

Driven

NADA MANAGEMENT SERIES

L34

A DEALER GUIDE TO

Federal Consumer Leasing Act Requirements



NATIONAL
AUTOMOBILE
DEALERS
ASSOCIATION

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Federal Consumer Leasing Act Requirements

Introduction

The federal Consumer Leasing Act (CLA) was enacted in 1976. It has been amended several times since—most recently by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)¹—but it remains the basic law governing the disclosure and advertising of the terms of a motor vehicle lease to consumers. This guide discusses the disclosure and other non-advertising requirements of the CLA and the federal regulation that implements it, Regulation M (Reg M)². In most vehicle leases, the dealer is the “lessor” obligated to make the CLA disclosures, even if the dealer immediately sells the lease and the vehicle subject to the lease (“lease vehicle”) to a finance company, bank, or other financial institution (“leasing company”). This guide covers only vehicle leases originated by dealers.

Certain states have laws supplementing the CLA and Reg M. While this guide will occasionally reference state laws, its focus is the CLA and Reg M and not state laws. Consult your state dealer association or attorney about whether your state imposes additional lease disclosure, advertising, and/or other obligations.



The Purpose, Scope, and Enforcement of the CLA

PURPOSE

The CLA is designed "to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements."³

SCOPE

The CLA and Reg M govern "consumer leases" of vehicles. The term "consumer lease" as applied to a vehicle means:

- A contract for the use of a vehicle by a natural person primarily for personal, family, or household purposes;
- With a term that exceeds four months;
- With a total contractual obligation less than or equal to the current Reg M dollar ceiling.

As of January 1, 2020, the Reg M dollar ceiling for the total contractual obligation under the lease is \$58,300.⁴ This dollar ceiling is subject to annual adjustment to reflect changes in the Consumer Price Index. The total contractual obligation includes all nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes:

- Residual value amounts or purchase option prices; and
- Amounts collected by the lessor that are paid to a third party, such as taxes, licenses and registration fees.⁵

Keep in mind that some states may require compliance with the CLA and Reg M for a lease that exceeds the current Reg M ceiling for the total contractual obligation.

Open-End versus Closed-End Leases

The two types of motor vehicle leases subject to CLA and Reg M disclosures are open-end consumer leases and closed-end leases. In an open-end lease, the lessee bears all or part of the risk associated with the value of the leased vehicle at the end of the lease term. The amount the lessee owes, at the end of the lease term, is based on the difference between the

residual value of the vehicle and its realized value.⁶ In a closed-end lease, the lessee is not responsible for the difference if the actual value of the vehicle at the scheduled end of the lease is less than the residual value. However, the lessee is responsible for excess wear and use in a closed-end lease.

Some CLA and Reg M requirements are different for the two types of leases. Virtually all consumer motor vehicle leases are closed-end, so this guide will discuss only the CLA and Reg M requirements for closed-end leases.

"Leases" that are not Leases under the CLA and Reg M

Some transactions labeled as "leases" are actually credit sales as defined by the Truth in Lending Act (TILA) and require the TILA credit sale disclosures. This occurs when the lessee contracts to pay compensation for use of the vehicle in a sum substantially equal to or greater than the vehicle's value and the lease provides that lessee will become (or has the option to become) the vehicle's owner for no other or a nominal consideration upon full compliance with the lessee's obligations under the lease.⁷ A lease that is considered a credit sale under TILA is not subject to the CLA or Reg M,⁸ but is subject to TILA and Regulation Z (Reg Z).⁹

Similarly, state laws such as the Uniform Commercial Code or state retail installment sales or loan laws may treat some transactions labeled as "leases" as credit sales, loans and/or secured transactions using tests similar to the TILA test described above for determining when a lease is a credit sale. Under these laws, a lease can be "recharacterized" when the law determines it is really a different form of transaction under legal tests that aim to identify when a lease is really, in economic substance, a disguised credit sale, loan, or secured transaction. Recharacterization of a lease would generally expose a "lessor" to substantial legal liability, because the federal and state legal compliance requirements for a lease are very different from those for a credit sale, loan, or secured transaction. Fortunately, the risk of recharacterization is likely quite low for the mainstream vehicle leasing programs most leasing companies offer to franchised dealers.

This guide addresses only leases that are subject to the CLA and Reg M and not subject to recharacterization as credit sales, loans or secured transactions under TILA or other law. The federal requirements for credit sales are described in the NADA *Driven* guide entitled *A Dealer Guide to Federal Truth in Lending Requirements*.



FEDERAL TRADE COMMISSION

ENFORCEMENT

The Regulators

Automotive and truck dealer compliance with the CLA and Reg M is regulated by the Board of Governors of the Federal Reserve Board (FRB) and enforced by the Federal Trade Commission (FTC) if the dealer has service facilities and routinely assigns its leases to unaffiliated third-party leasing sources.¹⁰ This typically applies to franchised dealers. The leasing operations of dealers who lack a service facility or hold leases or sell them to an affiliated leasing company (which applies to lease-here-pay-here and many independent dealers) are regulated by the Consumer Financial Protection Bureau (CFPB) to the extent of that activity and enforced by the CFPB and the FTC.¹¹ Most leasing companies are also subject to regulation by the CFPB and enforcement by the CFPB and the FTC.¹² The FRB and CFPB publish separate versions of Reg M, but they presently are substantially identical as applied to motor vehicle leases.¹³

Penalties for Violations

The CLA and Reg M contain technical disclosure requirements as discussed below. Unfortunately, even innocent failures to comply with these requirements can lead to violations that trigger penalties. A lessor that fails to comply with a requirement imposed by the CLA or Reg M is subject to civil liability as follows.

- In an individual action: (i) the lessee's actual damages; (ii) statutory damages of 25% of the total amount of monthly payments under the lease (but not less than \$200 nor greater than \$2,000); and (iii) the lessee's reasonable attorney's fees and court costs.
- In a class action: (i) the lessee's actual damages; (ii) statutory damages of such amount as the court may allow, subject to a maximum liability of the lesser of \$1,000,000 or 1% of the lessor's net worth for any class action or series of class actions arising out of the same failure to comply by the same lessor; and (iii) the lessee's reasonable attorney's fees and court costs.¹⁴

The statute of limitations for a lessee to bring an action under the CLA is one year from the termination of the lease.¹⁵

A lessor may also be subject to a criminal penalty of not more than \$5000, a year in jail, or both, for "willfully and knowingly" not complying with the CLA or Reg M.¹⁶

CLA violations can also be enforced by the FTC (or CFPB) and State Attorneys General under the Dodd-Frank Act.

Correction of Violations; Unintentional Errors

Under some circumstances, the CLA permits a lessor to correct a disclosure error and avoid the liability for a violation. If notice of the error is sent to the customer, correct disclosures are given, and the error is corrected by making any adjustments necessary to limit the amounts the customer pays to the disclosed amounts, all within 60 days of discovering the error, a disclosure violation can be avoided.¹⁷

Similarly, if the creditor commits an unintentional error, it may have a defense to liability if the lessor can demonstrate that “the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.”¹⁸ Examples of a bona fide error are clerical and calculation errors, computer malfunctions and programming errors, and printing. But an error of legal judgment about what the CLA requires does not qualify as a bona fide error under this defense.¹⁹ Courts have held that to qualify for this bona fide error defense, the person asserting the defense must show that the procedures to avoid and prevent errors that might slip through the procedures aimed at good faith compliance. This means that the procedures must contain extra preventive steps, such as a rechecking mechanism. And the person must show that such procedures were not only established, but also maintained and followed consistently.²⁰

Disclosure Obligations of CLA and Reg M

KEY TERMS

The core of a lessor’s obligations under the CLA and Reg M are the disclosures that must be presented to a motor vehicle lessee before the lessee becomes bound by the lease. Several key “lease math” definitions are critical to understanding the CLA and Reg M disclosures for a motor vehicle lease. These are:

Gross Capitalized Cost: This is the amount agreed upon by the lessor and the lessee as the value of the vehicle and any items that are capitalized or amortized during the lease term, including but not limited to taxes, insurance, service agreements, and any outstanding prior credit or lease balance.²¹ This amount includes the full value of the vehicle, including the residual value. It also includes the price of items the lessee will effectively buy over the term of the lease, such as voluntary protection products.

Capitalized Cost Reduction: This is the total amount of any rebate, cash payment, net trade-in allowance,

and noncash credit that reduces the gross capitalized cost.²²

A capitalized cost reduction is a payment in the nature of a down payment on the leased property that reduces the amount to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing or delivery.²³ But remember that this amount does not necessarily reflect the total amount the lessee must pay at lease signing. In many leases, the lessee will, at a minimum, also have to pay the first month’s payment, title and registration fees at lease signing. Therefore, calling the capitalized cost reduction a down payment might confuse the lessee about how much the lessee has to pay at lease signing.

Adjusted Capitalized Cost: This amount is the difference between the gross capitalized cost and the capitalized cost reduction. This is the amount that is used to calculate the monthly lease payment.²⁴ This is the closest thing there is in a lease to the “amount financed” or “balance” in a credit sale. But remember, the customer does not owe this amount to the lessor, because this amount includes the vehicle’s residual value. In a closed-end lease, a lessee who returns the vehicle at the scheduled end of the lease has no obligation to pay the vehicle’s residual value.

