee. Both the dealer and the bank are lessors for purposes of the regulation. Under § 213.4(a)(2), both the dealer and the bank must be identified on the disclosures.

2(a)(9) "Organization".

1. *Joint venture.* The term "organization" includes joint ventures.

2(a)(12) "Personal property".

1. *Coverage.* What is personal property may differ depending on state law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(a)(14) "Realized value".

1. *General.* Realized value is not a required disclosure. It refers to the value of the property at early termination or at the end of the lease term. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the estimated value of the property and its realized value.

2. *Options.* At the end of the lease term or at early termination the lessor may choose any of the 3 methods for determining realized value. If the lessor sells the property, the price received for the property is the realized value. If the lessor does not sell the property, the lessor may choose either the highest offer of the fair market value as the realized value.

3. *Exclusions.* The realized value may exclude any amount attributable to taxes.

4. *Disposition charges.* If the lessor charges the lessee a fee to cover the disposition expenses, the fee must be disclosed at consummation under § 213.4(g)(5) and may not be subtracted in determining the realized value.

5. *Offers.* In determining the highest offer for disposition, the lessor need not consider offers that have been withdrawn or reneged upon.

6. *Appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and § 213.4(g)(14); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(15) "Security interest".

1. *Coverage.* The list of security interests in the definition is not exhaustive. Beyond those mentioned, only interests that are security interests under state or other applicable law are encompassed by the definition. For example, any interest the lessor may have in the leased property falls within this definition only if it is considered a security interest under the state or other applicable law.

2. *Insurance.* The lessor's right to insurance proceeds of unearned insurance premiums is not a security interest for purposes of this regulation.

2(a)(17) "Total lease obligation".

1. *Disclosure.* The total lease obligation is disclosed under § 213.4(g)(15)(i). It is relevant only to so-called open-end leases, in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property of its realized value.

2. *Periodic payments: Disclosure distinguished.* The amount of the scheduled periodic payments for purposes of calculating the total lease obligation may be less than the amount of the periodic payments disclosed under § 213.4(g)(3) because certain items that may be paid periodically are not part of the lessee's total lease obligation.

3. *Periodic payments: Inclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation is composed of the following:

- Any portion of the periodic payments attributable to depreciation, cost of money, and profit.
- The capitalized cost of a mechanical breakdown protection contract.
- Taxes, if paid by the lessor initially and capitalized over the lease term. (Taxes that are not capitalized but paid periodically by the lessee may be included at the lessor's option. See commentary to § 213.4(g)(15).)

4. *Periodic payments: Exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does not include the following:

- Any amount not paid periodically.
- Any portion of the periodic payments attributable to official

fees, registration, certificate of title, or license fees.

- Any portion of the periodic payments attributable to maintenance or insurance (except the capitalized cost of a mechanical breakdown protection contract).

5. *Initial payments.* The following amounts are not included among the payments at consummation when calculating the total lease obligation:

- Refundable security deposits.
- Official fees and charges disclosable under § 213.4(g)(4).
- "Other charges" disclosable under § 213.4(g)(5).
- The cost of a mechanical breakdown protection contract purchased at consummation.

6. *Estimated value.* In calculating the total lease obligation, the lessor must estimate the value of the leased property at the end of the lease term.

2(a)(18) "Value at consummation".

1. *Disclosure.* Value at consummation, as defined by this section, is required by § 213.4(g)(15)(i) to be disclosed and subtracted from the total lease obligation.

2. *Taxes.* If the lessor pays a tax at consummation, the amount of the tax is included in the value at consummation. If the lessor does not pay a tax at consummation, the tax is not included in the value at consummation. See the commentary to § 213.4(g)(15).

3. *Other amounts.* The definition of the value at consummation explicitly permits the lessor to include a profit or markup (without separate itemization). Aside from the inclusion of tax in certain cases, the lessor may not include in this amount other items (such as maintenance or extended warranty insurance), even if they are provided or paid for by the lessor.

2(b) Rules of construction.

1. *Footnotes.* Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Consummation.* Whether a contractual relationship is created between the lessor and the lessee is determined under state or other applicable law.

