

12073

SENATE

TRANSPORTATION

The Undersigned Seller (Creditor) SEEKINS FORD LINC-MERC, INC. Sells  
 and the Undersigned Buyer UPSIDE DOWN JOE Buys  
 the following described property and promises to pay on the terms set forth below and on the reverse side of this agreement. Buyer acknowledges and  
 represents that the property is being purchased primarily for: (a) Personal or Family use  (b) Commercial or Business use  (check one)

YEAR	TRADE NAME	MODEL	BODY TYPE	IDENTIFICATION NUMBER	NEW/USED
2006	FORD TRUCK	F-150 SERIES	SUPERCREW 4X4	1ETPM14586EA27882	NEW

**COMPREHENSIVE AND COLLISION INSURANCE REQUIRED:** Buyer must immediately procure Comprehensive and Collision insurance coverage. This insurance must contain a Loss Payable Clause Endorsement naming Wells Fargo Bank, N.A. ("WFB") as Lienholder. This insurance may be procured through and placed with Buyer's choice of broker and company, subject to WFB's right to refuse to accept an insurer for reasonable cause. If proof of this insurance is not provided to WFB within fifteen (15) days of the date of this Contract, WFB may, at its option, order a policy to protect its interest in the collateral and Buyer must pay for such policy or, at WFB's option, such costs shall be added to the balance of Buyer's loan. This insurance will not include "bodily injury," "public liability," and "property damage liability," and will not comply with any state financial responsibility law. **MAXIMUM DEDUCTIBLE IS \$600.**

**ITEMIZATION OF AMOUNT FINANCED**

Sales Price	\$ <u>35900.00</u>	Amounts Paid on Consumer's behalf (Seller may be retaining a portion of these amounts)	
Document Fee	\$ <u>295.00</u>	Extended Service	\$ <u>N/A</u> To <u>N/A</u>
Total Cash Price	\$ <u>36275.00</u> (1)	Rust Proofing	<u>N/A</u> To <u>N/A</u>
Down Payment		GAP Coverage	<u>499.00</u> To <u>CLASSIC GAP</u>
Cash	\$ <u>N/A</u>	Credit Life	<u>N/A</u> To Insurance Companies
Positive Trade In Value	\$ <u>0.00</u>	Credit History	<u>N/A</u> To Insurance Companies
		Tax/License/Recording Fees	<u>130.00</u> To Public Officials
<b>FORD TRUCK EXPEDITION 2005</b>		Excess of Lien Over Trade Value	<u>3586.00</u> Total \$ <u>4215.00</u> (4)
MAKE MODEL YEAR		Amount Financed (2 + 4)	\$ <u>40490.00</u> (6)
Total Down Payment	\$ <u>0.00</u> (2)	Finance Charge	\$ <u>12560.80</u> (5)
Net Cash Price (1 minus 2)	\$ <u>36275.00</u> (3)	Total of Payments (6 + 5)	\$ <u>53050.80</u> (7)
		Total Sale Price (1 + 4 + 6)	\$ <u>53050.80</u> (8)

Amount Financed	FINANCE CHARGE	ANNUAL PERCENTAGE RATE	Total of Payments	Total Sale Price
\$ <u>40490.00</u>	\$ <u>12560.80</u>	<u>11.00</u> %	\$ <u>53050.80</u>	\$ <u>53050.80</u>
The amount of credit provided to you or on your behalf.	The dollar amount the credit will cost you.	The cost of your credit as a yearly rate.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your credit purchase, including your down payment of \$ <u>0.00</u>

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
<u>59</u>	\$ <u>884.18</u>	<b>MONTHLY BEGINNING 04/14/2006</b>
<u>1</u>	\$ <u>884.18</u>	<b>FINAL PAYMENT DUE ON 03/14/2011</b>

In any event, the final payment will be the sum of the outstanding principal balance, accrued interest to the date of payment, late charges, and any accrued costs including insurance and attorney fees.

**CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT.** It will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Single Credit Life	\$ <u>N/A</u>	I want single credit life insurance. <input checked="" type="checkbox"/> Signature _____
Single Credit Disability	\$ <u>N/A</u>	I want single credit disability insurance. <input checked="" type="checkbox"/> Signature _____
Joint Credit Life	\$ <u>N/A</u>	We want joint credit life insurance. <input checked="" type="checkbox"/> Signature _____ <input checked="" type="checkbox"/> Signature _____
Joint Credit Disability	\$ <u>N/A</u>	We want joint credit disability insurance. <input checked="" type="checkbox"/> Signature _____ <input checked="" type="checkbox"/> Signature _____

**SECURITY:** Buyer grants Seller a security interest in the goods or property being purchased and (brief description of other property, if applicable):

**PREPAYMENT:** If you pay off early, you will not have to pay a penalty.

**LATE CHARGE:** If a payment is 15 or more days late, you will be charged the lesser of 10% of the delinquent payment or \$25.00. This charge shall not be imposed more than once for each delinquent payment. In the event that part of a payment is 15 or more days late, the late charge shall be assessed only against the delinquent portion of the payment.

**Arbitration Clause:** The terms and conditions on the reverse side of this document are part of the contract. Read these terms and conditions in their entirety.

The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the finance charge.

Before removing the vehicle described below from the State of Alaska, I must obtain written permission from the lienholder named on the vehicle title and/or registration as required by Section 28.10.491 of the Alaska Motor Vehicle Act. Wells Fargo Bank, N.A. will not authorize removal from U.S.A.

See your contract for details for details on late payment, default, right to accelerate, security interests, and any required repayment in full before the scheduled date.

**NOTICE TO BUYER**

THE TERMS AND CONDITIONS APPEARING ON THE BACK HEREOF ARE PART OF THIS SECURITY AGREEMENT

9074694067

Seekins Ford

12:46:16 p.m

03-02-2006

7/9

Documents Fee

WELLS FARGO (CONT)

295.00

Extended Service

\$ N/A To N/A

Rust Proofing

N/A To N/A

GAP Coverage

499.00 To CLASSIC GAP

Credit Life

N/A To Insurance Companies

Credit Disability

N/A To Insurance Companies

Tax/License/Recording Fees

130.00 To Public Officials

Process of Lien Over Trade Value

3586.00 Total \$ 4215.00 (4)

Amount Financed (2 + 4)

\$ 40490.00 (5)

Finance Charge

\$ 12560.80 (6)

Total of Payments (5 + 6)

\$ 53050.80 (7)

Total Sale Price (1 + 4 + 6)

\$ 53050.80 (8)

Total Cash Price

\$ 36275.00 (1)

Down Payment

\$ N/A

Cash

\$ 0.00

Positive Trade In Value

\$ 0.00

FORD TRUCK EXPEDITION 2005

MAKE MODEL YEAR

Total Down Payment

\$ 0.00 (2)

Net Cash Price (1 minus 2)

\$ 36275.00 (3)

Amount Financed	FINANCE CHARGE	ANNUAL PERCENTAGE RATE	Total of Payments	Total Sale Price
\$ 40490.00	\$ 12560.80	11.00 %	\$ 53050.80	\$ 53050.80
The amount of credit provided to you or on your behalf.	The dollar amount the credit will cost you.	The cost of your credit as a yearly rate.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your credit purchase, including your down payment of \$ 0.00

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
59	\$ 884.18	MONTHLY BEGINNING 04/14/2006
1	\$ 834.18	FINAL PAYMENT DUE ON 03/14/2011

In any event, the final payment will be the sum of the outstanding principal balance, accrued interest to the date of payment, late charges, and any accrued costs including insurance and attorney's fees.

CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Single Credit Life	\$ N/A	I want single credit life insurance. <input checked="" type="checkbox"/> Signature
Single Credit Disability	\$ N/A	I want single credit disability insurance. <input checked="" type="checkbox"/> Signature
Joint Credit Life	\$ N/A	We want joint credit life insurance. <input checked="" type="checkbox"/> Signature
Joint Credit Disability	\$ N/A	We want joint credit disability insurance. <input checked="" type="checkbox"/> Signature

SECURITY: Buyer grants Seller a security interest in the goods or property being purchased and (unless disavowed) of other property. It is understood:

PREPAYMENT: If you pay off early, you will not have to pay a penalty.

LATE CHARGE: If a payment is 15 or more days late, you will be charged the lesser of 10% of the delinquent payment or \$25.00. This charge shall not be imposed if more than one late payment is made in the same month. In the event that part of a payment is 15 or more days late, the late charge shall be assessed only against the delinquent portion of the payment.

Arbitration Clause: The terms and conditions on the reverse side of this document are part of the contract. Read these terms and conditions in their entirety.

The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the finance charge.

Before removing the vehicle described below from the State of Alaska, I must obtain written permission from the lienholder named on this vehicle title & other registration as required by Section 28.10.491 of the Alaska Motor Vehicle Act. Wells Fargo Bank, N.A. will not authorize removal from U.S.A.