Residual Value: This is the value of the vehicle at the end of the lease term that the lessor estimates or otherwise assigns to the vehicle at the beginning of the lease. It is used in calculating the monthly lease payment.²⁵ It is similar in some ways to the balloon payment in a credit sale or loan, except that any obligation the lessee has to “pay” this amount is satisfied by returning the vehicle. In a way, you could think of the vehicle as the “big metal check” the lessee uses to pay the lessor the residual value.

Depreciation and any Amortized Amounts: This amount is the difference between the adjusted capitalized cost and the residual value.²⁶ It is the closest thing in a lease to the part of the periodic payment that goes to repay the amount financed under a credit sale.

Rent Charge: This amount (also commonly referred to as lease charge) is the difference between the total of the base monthly lease payments over the lease term minus the depreciation and any amortized amounts.²⁷ This is the lease equivalent to the finance charges on a credit sale subject to TILA. But unlike finance charges under TILA, there are no rules under the CLA or Reg M for determining what charges are included in the rent charge beyond the simple subtraction described above. This is because there is no equivalent to an

Annual Percentage Rate (APR) disclosure under the CLA and Reg M that requires strict rules like those in TILA for classifying certain amounts as finance charges to ensure a uniform APR calculation.

Adjusted Lease Balance: In a monthly payment lease, this amount is the Adjusted Capitalized Cost minus the sum of the depreciation and amortization component of all payments that have previously become due. It is the closest thing in a lease to an outstanding balance. But remember that the amount does not represent an amount due from the lessee, because it includes the residual value of the lease vehicle. As discussed above, the lessee has no obligation to pay the residual value if the lessee returns the vehicle at the scheduled end of the lease.

Realized Value: This amount is: (i) the price received by the lessor for the leased vehicle at disposition; (ii) the highest offer for disposition of the leased vehicle; or (iii) the fair market value of the leased vehicle at the end of the lease term.²⁸ In most motor vehicle leases, the realized value is defined as the amount received for the vehicle at a wholesale sale; the wholesale value determined by appraisal or using a nationally recognized guidebook; or the insurance proceeds after a total loss.

GENERAL DISCLOSURE REQUIREMENTS

Format

The lessor must provide all disclosures required by Reg M (described below), clearly and conspicuously, in writing, and in a form the lessee may keep. The clear and conspicuous standard requires the disclosures to be reasonably understandable.²⁹

The lessor has the choice of providing the disclosures in the lease agreement itself, or in a separate statement that identifies the lease transaction.³⁰ Most vehicle leases include the required disclosures in the lease agreement itself.

Certain disclosures (identified below) must be segregated from other information ("Segregated Disclosures"). No information may be included with the Segregated Disclosures unless the information is directly related to the Segregated Disclosures.

The headings, content, and format for the Segregated Disclosures must be provided in a manner substantially similar to the model form in [Appendix A](#) of this guide.³¹ The Segregated Disclosures in most leases appear inside a box (CLA Box) labeled something like "Federal Consumer Leasing Act Disclosures." Generally, lessors may make certain changes in the format

or content of the model form and may delete any disclosures that are inapplicable to a transaction. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other regular or irregular periodic payments. But the content, format, and headings for the segregated disclosures must remain substantially similar to those contained in the model form. Therefore, any changes should be minimal and not so extensive as to affect the substance and the clarity of the disclosures.³² Most leasing forms follow the Reg M model form very closely.

Neither the CLA nor Reg M impose a minimum type size for the required disclosures, but some states have such a requirement that must be followed.

Practice Tip



Never add or strike out anything inside the CLA Box without consulting your attorney. Doing so may cause the lease to violate the CLA or Reg M no matter how minor or inconsequential the change may seem.

Timing

The disclosures must be provided by the lessor to the lessee before consummation of the lease.³³ Consummation occurs when a contractual relationship between the lessor and lessee is established under state or other applicable law.³⁴

To satisfy this requirement, the originating lessor (usually the dealer) must give the consumer a copy of the unsigned lease, in a form the consumer can keep, to read and sign. This can be a printed copy or, as described in [Appendix B](#), it may be permissible to provide the consumer an electronic copy. Whether providing a printed copy or an electronic copy of the disclosures, the consumer should receive a copy of the signed lease to keep at the time the consumer becomes obligated.³⁵

Practice Tip



It is important not to put lease terms on a buyer's order that is signed by the customer prior to giving CLA disclosures. If the customer will lease the vehicle and the buyer's order contains lease terms, the buyer's order may be construed as obligating the customer to the terms of the lease and CLA would be violated if all the CLA disclosures were not given before the customer signed the buyer's order.

Identification of the Parties

The disclosures must be given to the lessee in a dated statement that identifies the lessor and the lessee.³⁶

When a transaction involves more than one lessor, the required disclosures may be made by one lessor on behalf of all lessors.³⁷ When a lease involves more than one lessee, the lessor may provide the disclosures to any lessee who is primarily liable on the lease.³⁸ In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee if the disclosure statement identifies all the lessors and lessees.³⁹



Practice Tip

Reg M's definition of "lessor" covers more parties than just the dealer who originates the lease. A "lessor" includes a party who regularly leases, offers to lease, or *arranges* for the lease of a vehicle under a consumer lease.⁴⁰ To "arrange" for a lease means to provide or offer to provide a lease that is or will be extended by another person under a business relationship that provides that the person arranging the lease (i) receives a fee, compensation, or other consideration for arranging the lease; or (ii) has knowledge of the lease terms and participates in the preparation of the lease agreement.⁴¹ An assignee of the lease will qualify as a lessor under this definition if the assignee has substantial involvement in the lease transaction.⁴² And all parties who fall within this definition of lessor must be identified in the lease, but not necessarily as a "lessor" using that label.⁴³

Use of Estimates

Reg M limits the circumstances where the lessor can use estimates and imposes duties on the lessor to ensure the quality of any estimates used. Before estimating amounts or other information you need to make a disclosure required by Reg M, you must make a reasonable effort to find out the information. If after making those reasonable efforts to obtain the information, the necessary information is still unknown or unavailable at the time the disclosures are made, you may use reasonable estimates to make the disclosures.⁴⁴

Any estimate must be: (i) based on the best information reasonably available to the lessor; (ii) clearly identified as an estimate; and (iii) not used to circumvent or evade any required disclosures.⁴⁵ The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining the information.⁴⁶

Subsequent Events

If a required disclosure becomes inaccurate because of an event occurring after consummation, the inaccuracy is not a violation of Reg M and generally no new disclosures are required.⁴⁷ Examples of subsequent occurrences not requiring new disclosures include:

- an increase in official fees or taxes;
- an increase in insurance premiums or coverage caused by a change in law; or
- the assumption of the lease by another person, regardless of whether the lessor charges an assumption fee.⁴⁸

However, in some circumstances, the renegotiation or extension of a lease requires new disclosures. A renegotiation occurs when the lease is satisfied and replaced by a new lease with the same lessee.⁴⁹ Renegotiations require new disclosures unless the renegotiation makes only certain limited changes spelled out in Reg M.⁵⁰ An extension of the lease requires new disclosures if, by itself or in combination with previous extensions, it results in an extension of the original term of the lease by greater than six months.⁵¹

Language of Disclosures

Reg M permits, but does not require, the lessor to give the required disclosures in a language other than English if the disclosures are made available in English upon the lessee's request.⁵² Several jurisdictions, including California, Hawaii, Illinois, and New York City, require that in a transaction negotiated in a language other than English, the lessee must be provided a copy of the lease agreement in the other language.

No Lease Rate Disclosure

As noted above, a central focus of TILA's required disclosures is the Annual Percentage Rate or APR. And a significant part of Reg Z is dedicated to very specific instructions on how to calculate the APR.⁵³

In stark contrast, neither the CLA nor Reg M requires disclosure of a "lease rate" or "money factor" in a consumer lease.⁵⁴ Neither does any state law. In fact, if you disclose a percentage rate in an advertisement or documents related to a lease transaction, Reg M requires you to include a warning stating, "This percentage may not measure the overall cost of financing this lease." And use of the terms "annual percentage rate" or "annual lease rate," or any equivalent term, is prohibited.⁵⁵ So rather than requiring a lease rate disclosure, Reg M discourages such disclosures because such a disclosure could

be misleading. As a result, consumer vehicle leases generally do not include a disclosure of the lease rate or money factor.