References

Statute: Sections 103(g) and 181.

Previous regulation: § 226.2

1981 changes: "Agricultural purpose" has been slightly revised to conform to the amended act.

Section 213.3—Exempted Transactions

References

Statute: Section 105(a).

Previous regulation: § 226.3(f).

1981 changes: None.

Section 213.4—Disclosures

4(a) General requirements.

Paragraph 4(a)(1).

1. *Clearly, conspicuously and in meaningful sequence.* This standard requires that disclosures be in a reasonably understandable form. For example, while that regulation requires no particular mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix C contains model forms that meet this standard, although lessors are not required to use these forms. The requirement that disclosures be made "clearly and conspicuously" does not mean that they must be more conspicuous than other terms in a combined contract-disclosure statement, nor does it preclude the use of a multi-purpose disclosure form that enables the lessor to designate the specific disclosures applicable to a given transaction. See the commentary to Appendix C.

2. *Type size.* The term "point" in the phrase "10-point type" is a printing term that refers to the size of the body of the type, as distinguished from the size of the type face, which may vary among different print manufacturers.

Paragraph 4(a)(2).

1. *Consummation.* The time of consummation is determined by state or other applicable law. See commentary to § 213.2(b)(2).

2. *Identity of multiple lessors and multiple lessees.* Although § 213.4(c) permits a single lessor to make disclosures to a single lessee, in transactions involving multiple lessors and lessees, the disclosure statement must identify all the lessors and lessees.

3. *Integrated lease/disclosure forms.* Contract terms that are not required disclosures may be added to the disclosure statement so long as the required disclosures are made together on a single page (which may include both sides) and above the place for the lessee's signature. Generally, contract terms may precede, follow, or be intermingled with the disclosures within the limits of § 213.4(b) governing the use of additional information and the clear, conspicuous, and meaningful sequence disclosure standard in § 213.4(a)(1).

4. *Lessee's signature.* The regulation does not require the lessee to sign the disclosures but, if disclosures are combined with contract terms, the lessor may require the lessee's signature for contract or evidentiary purposes. In such a case, the disclosures must be made above the place for the lessee's signature. When disclosures and

contract terms appear on 2 sides of a page, the consumer's signature usually appears on the bottom of the second side. The consumer's signature may appear, however, on the bottom of the first side if all the disclosures appear on that side.

Paragraph 4(a)(4).

1. *Permissible uses.* If the lessor chooses to provide foreign-language translations of the disclosures or is required to do so by state, federal, or local law, the translations are not inconsistent per se with disclosures under this regulation and may be provided as additional information under § 213.4(b).

2. *Advertisements in Puerto Rico.* The requirement for providing English disclosures upon request shall not apply to advertisements subject to § 213.5 of this regulation.

4(c) Multiple lessors; multiple lessees.

1. *Multiple lessors.* If a lease transaction involves more than one lessor:

- The lessors must choose one among them to make the required disclosures.
- If multiple lessors do not select among themselves, then each lessor is required to make consumer lease disclosures.
- All disclosures for the transaction must be given, even if the disclosing lessor would not otherwise have been obligated to make a particular disclosure.

2. *Multiple lessees.* If one lessee is merely a surety or guarantor, the disclosures must be given to the principal lessee.

4(d) Unknown-information estimate.

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made.

2. *Basis of estimates: General.* The estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. For example:

- Section 213.4(g)(4) requires the lessor to disclose the total amount payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes. When these amounts are subject to indeterminate increases over the course of the lease, the lessor may base its estimated disclosures on those rates or charges in effect at the time of disclosure.

3. *Basis of estimates: the estimated value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the estimated value of the leased property (see § 213.4(g)(15)), the lessor may choose either a retail or a wholesale value in making the estimate, provided that choice is consistent with the lessor's actual practice in determining the value of the property at the end of the lease term. Regardless of which value is assigned, the estimate must be reasonable and based on the best information available to the lessor. For example:

- An automobile lessor offering an open-end lease must disclose the estimated value of the vehicle at the end of a 3-year lease. The lessor relies on the *Kelly Blue Book* as the best source of information on wholesale used vehicle prices. Use of a wholesale price is permissible, if the lessor intends to assign a wholesale value to the vehicle at the end of the lease term.
- Same facts as above, except that the lessor discloses an estimated wholesale value that is lower than the value derived from the *Kelly Blue Book* because, in its experience, the *Kelly Blue Book* values are higher than the values actually received in local used-vehicle markets. The use of a value for a vehicle lower than that derived from the *Kelly Blue Book* is permissible so long as it actually approximates objective experience in the used motor vehicle market.

