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FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R-1632]

RIN 7100-AF24

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1013

RIN 3170-AA89

Consumer Leasing (Regulation M)

AGENCIES: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are finalizing amendments to the official interpretations and commentary for the agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the Board and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Based on the annual percentage increase in the CPI-W

as of June 1, 2018, the exemption threshold will increase from \$55,800 to \$57,200 effective January 1, 2019.

Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Board and the Bureau are making similar amendments to each of their respective regulations implementing the Truth in Lending Act elsewhere in this issue of the *Federal Register*.

DATES: This final rule is effective January 1, 2019.

FOR FURTHER INFORMATION CONTACT: *Board:* Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

Bureau: Shelley Thompson, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, and the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,¹ from \$25,000 to \$50,000, effective July 21, 2011.² In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the

¹ Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. See 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

² Public Law 111-203, section 1100E, 124 Stat. 1376, 2111 (2010).

annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation Z (which implements TILA) (collectively, the Board Final Threshold Rules).³

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation M implementing the CLA, 12 CFR part 1013, substantially duplicating the Board's Regulation M.⁴ Although the Bureau has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.⁵

The Board's and the Bureau's regulations,⁶ and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI-W that was in effect on the preceding June 1.

³ 76 FR 18349 (Apr. 4, 2011); 76 FR 18354 (Apr. 4, 2011).

⁴ See 76 FR 78500 (Dec. 19, 2011); 81 FR 25323 (April 28, 2016).

⁵ Section 1029(a) of the Dodd-Frank Act states: "Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority * * * 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). Section 1029(b) of the Dodd-Frank Act states: "Subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates 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 are 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 (3) offers or provides 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).

⁶ 12 CFR 213.2(e)(1) (Board) and 12 CFR 1013.2(e)(1) (Bureau).

They further provide that 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 \$900.⁷ Since 2011, the Board and the Bureau have adjusted the Regulation M exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Board and the Bureau published a final rule in the *Federal Register* to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI-W (Regulation M Adjustment Calculation Rule).⁸ The Regulation M Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI-W, the Board and Bureau will not adjust the exemption threshold from the prior year. The Regulation M Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI-W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. 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; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then

⁷ See comments 2(e)-9 in Supplements I of 12 CFR parts 213 and 1013.

⁸ See 81 FR 86256 (Nov. 30, 2016).

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, after rounding.

II. 2019 Adjustment and Commentary Revision

Effective January 1, 2019, the exemption threshold amount is increased from \$55,800 to \$57,200. This is based on the CPI-W in effect on June 1, 2018, which was reported on May 10, 2018. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the prior month. The CPI-W is a subset of the CPI-U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI-W reported on May 10, 2018 reflects a 2.6 percent increase in the CPI-W from April 2017 to April 2018. Accordingly, the 2.6 percent increase in the CPI-W from April 2017 to April 2018 results in an exemption threshold amount of \$57,200. The Board and the Bureau are revising the commentaries to their respective regulations to add new comment 2(e)-11.x to state that, from January 1, 2019 through December 31, 2019, the threshold amount is \$57,200. These revisions are effective January 1, 2019.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.⁹ The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation M Adjustment Calculation Rule. For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are

⁹ 5 U.S.C. 553(b)(B).

unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹⁰ As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,¹¹ the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 213

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

12 CFR Part 1013

¹⁰ 5 U.S.C. 603 and 604.

¹¹ 44 U.S.C. 3506; 5 CFR part 1320.

Advertising, Consumer leasing, Reporting and recordkeeping requirements, Truth in lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. No. 111-203 section 1100E, 124 Stat. 1376.

2. In Supplement I to Part 213, under *Section 213.2—Definitions*, under *2(e) Consumer Lease*, paragraph 11.x is added to read as follows:

Supplement I to Part 213—Official Staff Interpretations

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Section 213.2—Definitions

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2(e) Consumer Lease.

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11. * * *

x. From January 1, 2019 through December 31, 2019, the threshold amount is \$57,200.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

3. The authority citation for part 1013 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. No. 111-203 section 1100E, 124 Stat. 1376.

4. In Supplement I to part 1013, under *Section 1013.2—Definitions*, under *2(e)—Consumer Lease*, paragraph 11.x is added to read as follows:

Supplement I to Part 1013—Official Interpretations

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Section 1013.2—Definitions

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2(e) Consumer Lease

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11. * * *

x. From January 1, 2019 through December 31, 2019, the threshold amount is \$57,200.

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By order of the Board of Governors of the Federal Reserve System, under delegated authority,

November 7, 2018.

Ann E. Misback
Secretary of the Board.

Dated: November 9, 2018

Mick Mulvaney

Acting Director, Bureau of Consumer Financial Protection.

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