SPECIFIC DISCLOSURE REQUIREMENTS FOR CLOSED-END LEASES

Segregated Disclosures

The Segregated Disclosures required by Reg M to be in the CLA Box in a closed-end vehicle lease (as illustrated on the [first page of Appendix A](#)) are:

Amount Due at Lease Signing or Delivery: The total amount to be paid prior to or at consummation, or by delivery of the vehicle, if delivery occurs after consummation, using the term “amount due at lease signing or delivery.” The lessor must itemize each component by type and amount, including any refundable security deposit, advance monthly payment, and capitalized cost reduction. The lessor must also itemize how the amount due will be paid, by type and amount, including any net trade-in allowance, rebates or noncash credits, and cash payments.⁵⁶

The total for the column labeled “Amount Due at Lease Signing or Delivery” must equal the total for the column labeled “How the Amount Due at Lease Signing or Delivery will be paid.”⁵⁷

Negative Equity: If an amount owed on a prior lease or credit balance exceeds the agreed upon value of a trade-in, the difference is not reflected as a negative trade-in allowance. In such a case, you must disclose the trade-in allowance as zero or not applicable, or leave a blank line.⁵⁸

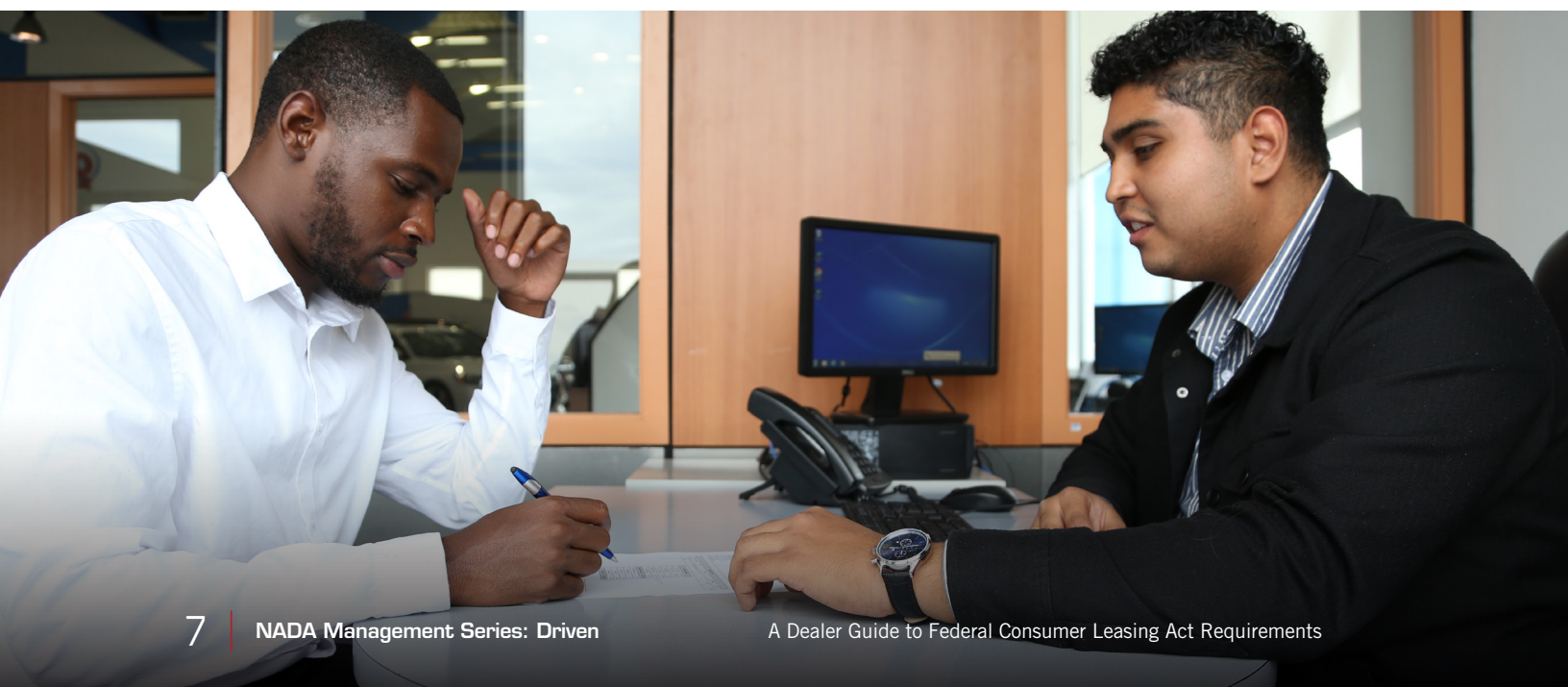
In most cases, the negative trade-in balance will be included in the disclosed gross capitalized cost

and separately disclosed in the itemization of gross capitalized cost (see discussion below). In the rare case where a lessee will pay the negative trade-in balance as part of the amount due at lease signing or delivery, it should be itemized separately in the disclosure of the amount due at lease signing or delivery (see discussion above).

Unlike Reg Z, it is not clear whether a lessor may subtract amounts paid by the lessee in cash or rebates and noncash credits from the negative trade-in balance to compute the negative equity disclosed in the lease. Doing so creates a risk of understating the amount due at lease signing or delivery and the gross capitalized cost. As a result, as discussed above, the safer approach is to disclose the full amount of the negative trade-in balance and list the full amounts paid by the lessee in cash or rebates and noncash credits in the disclosure of how the amount due at lease signing or delivery will be paid.

Rebates: Only rebates applied toward an amount due at lease signing or delivery are required to be disclosed.⁵⁹

Credit Card, Check or Other Payment Methods: You may include payments by check, credit card, or other payment methods in addition to currency on the line item for “Amount to be paid in cash.” Or you may add a line item under the column “How the Amount Due at Lease Signing or Delivery will be paid” for non-currency payments such as credit cards.⁶⁰ However, some leasing companies do not permit certain payment methods, such as credit card payments, on leases submitted to them for purchase. You should review your agreements with your leasing company to determine what forms of payment to accept from lessees.



Payment Schedule and Total Amount of Periodic

Payments: The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.⁶¹

The payment schedule must include all payments that are made at regular or irregular intervals and generally derived from rent, depreciation or amortization, and other amounts that the lessor collects at the same interval(s), including for example taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed in the payment schedule.⁶²

Other Charges: The total amount of other charges payable to the lessor, itemized by type and amount, which are not included in the periodic payments. These other charges include the amount of any liability imposed on the lessee at the end of the lease term (e.g., a disposition fee).⁶³ Generally, the leasing company will identify the charges it may assess while servicing the lease that must be disclosed as an “other charge.”⁶⁴

Total of Payments: The total of payments, with a description such as “the amount you will have paid by the end of the lease.” The total of payments is the sum of the amount due at lease signing (other than refundable amounts, such as the security deposit), the total of the periodic payments (less any part of the periodic payments paid at lease signing, which typically includes the first periodic payment), and other charges.⁶⁵

Payment Calculation: A mathematical progression of how the scheduled monthly payment is computed, which must contain the following:

Gross capitalized cost, including a disclosure of the agreed upon value of the vehicle, a description such as “the agreed upon value of the vehicle [state the amount] and any items you pay for over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance),” and a statement of the lessee's option to receive a separate written itemization of the gross capitalized cost. The lessor is also required to either provide an itemization of the gross capitalized cost or provide the lessee with a statement that the lessee has the right to obtain such itemization. If the lessee requests it, an itemization must be provided before consummation.

Agreed upon value: The “agreed upon value” of the vehicle includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. You may also include taxes and fees for title, licenses, and registration that are capitalized. You may not include charges for

service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or credit transaction in the agreed upon value.⁶⁶

Itemization of gross capitalized cost: This applies if the lessor elects to provide the itemization of gross capitalized cost to all lessees at the same time as the lessor provides the other CLA and Reg M disclosures.⁶⁷ And some states (such as California) require it to be given to all lessees. As a result, most vehicle lease agreements include the itemization of gross capitalized cost.

Capitalized cost reduction, with a description such as “the amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost.”

Adjusted capitalized cost, with a description such as “the amount used in calculating your base [periodic] payment.”

Residual value, with a description such as “the value of the vehicle at the end of the lease used in calculating your base [periodic] payment.”

Depreciation and any amortized amounts, with a description such as “the amount charged for the vehicle's decline in value through normal use, and for any other items paid over the lease term.”

Rent charge, with a description such as “the amount charged in addition to the depreciation and any amortized amounts.”

Total of base periodic payments, with a description such as “depreciation and any amortized amounts plus the rent charge.”

Lease payments, with a description such as “the number of payments in your lease.”

Base periodic payment. The total of the base periodic payments divided by the number of payment periods in the lease.

Itemization of other charges. An itemization of any other charges that are part of the periodic payment, such as monthly sales tax.

Total periodic payment. The sum of the base periodic payment and any other charges that are part of the periodic payment.⁶⁸

Early Termination Notice: A notice substantially similar to the following: “Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is



terminated. The earlier you end the lease, the greater the charge is likely to be.”⁶⁹ This disclosure is usually included in the preprinted part of the lease form.

Notice of Wear and Use Standard: A notice substantially similar to the following: “Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use.” The notice must also specify the amount or method for determining any charge for excess mileage.⁷⁰

Purchase Option at Scheduled End of Lease: If the lessee has the option to purchase the leased vehicle at the end of the lease term, the amount of the purchase price (including the purchase option fee, if any).⁷¹

The lessor must disclose the purchase option price as a sum certain or as a sum certain to be determined at a future date by reference to a readily available independent source. The reference must provide sufficient information so that the lessee will be able to determine the actual price when the option becomes available. For example, if the purchase option price is set by reference to a guidebook value, the lease agreement would need to disclose enough information to select the specific guidebook (such as the publisher, the version or regional version, the date of the guidebook or words allowing the lessee to determine the date, such as “the then current version”) and the specific price quotation (such as

the vehicle condition and mileage assumptions).

