CONSUMER LEASING ACT (REGULATION M)

OVERVIEW

Overview

Regulation M implements the consumer leasing portions of the Truth in Lending Act. The purpose is to assure that lessees of personal property are given accurate and meaningful disclosures of the terms and conditions of personal property leases. These disclosures allow consumers to compare various lease terms or to compare lease terms with credit terms. Regulation M also places limits on the size of balloon payments and requirements on leasing advertisements.

Regulation M only applies to leases:

- Longer than four months in duration;
- Valued at no more than $25,000;
- For personal property to be used primarily for personal, family, or household use; and
- Made to a natural person.

Part 714 of NCUA's Rules and Regulations covers additional standards and requirements that a federal credit union must follow when engaged in the leasing of personal property.

Exempt Transactions

Regulation M does not apply to leases:

- To an organization;
- Of property to be used for commercial or agricultural purposes;
- Of personal property that is incidental to the lease of real property;
- Of real property; or
- That meet the definition of credit sale.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Consumer Leasing Act.
Reputation risk can occur when the credit union incurs decreased member confidence as a result of failures resulting from leases, or incurs fines and penalties.
Strategic risk occurs when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance.

Additional Information

For additional information visit the Federal Trade Commission online at http://www.ftc.gov/ .

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OPERATIONAL REQUIREMENTS

Disclosures / Notices

Initial Disclosures (12 CFR 213.3 and 12 CFR 213.4)
Disclosures must be made before the lease is consummated and must contain the following:

- A dated, written statement clearly identifying the lessor and lessee;
- A brief description of the leased property;
- The total amount of any advance payments made by the lessee;
- The number, amount, and timing of payments scheduled under the lease and the total amount of payments;
- The total amount of all other charges that are not already included in the periodic payments;
- Identification of insurance (if any) required in connection with the lease;
- Identification of any express warranty or guarantee available to the lessee;
- Identification of the party responsible for maintenance of the leased property;
- A description of any security interest retained by the lessor;
- The amount, or method of determining the amount, of penalties for delinquent or defaulted payments;
- A statement whether the lessee has the option to purchase the leased property and at what price;
- A statement of the conditions under which the lease may be terminated by either party; and
- The lessee's liability at early termination or at the end of the lease term.

If any of the required disclosure information is not known at the time of disclosure, the lessor must provide an estimate of the unknown information and clearly identify it as an estimate.

Subsequent Disclosures (12 CFR 213.5)

- Renegotiation
  A renegotiation occurs when a consumer lease subject to this part is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation requires new disclosures, except as provided in the exceptions section below.

- Extension
  An extension is a continuation, agreed to by the lessor and the lessee, of an existing consumer lease beyond the originally scheduled end of the lease term, except when the continuation is the result of a renegotiation. An extension that exceeds six months requires new disclosures, except as provided in the exceptions section below.

- Assumption
  New disclosures are not required when a consumer lease is assumed by another person, whether or not the lessor charges an assumption fee.

- Exceptions
  New disclosures are not required for the following, even if they meet the definition of a renegotiation or an extension:
  (a) A reduction in the rent charge;
  (b) The deferment of one or more payments, whether or not a fee is charged;
  (c) The extension of a lease for not more than six months on a month-to-month basis or otherwise;
  (d) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;
  (e) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average periodic payment does not change by more than 25 percent; or
  (f) An agreement resulting from a court proceeding.

Recordkeeping

Record retention (12 CFR 213.8)
A lessor shall retain evidence of compliance with the requirements imposed by this part, other than the advertising requirements under 12 CFR 213.7, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.

Advertising

Advertising (12 CFR 213.7) Only lease terms that are, or will be, available in the future may be advertised. If the advertisement uses certain triggering terms (the amount of any payment, including a down payment or a statement that no down payment or other payment is required before delivery), it must also state the following:

- That the transaction advertised is a lease;
- The total amount due prior to or at consummation or delivery;
- The number, amounts, and timing of scheduled payments;
- Whether or not a security deposit is required; and
- Whether the lessee may be assessed an extra charge at the end of the lease term based on the difference between the estimated residual value of the leased property at lease end and its realized value at lease end.

Enforcement / Liability

Administrative Enforcement Authority (15 U.S.C. §1607)

NCUA has authority to enforce compliance with the Consumer Leasing Act for all federal credit unions. The FTC has authority to enforce compliance with the Consumer Leasing Act for all other credit unions.

Penalties and Liabilities

Failure to comply with the Consumer Leasing Act may result in both criminal and civil penalties similar to those applicable under the Truth in Lending Act.