

SECTION 22: LEASING / REGULATION M TRIGGER TERMS

Federal Law
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GENERAL RULE

Dealer advertising that features vehicle lease offers is subject to federal law prohibiting deceptive advertising and to Regulation M, which typically applies and requires disclosures that the transaction is a lease, the total amount due at lease signing, whether or not a security deposit is required and the number, amount and timing of the scheduled lease payments.



DISCUSSION

Under federal law, dealer advertising (in any medium) that includes vehicle lease offers must be truthful and not misleading. For example, vehicle lease terms should not be advertised by a dealer unless they are actually available and a vehicle lease offer should not be advertised in a manner that leads a consumer to believe the offer is for a vehicle purchase. For more information on this topic, see the FTC publication entitled "Advertising Consumer Leases."

As it relates to advertising, the purpose of the federal Consumer Leasing Act and its implementing Regulation M is to have lease terms disclosed to consumers in a meaningful way so that the terms can be understood and compared. Advertising for purposes of Regulation M includes any "commercial message in any medium that directly or indirectly promotes a consumer lease transaction." A "consumer lease" under this regulation basically means a lease contract "for the use of personal property by a natural person primarily for personal, family or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount." The threshold amount referred to in Regulation M (\$54,600 as of January 1, 2015) is subject to an annual CPI adjustment. Consumer leases are described as "closed-end" if they do not fit the definition of an "open-end" lease, which is a lease that provides for the lessee to be liable at the end of

the lease term for the difference between the residual value of the leased vehicle and its realized value. Given the current status of vehicle lease programs available from financial institutions, dealers typically do not advertise open-end leases.

Trigger Terms. Similar to the approach followed by Regulation Z regarding credit offers, if certain information (a "trigger term") is included in a consumer lease advertisement, then additional key information regarding the lease offer must be disclosed. Specifically, each of the following is a trigger term under Regulation M:

- ▶ The amount of any payment (for example, a \$199 monthly payment)
- ▶ A statement of any capitalized cost reduction or other payment or even that no payment is required (for example, \$0 down)

As a practical matter, dealer advertising involving consumer lease offers typically includes a Regulation M trigger term because a lease payment (usually the monthly payment) is featured. When a trigger term is advertised, the following information must be disclosed clearly and conspicuously in the advertisement:

- ▶ That the transaction advertised is a lease
- ▶ The amount due prior to or at the lease signing ("consummation") or by delivery (if delivery occurs after consummation)
- ▶ The number, amounts and due dates or periods of scheduled payments under the lease (for example, \$425 per month for 36 months)
- ▶ A statement of whether or not a security deposit is required

Note that if the lease advertised is open-end, there must also be a statement that an extra charge may be imposed on the lessee at the end of the lease term. Note also that the due dates or periods of scheduled payments disclosure requirement is typically satisfied by stating that monthly payments are involved. Sometimes a single advertisement may feature multiple vehicle lease offers with only one such offer having a total contractual obligation amount that does

not exceed the threshold amount. In this situation, the Federal Reserve Board Official Staff Commentary to Regulation M (“Regulation M Commentary”) indicates the entire advertisement must make the required disclosures under Regulation M.

Amount Due at Lease Signing. In making the required disclosure of the amount due at lease signing, Regulation M and the Regulation M Commentary provide the following direction:

- ▶ The amounts that make up the total amount due at lease signing do not need to be itemized.
- ▶ Dealers must not disclose any component part of the amount due at signing (for example, the down payment amount) in a manner that is more “prominent” than the total amount due at lease signing. Note that the monthly payment amount may be displayed more prominently than the total amount due at signing.
- ▶ Third-party fees such as taxes and license, which vary by state, may be excluded from the amount due at signing, but it must be clearly and conspicuously disclosed to a consumer that those amounts are due in addition to the amount due at signing.