A statement that the purchase price will be the “negotiated price” or the “fair market value” does not comply with this requirement.⁷²

A purchase option fee may be separately itemized or disclosed as part of the purchase option price.⁷³

Instead of disclosing the actual or estimated official fees (taxes, licenses, registration and similar governmental fees) that would be due in connection with an exercise of the lessee’s purchase option, the lessor may provide a statement indicating that the purchase option price does not include fees for tags, taxes, and registration.⁷⁴ Most consumer vehicle leases opt to include this statement rather than the actual or estimated official fees.

Typically, the scheduled end purchase price is based on the residual value plus a purchase option fee in some cases. Some lessors set the base purchase price at an amount higher than the residual to compensate for the effort required to handle the sale to the lessee and/or to allow an opportunity for profit on the sale.

Statement Referencing Non-Segregated Disclosures:

A statement that the lessee should refer to the lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interests, if applicable.⁷⁵

The lessor may delete inapplicable items from the disclosure. For example, if a lease contract does not include a security interest, the reference to a security interest may be omitted.⁷⁶

This disclosure is usually included in the preprinted part of the lease form.

Non-Segregated Disclosures

The following disclosures must be given outside of the CLA Box (usually elsewhere in the lease agreement) as illustrated on the [second page of Appendix A](#):

Description of Vehicle: A description of the leased vehicle sufficient to identify it to the lessee and the lessor.⁷⁷

Early Termination: A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount, or a description of the method for determining the amount, of any penalty or other charge for early termination, which must be reasonable.⁷⁸ Generally, your leasing company determines the early termination method and will require you to use lease forms that properly disclose that method; the required disclosures will be included in the preprinted part of the lease form.^{79,80}

Maintenance Responsibilities: A statement of whether the lessor or the lessee is responsible for maintaining and servicing the vehicle, including a brief description of the responsibility.⁸¹ This disclosure is usually included in the preprinted part of the lease form.⁸²

Statement of Wear and Use Standards: A statement of the lessor's standards for wear and use, which must be reasonable.⁸³

Purchase Option at Early Termination: A statement of whether the lessee has the option to purchase the vehicle at early termination. If the lessee has such an option, the lessor must disclose when the option may be exercised and the purchase price, or the method for determining the purchase price.⁸⁴

The requirements for disclosing the purchase option at early termination are the same as those described above for disclosing the purchase option at the scheduled end of the lease. The principal difference between the two disclosures is that the early termination purchase option price is usually described as a formula that is based on the early termination charge calculation. Typically, the price is the Adjusted Lease Balance plus, in some cases, a purchase option fee.

Liability between Residual and Realized Values: A statement of the lessee's liability, if any, at early termination, for the difference between the residual value of the leased property and its realized value.⁸⁵ This disclosure is generally made as part of the disclosure of the early termination charge described above.

Right of Appraisal: If the lessee's liability at early termination or at the end of the lease term is based on the vehicle's realized value, a statement that the lessee may obtain, at the lessee's expense, a professional appraisal by an independent third party (agreed to by the lessor and the lessee) of the value that could be realized upon sale of the vehicle. The appraisal is final and binding on the parties.⁸⁶

The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease. But neither the CLA nor Reg M specifies what constitutes a reasonable time.⁸⁷

Fees and Taxes: The total dollar amount for all official fees, including license, registration, and title fees, and all taxes required to be paid in connection with the lease over the entire lease term.⁸⁸

All official fees and taxes paid in connection with the lease must be included in this disclosure, even if they are also disclosed elsewhere. For example:

- Official fees and taxes paid at lease signing or delivery are disclosed in the itemization of the amount due at lease signing discussed above and included in the disclosure of the total dollar amount of official fees and taxes discussed here.
- Taxes that are part of the scheduled payments are reflected in the disclosure under the payment schedule and payment computation described above and are included in the total dollar amount of official fees and taxes discussed here.⁸⁹

The total disclosed here must also include all official fees and taxes payable during the term of the lease that are either paid by the lessor and passed on to the lessee or paid directly by the lessee. Examples include any of the following if paid directly by the lessee or paid by the lessor and rebilled to the lessee: periodic property tax bills, registration or plate renewal fees, and taxes assessed on the periodic payments. But a tax payable by the lessor and absorbed as a cost of doing business need not be disclosed in this total. And official fees and taxes charged in connection with the exercise of a purchase option are not disclosed in this total.⁹⁰



Lessors typically base this disclosure on estimated tax rates, or amounts, and are afforded great flexibility in doing so. For example, where a rate is applied to the future value of the vehicle, lessors have flexibility in estimating that value, including, but not limited to, using the mathematical average of the agreed upon value of the vehicle and the residual value, or published valuation guides. Lessors may include a statement that the actual total of fees and taxes may be higher or lower, depending on the tax rates in effect or the value of the vehicle at the time the fee or tax is assessed.⁹¹ Notwithstanding this flexibility, estimates of the official fees and taxes must still satisfy the general requirements for estimates described in the “Use of Estimates” section above.

Some leasing companies rely on dealers to provide some or all of the information required for these disclosures. Others provide instructions to the dealer on how to make the disclosures.

Insurance: If insurance is provided by or paid through the lessor, the types, amounts of coverage, and cost to the lessee. If the lessee must obtain insurance, the types and amounts of coverage must be disclosed.⁹²

Whether products purchased in conjunction with a lease, such as mechanical breakdown protection (MBP) or guaranteed automobile protection (GAP), should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP or GAP as insurance, the disclosures under this section are not required. For MBP insurance contracts

not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time—for example, by indicating that the mechanical breakdown contract insures parts of the vehicle for up to 100,000 miles.^{93,94}

Warranties or Guarantees: All express warranties and guarantees made by the lessor or the manufacturer regarding the vehicle must be identified.⁹⁵

The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.⁹⁶

Whether an express warranty or guaranty exists is determined by state or other law.⁹⁷

Penalties and Other Charges for Delinquency: The amount, or method of determining the amount, of any penalty or other charge for delinquency, default, or late payments. These charges must be reasonable.^{98,99}

Security Interest: A description of any security interest (other than a disclosed security deposit) held or to be retained by the lessor, with a clear identification of the property to which the security interest relates.^{100,101} This disclosure is normally included in the preprinted part of the lease form.

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

STATE LAWS AFFECTING LEASE DISCLOSURES

In many states, the primary state law governing motor vehicle leases is Uniform Commercial Code Article 2A. Article 2A is primarily a set of default contract rules for leases, including rules for offer and acceptance of a contract, statute of frauds, warranties, assignment of interests, risk of loss, and remedies on breach of contract such as limits on liquidated damages. But Article 2A imposes few disclosure requirements, so disclosures in these states are governed almost exclusively by the CLA.

A little less than half of the states have laws other than UCC Article 2A that also govern consumer motor vehicle leases in some manner. Some have passed comprehensive stand-alone motor vehicle leasing laws that broadly govern motor vehicle leases. These laws frequently require additional disclosures.¹⁰²

Other states have leasing laws that are more limited, requiring only certain disclosures or regulating a specific aspect of the lease transaction.¹⁰³

In addition, as discussed above, the CLA requires disclosure of the total dollar amount for all official fees, including license, registration, and title fees and all taxes required to be paid in connection with the lease over the entire lease term. To make this disclosure and other CLA disclosures involving official fees and taxes properly, you must have a thorough and complete understanding of the state and local laws governing official fees and taxes applicable to the transaction. In some jurisdictions, the computation of official fees and taxes can be very complex. You should consult a tax specialist to assist you in making these disclosures properly.

CLA and Reg M Limits on Charges and Fees

EARLY TERMINATION CHARGES

As noted above, the CLA limits a lessor's charge for early termination to an amount that is reasonable in light of the anticipated or actual harm caused by the early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.¹⁰⁴ This section appeared in Section 183(b) of the Public Act version of the CLA and is frequently referred to simply as the "183(b)." Whether a motor vehicle lessor's early termination charge is reasonable under this standard has spawned substantial litigation. While dealers are sometimes involved in litigation on this issue, the

method of computing the early termination charges is generally set by the leasing company and is set forth in the preprinted part of the lease form.¹⁰⁵

LATE CHARGES AND OTHER DEFAULT CHARGES

Section 183(b) also limits a lessor's charge for delinquency and default to an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency or default, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.¹⁰⁶ The leasing company usually establishes the amount and method of assessing these charges, but dealers may be responsible for properly completing blanks in some forms as instructed by the leasing company.

EXCESS WEAR AND MILEAGE

The CLA permits lessors to set standards for wear and use that are not unreasonable.¹⁰⁷ Similarly, Reg M requires that a lessor's standards for excess wear and use must be reasonable.¹⁰⁸ The standards for assessing excess wear and use charges are usually set forth in the preprinted part of the lease form.

STATE LIMITS ON CHARGES AND FEES

As discussed above, the primary state law governing motor vehicle leases is Uniform Commercial Code Article 2A. But most of Article 2A's provisions can be changed by lease agreement, so lessors and lessees in these states have a lot of flexibility in determining the terms and conditions of a vehicle lease.