4. *Labelling estimates.* Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the lessor has the option of labelling either every affected disclosure or only the disclosure primarily affected.

5. *Understating the estimated value.* In non-purchase option leases, the lessor may not use a lower value than that indicated by the best information available when disclosing the estimated value of lease property at the end of the lease term under § 213.4(g)(15).

4(e) Effect of subsequent occurrence.

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

- A change from a monthly to a weekly payment schedule.
- The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted

for in the lease.

- An increase in official fees or taxes. See the commentary to § 213.4(d).
- An increase in insurance premium or coverage caused by a change in law.
- Late delivery of an automobile caused by a longshoremen's strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.4(h).

4(g) *Specific disclosure requirements.*

1. *Inapplicable disclosures.* The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example, if the lessor does not take a security interest, no disclosure is required under § 213.4(g)(9). See the commentary to Appendix C.

2. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. See § 213.4(a)(2).

Paragraph 4(g)(1).

1. *Multiple-item lease.* In a multiple-item lease, the property may be described in separate statements as provided in § 213.4(a)(3).

Paragraph 4(g)(2).

1. *Itemization not required.* The lessor must disclose one total initial payment amount and identify the components of this one amount (for example, capitalized cost reduction, mechanical breakdown protection, registration fees). The lessor may, but need not, itemize the individual amount of each component.

2. *Consummation.* The time of consummation is determined by state or other applicable law. See commentary to § 213.2(b)(2).

3. *Fees payable upon delivery.* This provision does not apply to fees paid at delivery, when delivery occurs after consummation. For example:

- a. The lessee agrees to pay registration fees, sales taxes, and a delivery charge in one lump sum on the date the automobile is delivered, some time after consummation. None of these charges is an initial payment under § 213.4(g)(2) because it is paid after consummation of the lease. The registration fees and sales taxes are disclosed under § 212.4(g)(4), and the delivery charge is disclosed as an "other charge" under § 213.4(g)(5).

Paragraph 4(g)(3).

1. *Itemization not required.* Section 213.4(g)(3) does not require the lessor to

itemize the components of the periodic payments. Some of the components must be disclosed separately, however, if their disclosure is required by other provisions of the regulation. Examples of periodic payment components that must be disclosed separately include:

- Taxes. See § 213.4(g)(4).
- Insurance costs. See § 213.4(g)(6).

2. *Periodic payments.* The phrase "periodic payments," as used in § 213.4(g)(3) requires the disclosure of all payments made periodically and could include maintenance and insurance charges. It is distinguished from the same term as used in the definition of total lease obligation § 213.2(a)(17). See the commentary to § 213.2(a)(17) and Appendix C.

Paragraph 4(g)(5).

1. *Coverage.* Section 213.4(g)(5) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. It does not require disclosure of charges that are imposed when the lessee fails to abide by the lease agreement, such as charges for:

- Late payment.
- Default.
- Deferral of payments.
- Extension of the lease.

2. *Relationship to other provisions.* The other charges mentioned in § 213.4(g)(5) are charges that are not specifically covered by another provision of § 213.4(g). For example:

- A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the total initial charges under § 213.4(g)(2), not as an "other charge."
- The price of a mechanical breakdown protection contract ordinarily is disclosed as an "other charge." In states where mechanical breakdown protection contracts are regarded as insurance, however, the cost is disclosed in accordance with § 213.4(g)(6), not as an "other charge". See the commentary to § 214.4(g)(6).

3. *Lessee liabilities at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the lease term and that must be disclosed include, but are not limited to, disposition and "pick-up" charges.

Paragraph 4(g)(6).