See your contract for details for additional information about assignment, defect, right to rescind, security interests, and any required requirements to fill before the scheduled date.

NOTICE TO BUYER

THE TERMS AND CONDITIONS APPEARING ON THE BACK HEREOF ARE PART OF THIS SECURITY AGREEMENT.

(a) Do not sign this Contract before you read it or if any space intended for the agreed terms, except as to unavoidable information, are blank. (b) You are entitled to a copy of this Contract at the time you sign it. (c) You may at any time pay off the full unpaid balance due under this Contract.

NOTICE: Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

Co-Buyers and Other Owners - A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner knows that the Creditor has a security interest in the vehicle and consents to the security interest. The Buyer(s) hereby consent to release of information concerning the debt to all owners of the vehicle.

Other owner signs here:

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO, and shall apply to, inure to the benefit of and bind the heirs, executors, administrators, successors and assigns of the Buyer and Seller. The Buyer hereby acknowledges receipt of a true copy hereof prior to consummation and all Buyers are jointly and severally liable.

Seller Intends to Assign this Agreement to Wells Fargo Bank, N.A.

SEEKINS FORD-LINC-MERC., INC.

Buyer's Signature(s)

02/28/2006

By

UPSIDE DOWN JOE

1625 SEEKINS FORD DRIVE

FAIRBANKS AK 99701

-555 DOWNSIDE DRIVE

FEBRUARY 28th, 2006

FAIRBANKS AK

**DETAILED INSTALLMENT SALES CONTRACT**

907 4694057

Seekins Ford

12:46:49 p.m.

03-02-2006

B / 9

Buyer (and Co-Buyer) Name and Address

UPSIDE DOWN JOE  
-555 DOWNSIDE DRIVE  
FAIRBANKS AK

AK USA FOLL

CREDITOR-SELLER (Name and Address)

SEEKINS FORD-LINC-MERC., INC.  
1625 SEEKINS FORD DRIVE  
FAIRBANKS AK 99701

"You" and "your" refer to the Buyer (and Co-Buyer, if any) of the Property Being Purchased. "Creditor" or "Seller" refers to the seller of the Property Being Purchased. "Creditor" includes the party to whom this contract is assigned, if any. You may buy the goods or property described below for cash or on credit. The cash price is shown below as "Cash Sale Price." The credit price is shown below as "Total Base Price." By signing this contract, you agree to buy the goods or property on credit under the agreements on the front and back of this contract. You agree to pay the Creditor for the Amount Financed and Finance Charge according to the payment schedule shown below. Creditor will figure the Finance Charge on a daily basis.

**PROPERTY BEING PURCHASED (COLLATERAL)**

New/Used	Year and Make	Model	GVW If Truck (lbs.)	Identification Number	Use For Which Purchased
NEW	2006 FORD TRUCK	F-150 SERIE 5324		1FTPH14586FA27882	<input checked="" type="checkbox"/> Personal, Family or Household <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial

Trade-In	2005 FORD TRUCK	\$ 14000.00	\$ 17586.00
	Year and Make	Gross Allowance	Amount Owning

**ITEMIZATION OF AMOUNT FINANCED**

1. Cash Sale Price	PRICE INCLUDES \$ 295.00 DOC FEE	\$ 36275.00	(1)
2. Down Payment			
Rebate Assigned to Creditor	\$ N/A		
Cash Down Payment	\$ N/A		
Other	\$ N/A		
Trade-In (description above)	\$ N/A		
Total Down Payment		\$ 0.00	(2)
3. Unpaid Balance of Cash Sale Price (1 minus 2)		\$ 36275.00	(3)
4. Amounts paid on your behalf (Seller may be retaining a portion of these amounts.)			
To Public Officials for:			
(I) license, title & registration fees	\$ 130.00		
(II) U.C.C. fees	\$ N/A		
(III) taxes (not in Cash Sale Price)	\$ N/A	\$ 130.00	
To Insurance Companies for:			
Credit Life Insurance	\$ N/A		
Credit Disability Insurance	\$ N/A		
Other Insurance	\$ N/A		
Other Charges			
To	\$ N/A	\$ N/A	
To CLASSIC GAP for GAP	\$ 499.00		
To FORD MOTOR CREDIT for TRADE-IN PAYOFF	\$ 3586.00		
Total	\$ 4215.00		(4)
5. Amount Financed (3 plus 4)		\$ 40490.00	(5)

**INSURANCE**

INSURANCE ON THE GOODS OR PROPERTY BEING PURCHASED MAY BE OBTAINED FROM A PERSON OF YOUR CHOICE.