A little less than half of the states have laws other than UCC Article 2A that also govern consumer motor vehicle leases in some manner. Some of these laws impose limits on early termination charges, late charges, default charges, or other charges imposed in connection with the early termination of a lease.¹⁰⁹

CLA and Reg M in Practice

BACKDATING

Sometimes a dealer and the customer must execute a new lease in substitution for an earlier lease covering the same vehicle. For example, there may have been errors in the original lease that can only be corrected by entering into a new lease agreement. From a CLA perspective, when the dealer and the customer agree to re-contract, it is important to date the new lease on the day it is signed and not an earlier date, such as the date of initial vehicle delivery. Under the CLA, the

lessor must provide accurate CLA disclosures before the lessee becomes obligated under the lease. If the lease provides the CLA disclosures as of a date earlier than the date the customer signs the lease, it calls into question the accuracy of the CLA disclosure. For example, if the backdated lease is signed after the due date of the second payment disclosed in the lease, a regulator or court might find that both the payment schedule and the amount due at lease signing disclosures are inaccurate. To avoid such risks, dealers should not backdate leases when re-contracting.

VOLUNTARY PROTECTION PRODUCTS AND OTHER CHARGES

Generally, the CLA does not impose anything like the detailed, sometimes complex disclosure requirements that TILA imposes with respect to the financing of voluntary protection products. For example, there is no comparable CLA requirement to the TILA requirement that the creditor disclose to whom third-party amounts are paid in the itemization of the amount financed.¹¹⁰ (Note: It is a best practice to include this disclosure in a lease even though the CLA does not require it.)

As discussed above, if insurance is provided by or paid through the lessor, the lessor must disclose the types, amounts of coverage, and cost to the lessee. If the lessee must obtain insurance, the lessor must disclose the types and amounts of coverage.¹¹¹

It is also important to understand that the value of some voluntary protection products is different in a lease transaction because the customer will generally return the vehicle to the leasing company at the end of the lease transaction. For example, service contracts that extend beyond the term of a credit transaction would have value to consumers because they are entitled to keep the vehicle after paying off the credit contract. But in a lease, the part of the service contract term that extends beyond the lease term would have no value to a customer who returns the vehicle. Selling coverage that has no value to the customer carries a high risk of being found to be an unfair or deceptive practice.¹¹² So, you should take into account the differences in the value of these products to a lessee in deciding what coverages to offer.

You also need to understand the terms of the leasing programs of each leasing company you do business with in deciding what voluntary protection products to offer lease customers. For example, many lessors include GAP in their leases at no additional charge. In such cases, there is a high risk that selling additional GAP protection is an unfair and deceptive practice.¹¹³

Payment Packing

An unfair and deceptive practice known as “payment packing” may occur when a dealer quotes a consumer a monthly lease payment that includes the price of optional products, such as an extended service contract, without disclosing that such products are included in the quoted payment and that they are optional and obtaining the consumer’s agreement to purchase them. To avoid payment packing, dealers should take care to clearly and conspicuously disclose the price of each optional product offered to the consumer and clearly document the consumer’s agreement to purchase any optional products that will be financed in the lease. In order to further enhance the consumer’s understanding of the cost of these products, dealers should also disclose the monthly payment and the total of payments with and without each optional product.

Documentary Fees

You should also disclose fees charged by the dealership such as document preparation fees (“doc fees”). The permitted amount of doc fees and other dealership fees is governed by state law. You should not assume that a fee permitted in a sale or credit sale is also permitted in a lease. You should consult your attorney about what dealership fees are permitted in a lease in your state.

Charging Documentary Fees on Lessee Exercise of Purchase Option

The CLA disclosures related to a lessee’s purchase option can affect your ability to charge a documentary fee to a lessee purchasing a vehicle pursuant to the disclosed purchase option.

Most motor vehicle leases offer the lessee the option to purchase the leased vehicle for a stated, fixed price if the lessee chooses to exercise the purchase option at the scheduled end of the lease term (the “scheduled end option”) or based on a formula if the lessee chooses to purchase the vehicle before the scheduled end of the lease term (the “early termination option”). Under both options, the lessee has a contractual right to purchase the vehicle for the applicable option price (the “lease purchase option price”). The lease purchase option price is legally binding on the holder of the lease (the “lease holder”).

If a lessee elects to purchase the vehicle, many leasing companies will enlist a dealer to handle the sale (a “dealer-lessee purchase transaction”).¹¹⁴ Some leasing companies reassign the lease and sell the

vehicle to the dealer. In these cases, the dealer, as the lease holder, is contractually obligated to sell the vehicle to the lessee at the lease purchase option price. Other leasing companies simply sell the vehicle back to the dealer, in which case the dealer takes ownership of the vehicle subject to the lessee's right to purchase it for the lease purchase option price.

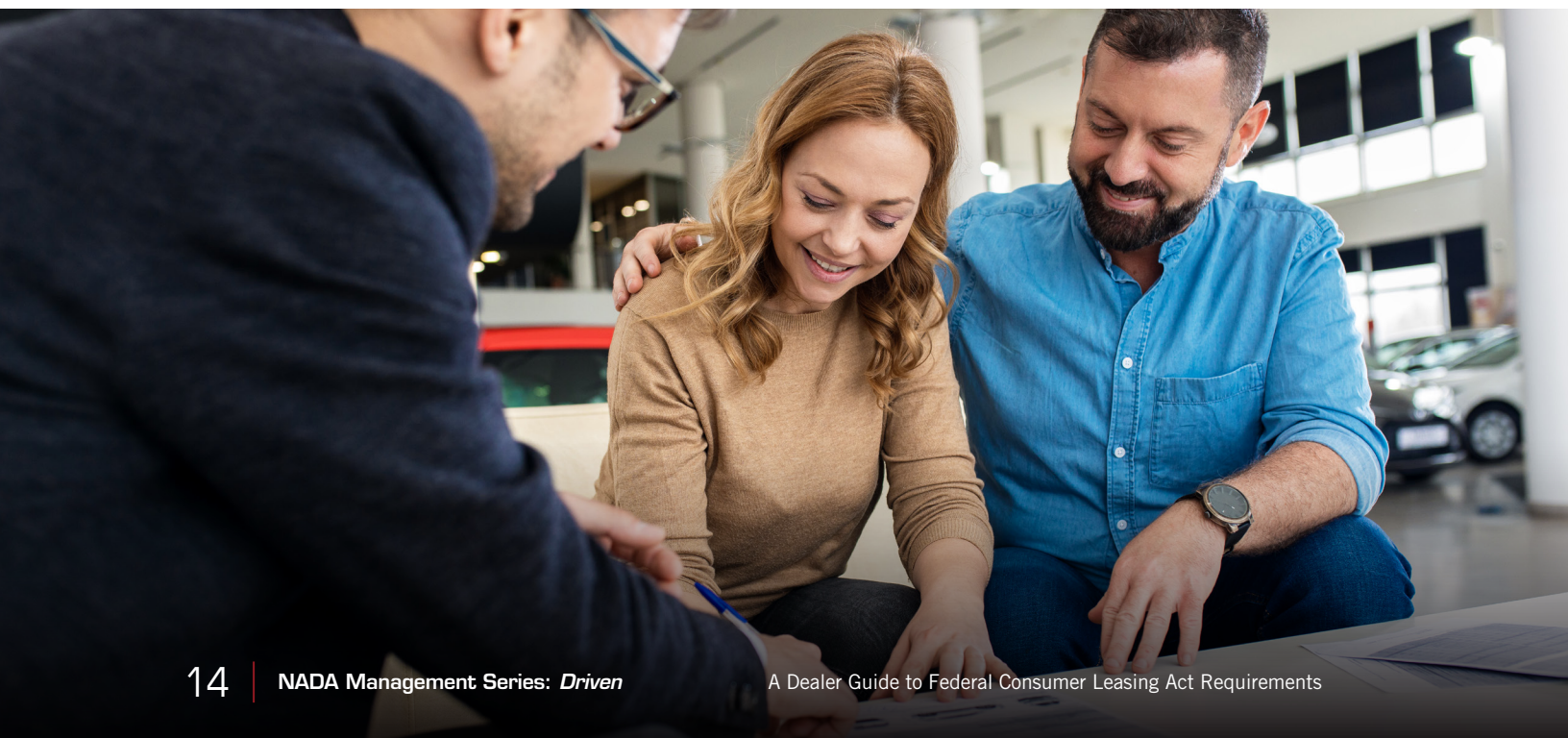
For the purposes of this discussion, we assume a documentary fee (however labeled) is a fee a dealer charges a vehicle purchaser for services related to registering and titling the vehicle where the amount of the charge does not vary depending on whether the buyer purchases for cash or on credit and is not regarded as a finance charge under TILA.

For the reasons discussed below, charging a documentary fee in a dealer-lessee purchase transaction risks a claim against the lease holder (and potentially the original lessor and other lease holders) that the practice breached the contract and or violated the CLA, unless:

1. The original lease disclosed the amount of the documentary fee charged in the dealer-lessee purchase transaction as a separate purchase option fee; or
2. The sum of the documentary fee and the price charged the lessee for the vehicle (excluding official fees and the price of any voluntary protection products sold to the lessee in connection with the dealer-lessee purchase transaction)¹¹⁵ is equal to the lease purchase option price.