Dealers should be very cautious in advertising \$0 due at lease signing offers. Such offers can easily be construed as misleading if significant fees and charges (for example, an acquisition fee) must be paid by a consumer at the beginning of a lease. As discussed below, the FTC is active in pursuing enforcement actions against dealers relating to such offers. Dealers should also be careful to avoid disclosing the amount due at lease signing in a misleading manner when manufacturer rebates are applicable. A good practice in this situation is to disclose the amount due at lease signing and then break out the manufacturer rebate amount and the amount the consumer is out of pocket. For example, an advertisement could disclose \$1,500 due at lease signing (\$1,000 out of pocket plus \$500 manufacturer rebate). Certainly any material restrictions and qualifications that apply to the rebate (for example, that a consumer must currently be leasing a competitive-make vehicle) should be clearly and conspicuously disclosed.

Lease Rates. Regulation M requires dealer advertising that includes a lease rate reference to be accompanied by a disclosure that reads, “This percentage may not measure the overall cost of financing this lease.” This disclosure must be displayed in the advertisement at least as prominently as the lease rate. A dealer should not use the term “annual percentage rate” or “annual lease rate” or similar terms in connection with lease advertising.

Television/Radio Disclosure Alternative. Regulation M recognizes an alternative approach for making the required disclosures in television or radio closed-end lease advertisements that include a trigger term. Specifically, if the advertisement references a toll-free telephone number that a consumer can use to obtain all of the lease offer information, it does not need to disclose whether a security deposit is required, but still must disclose the information that the transaction is a lease, the total amount due at lease signing, and the number, amounts and due dates or periods of scheduled payments under the lease. The toll-free telephone number must be available for at least 10 days (beginning with the date of the broadcast) and a consumer must be able to request and receive in writing the lease offer information. As an alternative to the toll-free telephone number, the advertisement may direct a consumer to a written advertisement in a publication of general circulation in the community served by the media station, by including the name and date of the publication and stating that the required lease information is disclosed in that advertisement. The written advertisement must be published at least three days before and end at least 10 days after the broadcast. This alternative method of making Regulation M disclosures is of limited practical value to dealers because the only required disclosure that can be left out is whether a security deposit is required and the telephone or print methods of making the disclosures are burdensome. There is no exception recognized under federal law that permits a dealer radio or television advertisement with a Regulation M trigger term to refer to a website for the additional lease information as an alternative to disclosing that information in the actual advertisement.

Merchandise Tag. Another alternative disclosure approach recognized under Regulation M relates to the use of merchandise tags. Under this approach, if a merchandise tag placed on a vehicle includes a Regulation M trigger term, the tag would not be required to include all of the lease information if it references a sign or display at the dealership that is prominently posted and includes a table or schedule of the required Regulation M disclosures.

Internet Advertisement. Under Regulation M, a catalog or multiple-page advertisement, or an advertisement on an Internet website, is considered a “single advertisement,” which allows the advertisement to use a table, chart or schedule to make the required disclosure of lease information. However, in this situation there must be a communication that clearly directs or links a consumer to the table, chart or schedule.

Clear and Conspicuous. All disclosures required under Regulation M must be made in a manner that is clear and conspicuous, which basically means they are reasonably understandable to a consumer. The Regulation M Commentary acknowledges that this manner of disclosure does not have specific technical requirements, but does indicate that making such disclosures by means of fine print in a television advertisement or rapidly stated information in a radio advertisement is not satisfactory if the required information cannot be comprehended by consumers. Dealer advertising that includes lease offers should also disclose in a clear and conspicuous manner any material restrictions and conditions that may apply (for example, the expiration date of the lease offer, and that it is subject to credit approval or insurability requirements). (See the [Clear and Conspicuous Disclosures Section](#) for a further discussion of this topic.)

State Law Comment. Some states have laws that specifically apply to dealer lease advertising. One state law requires such advertising to disclose any mileage limit and any excess mileage charge that applies to the lease offer.