1. *Mechanical breakdown protection.* Whether mechanical breakdown protection purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law.

Paragraph 4(g)(7).

1. *Brief identification.* The statement identifying warranties may be brief. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.4(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other applicable law.

Paragraph 4(g)(8).

1. *Standards for wear and use.* The lessor is permitted but not required to set standards for wear and use (such as excess mileage). The disclosure may be omitted by lessors that do not set such standards. See the commentary to § 213.4(g)(15).

Paragraph 4(g)(9).

1. *Third-party security interests.* The regulation does not require disclosure of security interests taken by someone other than the lessor. For example, when a bank that is not a lessor makes loans to leasing companies and takes assignments of consumer leases generated by those companies, neither the leasing company nor the bank must disclose the commercial security interest in the lessor's receivables.

Paragraph 4(g)(10).

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(g)(10). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditure of amounts in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(12). The § 213.4(g)(10) and (12) disclosures may be combined. Examples of combined disclosure are provided in the model lease disclosure forms in Appendix C.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional lease charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the lease charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In

either case, if the additional charge accrues at a rate higher than the normal lease charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(g)(10).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(g)(10).

Paragraph 4(g)(11).

1. *Mandatory disclosure of no purchase option.* Although generally the lessor need only make the specific required disclosures that apply to a transaction, it must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Lessee's right to bid.* The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(g)(11), if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

Paragraph 4(g)(12).

1. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under this section. See the commentary to § 213.4(g)(10).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the estimated and realized values at early termination, the amount or the method of determining the amount of the difference must be disclosed under this section.

Paragraph 4(g)(14).

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use but not for the estimated value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example,

- The automobile lessor may reasonably expect a lessee to return an undented car with four tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented tireless car and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in § 183(c) of the act, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.4(g)(14).

3. *Time restriction on appraisal.*

Neither the act nor the regulation specifies any time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease. The regulation does not define what is "reasonable time."

Paragraph 4(g)(15).

1. *Coverage.* The limitations of the lessee's liability for the value of the leased property under § 213.4(g)(15) do not apply at early termination.

2. *Total lease obligation.* The requirement that the total lease obligation be itemized is satisfied by disclosing the 3 components in the definition of total lease obligation in § 213.2(a)(7) with their corresponding amounts.

3. *Taxes.* Taxes that are in the value at consummation and capitalized over the lease term are included in the scheduled periodic payments for purposes of computing the total lease obligation. Taxes that are not capitalized but are paid monthly to the lessor (which pays it to the appropriate governmental agency) are not included in the value at consummation and may be included in or excluded from the total lease obligation at the lessor's option. When the tax is paid by the lessee at consummation, it may, but need not, be included in the total lease obligation and excluded from the value at consummation. It may never be included in the value at consummation and excluded from the total lease obligation.

4. *Leases with a minimum term.* If a lease has an alternative minimum term, the § 213.4(g)(15) disclosures governing the liability limitation need not be repeated for the minimum term. The lessee's option to terminate the lease at the end of the minimum term should be treated as an early termination provision and disclosed under § 213.4(g)(12), (13), and (14).

5. *Average payment allocable to a monthly period.* The phrase "average payment allocable to a monthly period" corresponds to the periodic payment used to compute the total lease obligation. See the commentary to § 213.2(a)(17).

6. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the estimated value of the property at the end of the lease term. The lessor also may recover additional charges from the lessee at the end of the lease term. Examples of such additional charges include:

- Disposition charges.
- Excess mileage charges.

- Late payment and default charges.
- Amounts that have accrued in simple interest accounting leases because the lessee has made late payments.

4(h) *Renegotiations or extensions.*

1. *Renegotiation.* A renegotiation occurs when an existing lease that was subject to this regulation (or its predecessor) is satisfied and replaced by a new lease undertaken by the same lessee. A renegotiation is a new lease requiring new disclosures. Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law. The following events shall not be treated as renegotiations:

- A substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent.
- A reduction in the lease charge.
- An agreement involving a court proceeding.
- A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed.

2. *Assumptions.* No new disclosures are required when a consumer lease is assumed by another person.