If a documentary fee will be added to the lease purchase option price in a dealer-lessee purchase transaction, these Reg M requirements can be interpreted to compel disclosure in the original lease of the amount of the documentary fee as a kind of "purchase option" fee. For a scheduled end option, the lease must state a sum certain for the lease purchase option price. If there is a purchase option fee, Reg M permits a lessor to disclose it separately. And while it permits the lessor to disclose that official fees are not included in the lease purchase option price, Reg M does not give similar permission to disclose that the purchase option price does not include other fees and charges, such as a documentary fee. Taken together, this suggests that a lessor should either disclose the amount of the documentary fee as a purchase option fee or a part of the fixed lease purchase option price.

For an early termination option, a lessor must disclose the purchase option price as a sum certain or as a sum certain to be determined at a future date by reference to a readily available independent source. In most leases, the lease purchase option price is disclosed as a formula that incorporates elements of the early termination charge that are used to determine how much to add to the fixed purchase price provided for in the scheduled end option. Again, Reg M permits the lessor to contract for the early termination option price and a separate purchase option fee and to disclose that official fees are not included in the disclosed lease purchase option price. But as with the scheduled end option, it does not give similar permission to disclose that the purchase option price does not include other fees and charges, such as a documentary fee. There-



fore, the choices for providing for a documentary fee as part of the lease option price in the early termination option are essentially the same as those discussed above for the scheduled end option.

If a lease does not disclose the documentary fee as a purchase option fee, charging a documentary fee in addition to the lease purchase option price risks a claim that the initial disclosure of the lease option price was not accurate and thus violated Reg M. It also risks a claim that the lease holder breached the original lease agreement by charging more than the agreed to lease option price.

A lessor could argue that a documentary fee is for separate services performed by the dealer for transferring title to the lessee and re-registering the vehicle. As such, the dealer should be able to charge additional consideration for these separate services. This argument is strengthened if the dealer offers lessees the option to perform these services themselves to avoid the charge and some lessees elect that option. But there remains a risk that a court or regulator will conclude that the term “purchase option fee” as used in Reg M includes such services and thus must either be disclosed separately or included in the lease option purchase price.

Several lawsuits have been brought by lessees who were charged documentary fees in addition to the lease option price where the related lease agreement did not disclose the amount of the documentary fee as a purchase option fee. The lessees in these cases claimed that the practice breached the lease agreement and/or violated Reg M. To date, none of these cases has addressed the merits of these claims. The remaining cases were either resolved on procedural grounds or settled.¹¹⁶

FINANCING A PRIOR CREDIT OR LEASE BALANCE IN A LEASE

By defining the gross capitalized cost to include any outstanding prior credit or lease balance, the CLA provides for the financing of a prior credit or lease balance in a lease.¹¹⁷ But state law governs the permissibility and requirements for doing so. You should consult your attorney to determine whether your state permits you to finance these items as part of a lease.

If state law permits the financing of a prior credit or lease balance, more care is required in determining the amount of the prior lease balance than the amount of a prior credit balance. In a credit transac-

tion, the payoff is usually just the remaining balance of the amount financed in the credit transaction, plus accrued unpaid finance charges, plus any unpaid fees and charges. For a lease, the payoff amount will differ depending on whether the lease ends early or at its scheduled end, and whether the vehicle is returned to the leasing company or acquired by the dealer.

Leased Vehicle Returned to Leasing Company

If the lessee returns the vehicle to the leasing company (“lessee return”), here are some things to consider in determining the “prior lease balance” to be financed in the new lease or credit sale:

At early end:

Under most leases, a lessee returning the vehicle to the leasing company early owes the early termination charge, any past due payments, other unpaid charges, and any official fees or taxes due related to the lease end.

Under many leases, the early termination charge can only be calculated after the leasing company sells the vehicle or otherwise establishes its realized value under the terms of the lease. As a result, a payoff quote from the leasing company is likely to be an estimate. Different leasing companies make different assumptions in providing this estimate, so it is important that you understand the assumptions and limitations related to any payoff quote you get from the leasing company to determine whether it is a good basis for estimating the amount of the prior lease balance in the new lease or credit sale. For example, the leasing company might quote you a payoff that assumes that they will sell the vehicle for residual value. That could be a very conservative estimate if the market for comparable used vehicles is strong or the lease is ending well before the scheduled end.

At scheduled end:

Under most leases, a lessee returning the vehicle to the leasing company at scheduled end owes any past due payments, excess mileage and wear charges, other unpaid charges and any official fees or taxes due related to the lease end.

Because the identification of excess wear requires an inspection, the payoff quote from the leasing company may not include these charges. It may also not include excess mileage charges. Again, it is important that you understand the assumptions and limitations related to any payoff quote you get from the leasing company to determine whether it is a good basis for estimating the amount of the prior lease balance in the new lease or credit sale.

At both early and scheduled end, there will be no “trade allowance” in the new lease agreement or credit sale because the lessee has returned the vehicle.

Leased Vehicle Acquired by the Dealer

If you acquire the leased vehicle in connection with the new lease or credit sale, here are some things to consider in determining the “prior lease balance” to be financed in the new lease or credit sale:

If you are buying the vehicle for your inventory and not treating it as a trade-in on the new lease or credit sale, you will want to know if the leasing company will treat the transaction as a lessee return and pursue the lessee for the amounts due upon the vehicle’s return at early or scheduled end (as applicable) under the lease (see discussion above). This will help you avoid misunderstandings with the lessee in negotiating the new transaction.

If you are buying the vehicle and will treat the vehicle as a “trade-in” in the new lease or credit sale, you should know that the law’s treatment of a “trade-in” of a vehicle not owned by the lessee is not clear. But, at a minimum, you will want to make sure that any amount listed as the trade “payoff” on the lease is a reasonable estimate of an amount the lessee owes under the original lease or less that satisfies the CLA’s requirements for the use of estimates (see discussion above).

And you should understand that the price you paid to acquire the vehicle from the leasing company might not satisfy this standard. For example, the leasing company may have set its price to you based on a current market value of the leased vehicle that is higher than what the lessee would have paid under the purchase option provisions of the lease. In this situation, it might be difficult to justify the price you paid as the “payoff” of the lessee’s obligations under the lease.

The permissibility of treating your acquisition of a leased vehicle as a trade-in and the required method for doing so may be affected by state law and your agreements with your leasing company. Consult your attorney about how you need to handle these transactions.

For all the scenarios discussed above, you will need to determine how you will handle adjustments if the actual prior lease balance turns out to be higher or lower than you disclosed in the new lease or credit sale. How you handle these adjustments may be affected by state law and your agreements with your leasing company. You should consult your attorney about the best way to handle adjustments.



Appendices



Appendix A

Model Closed-End Vehicle Lease Disclosures

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ Lessee(s) _____

Amount Due at Lease Signing or Delivery (Itemized below)* \$ _____	Monthly Payments Your first monthly payment of \$ _____ is due on _____, followed by _____ payments of \$ _____ due on the _____ of each month. The total of your monthly payments is \$ _____.	Other Charges (not part of your monthly payment) Disposition fee (if you do not purchase the vehicle) \$ _____ Total \$ _____	Total of Payments (The amount you will have paid by the end of the lease) \$ _____
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* Itemization of Amount Due at Lease Signing or Delivery

Amount Due At Lease Signing or Delivery:		How the Amount Due at Lease Signing or Delivery will be paid:	
Capitalized cost reduction	\$ _____	Net trade-in allowance	\$ _____
First monthly payment	_____	Rebates and noncash credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____		_____
Registration fees	_____		_____
	Total \$ _____		Total \$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle (\$ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) \$ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost = _____

Adjusted capitalized cost. The amount used in calculating your base monthly payment = _____

Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment = _____

Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term = _____

Rent charge. The amount charged in addition to the depreciation and any amortized amounts = _____

Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge = _____

Lease payments. The number of payments in your lease = _____

Base monthly payment = _____

Monthly sales/use tax = _____

Total monthly payment = \$ _____

Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for \$ _____ [and a purchase option fee of \$ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: \$ _____.

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of \$ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

Maintenance.

[You are responsible for the following maintenance and servicing of the leased vehicle:

_____]];

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____]];

Warranties. The leased vehicle is subject to the following express warranties:

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

The charge for such early termination is:

(b) We may terminate this lease before the end of the lease term under the following conditions:

Upon such termination we shall be entitled to the following charge(s) for:

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

Late Payments. The charge for late payments is: _____

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be \$ _____ / [the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix B

Electronic Contracting

The following description of the electronic contracting (e-contracting) process should be presented to and discussed with your legal counsel before adopting any procedures to incorporate e-contracting into your operations.

The clear and conspicuous disclosure requirements of the CLA and Reg M fully apply to the use of electronic devices. When providing disclosures electronically, it is essential that dealers avoid any practice that could undercut or obscure the disclosures such as by rapidly scrolling through key costs and terms or seeking the consumer's signature on a document without first allowing the consumer sufficient time to review it.

