

“Adjusted Capitalized Cost”—This is the gross capitalized cost less the capitalized cost reduction and the amount used by the lessor in calculating the base periodic payment.

General Disclosure Requirements

Lessors are required by federal law to provide the consumer with leasing cost information and other disclosures in a format similar to the model disclosure forms found in Appendix A to the regulation. Certain pieces of this information must be kept together and must be segregated from other lease information. All of the information stated must be accurate, clear and conspicuous, and provided in writing in a form that the consumer may keep.² Additionally, in accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) and Section 6 of the regulation, a lessor may provide by electronic communication any disclosure required by this part to be in writing. Disclosures are to be provided in the following circumstances.

Prior to or Due at Lease Signing

A dated disclosure must be given to the consumer before signing the lease and must contain all of the information detailed in Section 4 of the regulation.

Renegotiations and Extensions

New disclosures also must be provided when a consumer renegotiates, or extends a lease, subject to certain exceptions.

Multiple Lessors/Lessees

In the event of multiple lessors, one lessor on behalf of all the lessors may make the required disclosures. If the lease involves more than one lessee, the required disclosures should be given to any lessee who is primarily liable.

Advertising

Advertisements concerning consumer leases must also comply with certain disclosure requirements. All advertisements must be accurate. If a printed ad includes any reference to certain “trigger terms”—the amount of any payment, statement of a capitalized cost reduction (i.e., down payment), or other payment required prior to or at lease signing or delivery, or that no such payment is required — then the ad must also state the following:

- that the transaction is for a lease
- the total amount due prior to or at lease signing or delivery
- the number, amounts and due dates or periods of the scheduled payments
- a statement of whether or not a security deposit is required.

An advertisement for an open-end lease also must include a statement that extra charges may be imposed at the end of the lease based on the difference between the residual value and the realized value at the end of the lease term.

If lessors give a percentage rate in an advertisement, the rate cannot be more prominent than any of the other required disclosures. They must also include a statement that “this percentage may not measure the overall cost of financing this lease.” The lessor cannot use the term “annual percentage rate,” “annual lease rate,” or any equivalent term.

Some fees (license, registration, taxes, and inspection fees) may vary by state or locality. An advertisement may exclude these third-party fees from the disclosure of a periodic payment or total amount due at lease signing or delivery, provided the ad states that these have been excluded. Otherwise, an ad may include these fees in the periodic payment or total amount due, provided it states that the fees are based on a particular state or locality and indicates that the fees may vary.

Limits on Balloon Payments

In order to limit balloon payments that may be required of the consumer, certain sections of the regulation call for reasonable calculations and estimates. These provisions protect the consumer at early termination of a lease, at the end of the lease term, or in delinquency, default, or late payment status. The provisions limit the lessee’s liability at the end of the lease term and set reasonableness standards for wear and use charges, early termination charges, and penalties or fees for delinquency.

Penalties and Liability

Criminal and civil liability provisions of the Truth in Lending Act also apply to the CLA. Actions alleging failure to disclose the required information, or otherwise comply with the CLA, must be brought within one year of the termination of the lease agreement.

Record Retention

Lessors are required to maintain evidence of compliance with the requirements imposed by Regulation M, other than the advertising requirements under Section 7 of the regulation, for a period of not less than two years after the date of the disclosures are required to be made or an action is required to be taken.

Examination Objectives

1. To assess the quality of the institution’s compliance management system for the Consumer Leasing Act.
2. To determine that lessees of personal property are given meaningful and accurate disclosures of lease terms.

² The provisions to provide disclosures electronically are currently not mandatory. (7/2002)

3. To determine if the limits of liability are clearly indicated to the lessees and correctly enforced by the institution.
4. To ensure that the financial institution provides accurate disclosures of its leasing terms in all advertising.

Examination Procedures

General Disclosure Requirements

- A. Review the institution's procedures for providing disclosures to ensure that there are adequate controls and procedures to effect compliance.
- B. Review the disclosures provided by the institution.
 1. Are the disclosures clear and conspicuous and provided in writing in a form the consumer may keep? Alternatively, are they provided electronically where agreed to by the consumer? (§213.3(a) & §213.3(a)(5))³
 2. Are the disclosures given in a dated statement and in the prescribed are in the format prescribed? (§213.3(a)(1))
 3. Is the information required by §213.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1) segregated and in a form substantially similar to the model in Appendix A? (§213.3(a)(2))
 4. Are the disclosures timely? (§213.3(a)(3))
 5. If the lease involves more than one lessee, are the disclosures provided to any lessee who is primarily liable? (§213.3 (c))
 6. If additional information is provided, is it provided in a manner such that it does not mislead or confuse the lessee? (§213.3(b))
 7. Are all estimates clearly identified and reasonable? (§213.3(d))
 8. Are the disclosures accurate and do the disclosures contain the information required by §213.4 (a) through (t)? (§213.4)
 9. Are disclosures given to lessees when they "renegotiate" or "extend" their leases? (§213.5)

Lessee Liability

- A. Review the lease estimates and calculations to ensure that there is not any unreasonable balloon payment expected of the lessee in the following circumstances:
 - at early termination,
 1. Does the lessor disclose the conditions under which the lease may be terminated early and the amount and method of determining the amount of any early termination charges? (§213. 4(g)(1))
 2. Are any early termination charges reasonable? (§213. 4(g)(1), 4(q))

- at end of lease term, for wear and use,
 1. If the lessor sets standards for wear and use of the leased vehicle are the amounts or method of determining any charge for excess mileage disclosed? (§213. 4(h)(3))
 2. Are standards for wear and use reasonable? (§213. 4(h)(2))
- at end of lease term (for open-end leases), and
 1. Does the lessor disclose the limitations on the lessee's liabilities at the end of the lease term? (§213.4(m)(2))
 2. Are the lessee and lessor permitted to make a mutually agreeable final adjustment regarding excess liability? (§213.4(m)(3))
- in delinquency, default or late payment.
 1. Does the lessor disclose penalties or other charges for delinquency, default or late payments? (§213. 4(q))
 2. Are the penalties or other charges reasonable? (§213. 4(q))

Advertising

- A. Review advertising policies and procedures used by the institution to ensure that there are adequate controls and procedures to effect compliance.
- B. Review a sample of the institution's advertisements.
 1. Do the advertisements advertise terms that are usually and customarily available? (§213.7(a))
 2. Are the disclosures contained in the advertisements clear and conspicuous? (§213.7(b))
 3. Do catalog/multiple page advertisements comply with the page reference requirements? (§213.7(c))
 4. When triggering terms are used, do the advertisements contain the additional required information? (§213.7(d))
 5. Do merchandise tags which use triggering terms refer to a sign or display that contains the additional required disclosures? (§213.7(e))
 6. If television or radio advertisements use triggering terms, if they do not contain the additional terms do not include the additional terms required by §7(d)(2) when triggering terms are used, do they use alternative disclosure methods (direct consumers to a toll free number or written advertisement)? (§213.7(f))

Miscellaneous

- A. Are records and other evidence of compliance retained for a period of no less than two years? (§213.8)

³ The provisions to provide disclosures electronically are currently not mandatory. (7/2002)