3. *Extension.* An extension is any continuation of a consumer lease beyond the date of early termination of the lease or the scheduled termination date of the lease. The continuation is an extension only if it has been agreed to by both the lessor and the lessee. An extension that exceeds 6 months is a new lease requiring new disclosures.

4. *Month-to-month extensions.* Section 213.4(h) applies only to existing leases that were covered by the requirements of this regulation or the previous Regulation Z, 12 CFR Part 226. It therefore does not apply to leases with an initial term of 4 months or less because such leases are not covered by the definition of consumer lease in § 213.2(a)(6). If a lease that is not covered by the regulation is extended on a month-to-month basis, new disclosures are not required even if the extension in fact exceeds 6 months. New disclosures are required, however, in the following instances:

- A lease that was subject to the regulation is extended beyond 6 months.
- A lease that was not subject to the regulation is extended or renegotiated for a specified term that exceeds 4 months.

5. *Timing of extension disclosures.* If a consumer lease is extended for a

specified term greater than 6 months, new disclosures based on the specified term are required at the time the extension is agreed to. If the lease is extended on a month-to-month basis and exceeds 6 months, new disclosures are required at the commencement of the seventh month. Because the extension is month-to-month, the disclosures are based on a 1-month term. Subsequent disclosures are required only at 6-month intervals.

References

Statute: Sections 102(b), 121, 122, 124, 182, and 183.

Other sections: §§ 213.2, 213.5 and 213.7 and Appendix C.

Previous regulation: §§ 226.6 and 226.15.

1981 changes: Although reorganized, the disclosure requirements are substantially the same as the previous requirements. The sole amendment implements section 121 of the Truth in Lending Act pertaining to multiple lessors and lessees disclosure requirements.

Section 213.5—Advertising

5(a) General rule.

1. *Persons covered.* An advertisement includes any commercial message in any communication medium that promotes, directly or indirectly, a consumer lease. Responsibility for complying with the advertising rules is not limited to lessors but includes any person advertising a consumer lease that requires transactional disclosures. Under section 184(b) of the act, however, the owner and personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability.

2. *"Usually and customarily."* Section 213.5(a) is not intended to inhibit the promotion of new leasing programs but to bar 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.

5(b) Catalogs and multipage advertisements.

1. *General rule.* The multiple-page advertisements to which § 213.5(b) refers are advertisements consisting of a numbered series of pages—for example, a supplement to a newspaper. A mailing comprised of several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart,

or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.5(c) (1) through (5). If one of the triggering terms listed in § 213.5(c) appears on another page of the catalog or multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

5(c) Terms that require additional information.

1. *Clear and conspicuous standard.* Section 213.5(c) prescribes no specific rules for the format of the necessary disclosures. The terms need not be printed in a certain type size and need not appear in any particular place in the advertisement.

2. *Triggering terms.* Whenever certain triggering terms appear in lease advertisements, the additional terms enumerated in § 213.5(c) (1) through (5) must also appear. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement. For example, if an advertisement states a 5-year lease term with monthly payments, the number of required payments—a triggering term—is readily apparent.

5(d) Multiple-item leases; merchandise tags.

1. *Merchandise tags.* Section 213.5(d) provides a method for using merchandise tags without including all the required disclosures on the tags. As an alternative to this disclosure method, a merchandise tag may state all the necessary terms on one or both sides of the tag. If the terms are on both sides of the tag, both sides must be accessible to the consumer.

References

Statute: Sections 105(a) and 184.

Previous regulation: § 226.10 (a), (b), and (h).

Other sections: § 213.2(a) (2) and (6).

1981 changes: None.

Section 213.6—Preservation and Inspection of Evidence of Compliance

1. *Preservation methods.* Lessors must retain evidence that they performed required actions as well as made the required disclosures. Adequate evidence of compliance does not require actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method designed to reproduce records accurately (including computer programs). The lessor need retain only enough information to reconstruct the required disclosures or other records.

References

Statute: Section 105(a).

Previous regulation: § 226.6(i).

1981 changes: A uniform 2-year record-retention rule replaces the previous requirement that records be retained through at least one compliance examination.