The initial lessor (usually the dealer) also must give the lessee a copy of the CLA and Reg M disclosures in a form the lessee can keep prior to consummation of the lease. Dealers who conduct transactions electronically must comply with the federal Electronic Signatures in Global and National Commerce Act (E-SIGN Act),¹¹⁸ as well as the CLA and TILA and any supplemental state law requirements that do not conflict with the E-SIGN Act.¹¹⁹ Dealers also must ensure that they provide lessees with a copy of the lease agreement after it is executed. Dealers may do so by printing a copy for the lessee or by providing an electronic copy in a manner that complies with E-SIGN and state law. The E-SIGN requirements are summarized below. It is important to consult your legal counsel to ensure the e-contracting procedures that you adopt satisfy all applicable legal requirements in your state.

The E-SIGN Act permits dealers to use electronic documents to provide information that the law would otherwise require be provided to a consumer via written, paper documents (for example, the CLA and Reg M disclosures).¹²⁰ But to do so, dealers must obtain the lessee's consent to use or receive electronic documents to provide the required information. Before obtaining this consent, dealers must deliver to the lessee a clear and conspicuous statement with the following disclosures (collectively the "consent disclosures"):

1. The lessee's right to have the information provided or made available in paper form;
2. The lessee's right to withdraw consent and any consequences that may follow (terminating the electronic contracting process and preparing a new printed lease agreement or other documents would be one such consequence);
3. Whether the lessee's consent applies: (i) only to the particular lease transaction; or (ii) to all identified categories of records that may be provided during the course of the parties' relationship;
4. The procedures the lessee must use to withdraw consent and to update information needed to contact the lessee;
5. How, following consent, the lessee may obtain a paper copy of the electronic document and whether any fee will be charged for such a copy; and
6. The hardware and software requirements for access to and retention of the electronic records.

The lessee must consent electronically or confirm his or her consent electronically in a manner that "reasonably demonstrates" that the lessee has the ability to access the documents to be provided electronically. This is called the "reasonable demonstration" test.¹²¹ Thus, paper or telephonic consent to electronic delivery must be confirmed electronically. Bear in mind that the consent disclosures cannot be delivered orally over the telephone; they must be presented either electronically or on paper.

Endnotes

- 1 12 U.S.C. §§ 5301, *et seq.*
- 2 The CLA is codified at 15 U.S.C. §§ 1667 – 1667f. The Board of Governors of the Federal Reserve's Reg M is codified at 12 C.F.R. Part 213. As discussed in this guide, some motor vehicle dealer lease transactions are subject to the Consumer Financial Protection Bureau's Reg M, which is codified at 12 C.F.R. Part 1013. For information on the advertising requirements set forth in the CLA and Reg M, see the NADA *Driven* publication entitled [A Dealer Guide to Federal Advertising Requirements](#). For information about leasing fundamentals, see the NADA *Driven* publication entitled [A Dealer Guide to Leasing Fundamentals](#).
- 3 15 U.S.C. § 1601(b).
- 4 84 Fed. Reg. 58,017-58,020 (Oct. 30, 2019).
- 5 FRB Staff Commentary Comment 2(e)-3.
- 6 12 C.F.R. § 213.2(i).
- 7 TILA § 1602(h). And see for example, *Tom Benson Chevway Rental & Leasing, Inc. v. Allen*, 571 S.W.2d 346 (Tex. Civ. App. 1978)(lease transaction was a credit sale where car could be purchased for \$1.00 at the end of the lease).
- 8 12 C.F.R. § 213.2(e)(2).
- 9 TILA is codified at 15 U.S.C. §§ 1601 – 1666j. The Board of Governors of the Federal Reserve's Reg Z is codified at 12 C.F.R. Part 226.
- 10 The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), § 1029(a). 12 U.S.C. § 5519(a).
- 11 Dodd-Frank Act, § 1029(b).
- 12 Dodd-Frank Act, §§ 1001 *et seq.*
- 13 The CFPB's Reg M is codified at 12 C.F.R. Part 1013.
- 14 CLA § 1667d(a), TILA § 1640.
- 15 CLA § 1667d(c).
- 16 TILA § 1611.
- 17 CLA § 1667d(a); TILA § 1640(b). Errors must be corrected under this provision before either a court action is commenced for the error or the creditor receives a written notice of the error from the customer.
- 18 CLA § 1667d(a); TILA §1640(c).
- 19 CLA § 1667d(a); TILA §1640(c).
- 20 See for example, *Mirabal v. General Motors Acceptance Corp.*, 537 F.2d 871 (7th Cir. 1976); *Candelaria v. Nissan Motor Acceptance Corp.*, 740 F. Supp. 806 (D. N.Mex. 1990).
- 21 12 C.F.R. § 213.2(f).
- 22 12 C.F.R. § 213.2(f).
- 23 FRB Staff Commentary Comment 4(b)-2.
- 24 12 C.F.R. § 213.2(f).

- 25 12 C.F.R. § 213.2(n).
- 26 12 C.F.R. § 213.4(f)(5).
- 27 12 C.F.R. § 213.4(f)(6).
- 28 12 C.F.R. § 213.2(m).
- 29 12 C.F.R. § 213.3(a).
- 30 12 C.F.R. § 213.3(a)(1).
- 31 12 C.F.R. § 213.3(a)(2).
- 32 FRB Staff Commentary Comment App. A-1.
- 33 12 C.F.R. § 213.3(a)(3).
- 34 FRB Staff Commentary Comment 3(a)(3)-1.
- 35 The timing requirements for providing the disclosures to the lessee are substantially the same as the timing requirements under TILA. Under TILA, the FRB provides the following illustration of activity that complies with this requirement: “A creditor gives a consumer a multiple-copy form containing a credit agreement and TILA disclosures. The consumer reviews and signs the form and returns it to the creditor, who separates the copies and gives one copy to the consumer to keep. The creditor has satisfied the disclosure requirement.” FRB Staff Commentary Comment 17(b)-3. It is reasonable to assume that a similar approach would satisfy the timing requirements under the CLA and Reg M. For a more in depth discussion of the timing requirements, see the NADA *Driven* publication entitled [*Clarification of the Timing Requirements for Truth In Lending Act Disclosures*](#). Much of this discussion would also apply to a consumer lease.]
- 36 12 C.F.R. § 213.3(a)(1).
- 37 12 C.F.R. § 213.3(c).
- 38 12 C.F.R. § 213.3(c).
- 39 FRB Staff Commentary Comment 3(a)(1)-4.
- 40 12 C.F.R. § 213.2(h) (emphasis added).
- 41 FRB Staff Commentary Comment 2(h)-1.
- 42 FRB Staff Commentary Comment 2(h)-3.
- 43 FRB Staff Commentary Comment 3(a)(1)-2.
- 44 12 C.F.R. § 213.3(d).
- 45 12 C.F.R. § 213.3(d); FRB Staff Commentary Comment 3(d)(1)-1.
- 46 FRB Staff Commentary Comment 3(d)(1)-2.
- 47 12 C.F.R. § 213.3(e); Commentary to 12 C.F.R. § 213.3(e).
- 48 12 C.F.R. § 213.5(c); Commentary to 12 C.F.R. § 213.3(e).
- 49 12 C.F.R. § 213.5(a).
- 50 12 C.F.R. § 213.5(d).
- 51 12 C.F.R. § 213.5(b).
- 52 12 C.F.R. § 213.3(a)(4).

- 53 See Appendix J of Reg Z.
- 54 The lease rate or money factor is used by the lessor to compute the rent charge portion of the lease payment.
- 55 12 C.F.R. § 213.4(s).
- 56 12 C.F.R. § 213.4(b).
- 57 FRB Staff Commentary Comment 4(b)-5.
- 58 FRB Staff Commentary Comment 4(b)-3.
- 59 FRB Staff Commentary Comment 4(b)-4.
- 60 FRB Staff Commentary Comment 4(b)-6.
- 61 12 C.F.R. § 213.4(c).
- 62 FRB Staff Commentary Comment 4(c)-1.
- 63 12 C.F.R. § 213.4(d); FRB Staff Commentary Comment 4(d)-5.
- 64 Other charges are charges that are anticipated by the parties to be charged during the normal operation of the lease. FRB Staff Commentary Comment 4(d)-1. But they do not include charges that Reg M requires to be disclosed elsewhere, such as the periodic payments. FRB Staff Commentary Comment 4(d)-4. Other charges also do not include third-party fees or charges collected by the lessor on behalf of third parties (such as taxes). FRB Staff Commentary Comment 4(d)-3. Nor do they include charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement (such as charges for late payments, default, deferral of payments, or extensions of the lease). FRB Staff Commentary Comment 4(d)-2.
- 65 12 C.F.R. § 213.4(e).
- 66 FRB Staff Commentary Comment 4(f)(1)-1.
- 67 FRB Staff Commentary Comment 4(f)(1)-2.
- 68 12 C.F.R. § 213.4(f).
- 69 12 C.F.R. § 213.4(g)(2).
- 70 12 C.F.R. § 213.4(h)(3).
- 71 12 C.F.R. § 213.4(i)(1).
- 72 FRB Staff Commentary Comment 4(i)-5.
- 73 FRB Staff Commentary Comment 4(i)-3.
- 74 FRB Staff Commentary Comment 4(i)-4.
- 75 12 C.F.R. § 213.4(j).
- 76 FRB Staff Commentary Comment 4(j)-1.
- 77 12 C.F.R. § 213.4(a).
- 78 12 C.F.R. § 213.4(g)(1).
- 79 A lessor must provide a full description of the method of determining an early termination charge. The lessor should attempt to provide consumers with clear and understandable descriptions of its early termination charges. But descriptions that are full, accurate, and not intended to be misleading will comply with this requirement, even if the descriptions are