FTC Enforcement. The FTC has over the years initiated numerous enforcement actions against dealers based

upon deceptive lease advertising that fails to comply with the disclosure requirements of Regulation M. In April of 2000, the FTC pursued enforcement actions against two dealers relating to Internet lease ads. The FTC asserted that the required Regulation M disclosures were either not made or were buried in inconspicuous and unreadable fine print. Additionally, with respect to one of the dealers, the FTC asserted that an advertisement included a representation of a lease rate but failed to make the disclosure that the rate may not reflect the overall cost of financing the lease. In January of 2014, the FTC pursued several dealers for deceptive lease advertising that featured \$0 due at lease signing, when in fact there were several thousand dollars in fees and other amounts due at lease signing.



CROSS-REFERENCES

- ▶ [Clear and Conspicuous Disclosures Section](#)
- ▶ [Advertising Definition Section](#)



REFERENCE MATERIALS

- ▶ Section 5 of the FTC Act, 15 U.S.C. § 45
- ▶ Consumer Leasing Act (Chapter 5 of the Truth in Lending Act), 15 U.S.C. § 1601 et seq.
- ▶ Regulation M, 12 C.F.R. § 213.7
- ▶ FTC Press Release dated April 27, 2000: [“Auto Dealers Settle FTC Charges that Internet Ads Hid True Costs of Leasing”](#)
- ▶ FTC Press Release dated January 9, 2014: [“FTC Announces Sweep Against 10 Auto Dealers: ‘Operation Steer Clear’ Drives Home that Auto Ads Must Be Truthful”](#)
- ▶ FTC Publication: [“Advertising Consumer Leases”](#)
- ▶ Federal Reserve Board Official Staff Commentary to § 213.7, Regulation M



AD EXAMPLES

- ▶ [Example F, pp. 14-15](#)
- ▶ [Example G, pp. 16-17](#)

CLOSED-END LEASE ADVERTISING	
Regulation M Trigger Terms	Required Follow-On Disclosures If Any Trigger Term Is Used
Amount of any payment	Transaction advertised is a lease
Statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation	Total amount due prior to or at consummation or by delivery, if delivery occurs after consummation
	Number, amounts, and due dates or periods of scheduled payments under the lease
	Statement of whether or not a security deposit is required

SECTION 29: REGULATION Z TRIGGER TERMS



GENERAL RULE

Pursuant to Regulation Z, dealer advertising that includes the amount or percentage of any down payment, the number of payments, the amount of any payment, or the amount of any finance charge relating to an offer to sell a vehicle, must disclose additional information that gives a consumer a complete understanding of the terms and costs of the purchase.



DISCUSSION

The primary purpose of the federal Truth in Lending Act (TILA) and Regulation Z, which implements TILA, is to “ensure that credit terms are disclosed in a meaningful way so that consumers can compare credit terms more readily and more knowledgeably.”

Trigger Terms. Dealer advertising (in any medium) that includes an offer to sell a vehicle on a one-time credit transaction basis (defined as “closed-end credit” as opposed to open-end credit, which typically involves a credit line that a consumer may access multiple times) must disclose clearly and conspicuously additional information regarding the offer, if any one of the following terms (“trigger terms”) is displayed or mentioned:

- ▶ The amount or percentage of any down payment
- ▶ The number of payments or period of repayment
- ▶ The amount of any payment
- ▶ The amount of any finance charge

The additional information that must be disclosed when a trigger term is advertised includes all of the following:

- ▶ The down payment (amount or percentage), if any
- ▶ The terms of repayment
- ▶ The annual percentage rate using that term or the abbreviation “APR.” (Note that if the APR is to be increased after the vehicle purchase, that fact must also be disclosed.)

Dealers should be aware that the following items are not trigger terms under Regulation Z and therefore do not require the disclosure of additional information as discussed previously:

- ▶ Advertising that there is no down payment
- ▶ Advertising an annual percentage rate (or APR) by itself (for example, 0% APR limited term financing). Note that the disclosures required by Regulation Z must be made if the term (for example, 0% APR financing for 60 months) of the APR is included in the advertisement.