Section 213.7—Inconsistent State Requirements

1. *Procedures.* Only states (through their authorized officials) may request and receive determinations on inconsistency. The procedures for requesting a Board determination on inconsistency are contained in Appendix B.

2. *Optional state disclosures.* A lessor that chooses to make inconsistent state disclosures must do so in the manner prescribed by § 213.4(b).

References

Statute: Sections 111(a)(1) and 186(a).

Previous regulation: § 226.6(b)(3).

Other sections: §§ 213.2(a)(16) and 213.4(b) and Appendix B.

1981 changes: None.

Section 213.8—Exemption of Certain State-Regulated Transactions

1. *Classes eligible.* The state determines the classes of transactions for its exemption and makes its application for those classes. Classes might be, for example, all automobile leases or all leases in which the lessor is a bank.

2. *Substantial similarity.* The "substantially similar" standard requires that state statutory or regulatory provisions and state interpretations of those provisions must be generally the same as the federal act and Regulation M. A state will be eligible for an exemption even if its law covers classes of transactions not covered by the federal law. For example, if a state's law covers leases for agricultural purposes, this will not prevent the Board from granting an exemption for consumer leases, even though leases for agricultural purposes are not covered by the federal law.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials are authorized to enforce the state law through procedures and sanctions comparable to those available to federal enforcement agencies.

References

Statute: Sections 111(a)(2) and 186(b).

Previous regulation: § 226.6(b)(3).

Other sections: §§ 213.2(a)(16) and 213.4(b) and Appendix A.
1981 changes: None.

Appendix A—Procedures and Criteria for State Exemptions

References

Statute: Section 186(b).
Previous regulation: § 226.80 (supplement VI, Section I).
Other sections: § 213.8
1981 changes: None.

Appendix B—Procedures and Criteria for Board Determination Regarding Preemption

References

Statute: Section 186(a)
Previous regulation: § 226.80 (Supplement VI, Section II).
Other sections: § 213.7
1981 changes: None.

Appendix C—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. 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. The changes to the model forms may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms. Examples of acceptable changes include:

- Using the first person, instead of the second person, in referring to the lessee.
- Using "lessee," "lessor," or names instead of pronouns.
- Rearranging the sequences of the disclosures.
- Incorporating certain state "plain English" requirements.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "O," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)
- Adding language or symbols to indicate estimates.

2. *Model open-end or finance vehicle lease disclosures.* Model C-1 is designed for an open-end or finance lease of a vehicle. An open-end or finance lease is one in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value. Section 213.4(g)(15)(i) requires disclosure of an itemized total lease obligation for such leases. To facilitate

this disclosure, Model C-1 divides the initial charges (item 3) into two categories: those that are included in the total lease obligation and those that are not. The amount of the monthly payment (item 4) is similarly divided. This format permits the components of the total lease obligation (item 11) to be disclosed simply by cross-reference to the previous items. See the commentary to § 213.2(a)(17). The inclusion of taxes in the basic monthly payment disclosure (mentioned in the instructions to item 4(a)) is not mandatory in all cases. See the commentary to § 213.4(g)(15).

3. *Model closed-end or net vehicle lease disclosures.* Model C-2 is designed for a closed-end or net lease of a vehicle. A closed-end or net lease is one in which the lessee's liability at the end of the lease term is *not* based on the difference between the estimated value of the leased property and its realized value. Item 13(c) is included for those closed-end vehicle leases in which the lessee's liability at early termination is based on the vehicle's estimated value. See § 213.4(g)(14).

4. *Model furniture lease disclosures.* Model C-3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination that is required under § 213.4(g)(14) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. The disclosure may be added, if it is applicable, without loss of the form's protection from civil liability.

References

Statute: Sections 105, 130, and 185.
Previous regulation: § 226.1501, 1502, and 1503.
1981 changes: References in the instructions to the previous regulation have been deleted.

Appendix D—Federal Enforcement Agencies

References

Statute: Section 108.
Previous regulation: Appendix E.
1981 changes: None.

Board of Governors of the Federal Reserve System, October 5, 1981.

William W. Wiles,
Secretary of the Board.

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