complex. FRB Staff Commentary Comment 4(g)(1)-2. To provide this full description, a lessor may use the name of a generally accepted method of computing the Adjusted Lease Balance used to compute the early termination charges. For example, a lessor may state that the "constant yield" method will be utilized in computing the Adjusted Lease Balance, but must specify how that figure, and any other term or figure, is used in computing the total early termination charge due from the lessee. If a lessor refers to a named method in this manner, the lessor must provide a written explanation of that method if requested by the lessee. The lessor has the option of providing the explanation to all lessees in the lease documents or on a separate document. FRB Staff Commentary Comment 4(g)(1)-2. A lessor who opts simply to name the method used to compute the Adjusted Lease Balance may provide an address or telephone number for the consumer to request a written explanation of the named method used. But if a consumer requests the written explanation before or at lease signing, the lessor must give it to the lessee at the time of the request. If a consumer requests an explanation after consummation, the lessor must provide a written explanation within a reasonable time after the request is made. FRB Staff Commentary Comment 4(g)(1)-3. If your leasing company opts to simply name the method, make sure that they have provided you a separate document with a full explanation to give to lessees who ask for it before or at lease signing. And make sure the leasing company is ready to give the written explanation to lessees who ask for it after lease signing.

- 80 When the lease gives the lessor the right to terminate the lease early because of default (and it always does), default charges must also be disclosed as part of the amount due at early termination. FRB Staff Commentary Comment 4(g)(1)-4.
- 81 12 C.F.R. §§ 213.4(h)(1) and (2).
- 82 In most leasing programs, the lessee is responsible for maintaining and servicing the vehicle, but in a growing number of programs, the lessor is responsible for providing some maintenance and servicing of the vehicle.
- 83 12 C.F.R. §§ 213.4(h)(1) and (2).
- 84 12 C.F.R. § 213.4(i)(2).
- 85 12 C.F.R. § 213.4(k).
- 86 12 C.F.R. § 213.4(l).
- 87 FRB Staff Commentary Comment 4(l)-4.
- 88 12 C.F.R. § 213.4(n).
- 89 FRB Staff Commentary Comment 4(n)-1.
- 90 FRB Staff Commentary Comment 4(n)-1.
- 91 FRB Staff Commentary Comment 4(n)-2.
- 92 12 C.F.R. § 213.4(o).
- 93 FRB Staff Commentary Comment 4(o)-3.
- 94 Insurance purchased by the lessor primarily for its own benefit and absorbed as a business expense and not separately charged to the lessee need not be disclosed under this section even if it provides an incidental benefit to the lessee. FRB Staff Commentary Comment 4(o)-2.
- 95 12 C.F.R. § 213.4(p).
- 96 FRB Staff Commentary Comment 4(p)-1.
- 97 FRB Staff Commentary Comment 4(p)-3.
- 98 12 C.F.R. § 213.4(q).
- 99 Lessors are not required to disclose collection costs or attorney fees that are not imposed automatically, such as those

contingent upon the lessor incurring the fees in conjunction with a collection proceeding or upon the employment of an attorney to effect collection. FRB Staff Commentary Comment 4(q)-1.

100 12 C.F.R. § 213.4(r).

101 For the purposes of this disclosure, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is not limited to, security interests under the Uniform Commercial Code; real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded; mechanic's, materialman's, artisan's, and other similar liens; vendor's liens in both real and personal property; liens on property arising by operation of law; and any interest in a lease when used to secure payment or performance of an obligation. FRB Staff Commentary Comment 2(o).

102 See for example, Cal. Civ. Code §§ 2985.7 *et seq.*; N.Y. Pers. Prop. Law §§ 331 *et seq.*

103 See for example, Mich. Comp. Laws §§ 445.991 *et seq.*; Okla. Stat. tit. 14A § 2-311.

104 15 U.S.C. § 1667b(b).

105 Not all amounts collected in connection with an early termination are part of the "charge for early termination" subject to the 183(b) limits. For example, past due payments should not be considered part of the "charge for early termination" just because the lessor seeks to collect them in connection with an early termination. And while not free from doubt, a charge that is assessed at both scheduled termination and early termination is probably not part of the "charge for early termination" subject to the 183(b) limits. So, for example, a disposition fee that is charged at both early and scheduled termination is likely not a "charge for early termination" subject to this standard.

Conversely, any charge that is assessed at early termination, but not at scheduled termination, might be considered part of the charge for early termination subject to the 183(b) limits. For example, if a lease agreement charges the lessee for selling expenses at early termination, but not at scheduled termination, the selling expenses are likely to be treated as part of the charge for early termination. If this is the case, it might be difficult to justify such expenses as a "harm" caused by early termination if the lessor would have incurred and absorbed as a cost of doing business, substantially the same expenses at the scheduled end of the lease.

106 15 U.S.C. § 1667b(b). The 183(b) limits require that delinquency and default charges be reasonable in light of the anticipated and actual harm caused by the delinquency or default. This suggests that these charges should bear a reasonable relationship to the lessor's predicted costs resulting from delinquency or default.

107 15 U.S.C. § 1667b(a).

108 12 C.F.R. §§ 213.4(h)(1) and (2). While literally the "reasonableness" standard applies only to the standards for identifying excess wear and mileage, it is likely that a court or regulator would apply the limitation to the actual charges assessed. "Reasonable" in this context suggests that the excess wear charges should bear a reasonable relationship to anticipated or actual cost to the lessor resulting from the excess wear. Lease agreements frequently link the excess wear charge to the lessor's estimated or actual cost to repair the excess wear. But a lessor might also be able to justify linking the charge to the diminished value of the leased vehicle resulting from the wear.

Similarly, a reasonable excess use/mileage charge should bear a reasonable relationship to the anticipated or actual cost to the lessor resulting from the excess use/mileage. Lease agreements typically establish a total allowed mileage based on a per year allowance and assess a charge at the scheduled end of the lease for mileage in excess of the allowed total at fixed price per mile.

109 See for example, Cal. Civ. Code § 2987; N.H. Rev. Stat. §§ 361-D:16 *et seq.*

- 110 See 12 C.F.R. § 226.18(c)(1)(iii).
- 111 12 C.F.R. § 213.4(o).
- 112 See for example, Assurance of Voluntary Compliance, *Commonwealth of Pennsylvania Office of the Attorney General v. Paxton Associates, Inc. D/B/A Faulkner Honda*, No. 2019-CV-2628-MD (Pa. Ct. Com. Pl. Dauphin).
- 113 The NADA *Driven* publication entitled [NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy](#) provides dealers with an optional policy template for promoting compliance related to the sale of voluntary protection products.
- 114 In some states, the exercise of a lease purchase option must be handled in this way because a motor vehicle dealer license is required to handle the transaction and the leasing company is not eligible to obtain the required license.
- 115 While not free from doubt, a strong case can be made that, if properly disclosed, the dealer is free to sell separate optional products and services to the lessee for additional consideration above and beyond the lease purchase option price.
- 116 See *Schreiber v. Ally Financial*, 634 Fed. Appx. 263 (11th Circuit, 2015)(Purported class action alleging a Reg. M violation for failing to disclose that lessee would be required to pay a documentation fee in connection with the exercise of the lessee's purchase option); *Schiff v. Mazda Motor of America*, 102 F. Supp. 2d 891 (S.D. Ohio 2000)(Alleged breach of contract for charging a documentary fee in addition to the lease purchase option price); *Frost v. Mazda Motor of America*, 540 S.E.2d 324 (N.C. 2000)(Purported class action alleging multiple dealerships violated Reg M and breached the lease contract for charging a documentary fee in addition to the lease purchase option price); *Zelman v. Nissan Motor Acceptance Corp.*, 57 Fed. Appx. 415 (Fla. 2002)(Alleged Reg M violation for failing to disclose documentary fee would be added to the lease purchase option price.)
- 117 12 C.F.R. § 213.2(f).
- 118 15 U.S.C. § 7001, *et seq.*
- 119 See 12 C.F.R. § 226.17(a)(1). Not all state regulators will necessarily acknowledge E-SIGN preemption of state law, so if the law of your state restricts the use of electronic records in vehicle financing transactions, it is advisable to check on the position of any state regulator with jurisdiction over vehicle financing, and then determine with your legal counsel how you will handle any potential conflict between the E-SIGN Act and your state law. Reportedly, some title clerks may refuse to accept electronic contracts as evidence of a sale for titling purposes. If this occurs, you can print out a copy of the electronic contract or provide whatever other document the title clerk requires so as not to delay the titling of the vehicle or the perfection of the finance company's security interest in the vehicle.
- 120 For this purpose, recordings of oral communications are not considered electronic records. 15 U.S.C. § 7001(c)(6).
- 121 15 U.S.C. § 7001(c)(1)(C)(ii).

Acknowledgment

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