The Federal Reserve Board Staff Commentary to Regulation Z (“Regulation Z Commentary”) recognizes that certain flexibility exists in the manner in which the required disclosures are made. First of all, using a typical example transaction (when there is a range of possible combinations of credit terms) is acceptable if all of the required disclosures are made and the terms disclosed are available. The typical transaction should be labeled as an example in the advertising. Additionally, a down payment disclosure may state a dollar amount or a percentage. Examples of down payment disclosures that should be acceptable include: “\$2,000 cash or trade-in required from buyer,” or “10% down,” or “down payment ranges from 10 to 20% depending on credit” (if such a range is typical).

Dealers should understand that the “terms of repayment” include the amount of the payments, including any balloon payment, the number of payments, and also the period of the payments (monthly, bi-monthly, weekly, or otherwise). The Regulation Z Commentary further recognizes that terms of repayment may be disclosed as a “unit cost.” An example of this approach is “0% APR financing for 60 months at \$16.67 per month per \$1,000 financed with 10% down.”

Internet Advertisement. Under Regulation Z, a catalog or multiple-page advertisement, or an advertisement on an Internet website, is considered a “single advertisement,” which allows the advertisement to use a table or schedule to make the required disclosure

of cost information. However, in this situation, there must be a communication that clearly directs or links a consumer to the table or schedule.

Clear and Conspicuous. The Regulation Z Commentary also acknowledges that there are no specific rules in terms of type size or display format under the clear and conspicuous standard that applies to making the disclosures required by Regulation Z. Under this standard, the basic principal is that the disclosures must be made in a manner that is reasonably understandable to a consumer. (See the [Clear and Conspicuous Disclosures Section](#) for a further discussion of this topic.)

State Law Comment. Note that a number of states have laws that also require dealer advertising to comply with the disclosure requirements of Regulation Z.

FTC Enforcement. The FTC has brought numerous enforcement actions over the years against dealers regarding deceptive advertising that fails to comply with the disclosure requirements of Regulation Z. In January of 2014, the FTC filed complaints against several dealers on this basis. In these actions, the FTC focused on advertisements that featured an offer of low monthly payments to purchase a vehicle, but failed to clearly and conspicuously disclose material information regarding the offer (any disclosures relating to terms of repayment were made in fine print that was not easily readable). In one advertisement, the low monthly payments were based upon an APR available only for the first few months of the financing term. In another advertisement, there was a balloon payment exceeding \$10,000 due at the end of the financing term.



KEY REMINDERS

- ▶ Pursuant to Regulation Z, dealer advertising that references an amount or percentage of down payment, the number of payments, the amount of any payment, or the amount of any financing charge regarding the sale of a vehicle, must disclose additional information regarding the terms and costs of the transaction.
- ▶ Disclosures required by Regulation Z must be made clearly and conspicuously, so that they are reasonably understandable to a consumer.



CROSS-REFERENCES

- ▶ [Credit Advertising Section](#)
- ▶ [Clear and Conspicuous Disclosures Section](#)



REFERENCE MATERIALS

- ▶ Regulation Z, 12 C.F.R. § 226.24
- ▶ Truth in Lending Act, 15 U.S.C. § 1601 et seq.
- ▶ FTC Press Release dated January 9, 2014: [“FTC Announces Sweep Against 10 Auto Dealers: ‘Operation Steer Clear’ Drives Home That Auto Ads Must Be Truthful”](#)
- ▶ Federal Reserve Board Staff Commentary to § 226.24(b) and (d), Regulation Z



AD EXAMPLES

- ▶ [Example A, pp. 4-5](#)
- ▶ [Example B, pp. 6-7](#)

CLOSED-END CREDIT ADVERTISING	
Regulation Z Trigger Terms	Required Follow-On Disclosures If Any Trigger Term Is Used
Amount or percentage of down payment	Amount or percentage of down payment
Number of payments or period of repayment	Terms of repayment (which reflect repayment obligations over full term of contract, including any balloon payment)
Amount of any payment	Annual percentage rate (must use that term or "APR" and, if applicable, must state that rate may be increased after consummation)
Amount of any finance charge	