THE INSURANCE COVERAGE ORDERED UNDER THE TERMS OF THIS CONTRACT DOES NOT INCLUDE 'BODILY INJURY LIABILITY,' 'PUBLIC LIABILITY,' AND 'PROPERTY DAMAGE LIABILITY' COVERAGE.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

Credit Life \_\_\_\_\_ Insurer \_\_\_\_\_  
 \$ N/A  
 Premium \_\_\_\_\_ Insured(s) \_\_\_\_\_  
 Signature(s) \_\_\_\_\_

Credit Disability \_\_\_\_\_ Insurer \_\_\_\_\_  
 \$ N/A  
 Premium \_\_\_\_\_ Insured \_\_\_\_\_  
 Signature \_\_\_\_\_

N/A \_\_\_\_\_ N/A \_\_\_\_\_  
 Type of Insurance \_\_\_\_\_ Term \_\_\_\_\_  
 N/A \_\_\_\_\_ \$ N/A \_\_\_\_\_  
 Insurer \_\_\_\_\_ Premium \_\_\_\_\_  
 Signature \_\_\_\_\_

Credit Life and Credit Disability Insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you on this date.

**Required Insurance**

Creditor requires buyer to acquire and maintain comprehensive and collision insurance for the term of this contract in an amount equal to the cash value of the

**FEDERAL TRUTH-IN-LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase on credit, including your down payment of
11.00 %	\$ 12573.40	\$ 40490.00	\$ 53063.40	\$ 53063.40

Payment Schedule:	Number of Payments	Amount of Each Payment	When Payments Are Due
	59	\$ 884.39	Monthly starting 04/14/2006
	1 final	\$ 884.39	DUE ON: 03/14/2011

Prepayment: If you pay off your debt early, you will not have to pay a penalty.  
 Late Payment: If your payment is late seven days or more, you will be charged the greater of 20% of the

Trade-in (description above) \$ N/A  
 Total Down Payment \$ 0.00 (2)  
 3. Unpaid Balance of Cash Sale Price (1 minus 2) \$ 36275.00 (3)  
 4. Amounts paid on your behalf (Seller may be retaining a portion of these amounts.)  
 To Public Officials for  
 (i) license, title & registration fees \$ 130.00;  
 (ii) U.C.C. fees \$ N/A;  
 (iii) taxes (not in Cash Sale Price) \$ N/A \$ 130.00  
 To Insurance Companies for:  
 Credit Life Insurance \$ N/A  
 Credit Disability Insurance \$ N/A  
 Other Insurance \$ N/A  
 Other Charges  
 To N/A for N/A \$ N/A  
 To CLASSIC GAP for GAP \$ 499.00  
 To FORD MOTOR CREDIT for TRADE-IN PAYOFF \$ 3586.00  
 Total \$ 4215.00 (4)  
 5. Amount Financed (3 plus 4) \$ 40490.00 (5)

CREDIT LIFE, CREDIT DISABILITY, AND PROPERTY DAMAGE LIABILITY COVERAGE.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

Credit Life \_\_\_\_\_ Insurer \_\_\_\_\_  
 \$ N/A Premium \_\_\_\_\_ Insured(s) \_\_\_\_\_  
 Signature(s) \_\_\_\_\_

Credit Disability \_\_\_\_\_ Insurer \_\_\_\_\_  
 \$ N/A Premium \_\_\_\_\_ Insured \_\_\_\_\_  
 Signature \_\_\_\_\_

N/A Type of Insurance \_\_\_\_\_ Insurer \_\_\_\_\_  
N/A Term \_\_\_\_\_ Premium \_\_\_\_\_  
 Signature \_\_\_\_\_

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase on credit, including your down payment of \$ <u>0.00</u>
<u>11.00</u> %	\$ <u>12573.40</u>	\$ <u>40490.00</u>	\$ <u>53063.40</u>	\$ <u>53063.40</u>

Payment Schedule:

Number of Payments	Amount of Each Payment	When Payments Are Due
<u>59</u>	\$ <u>884.35</u>	Monthly starting: <u>04/14/2006</u>
<u>1 final</u>	\$ <u>884.39</u>	<u>DOE ON: 03/14/2011</u>

**Prepayment:** If you pay off your debt early, you will not have to pay a penalty.  
**Late Payment:** If your payment is late seven days or more, you will be charged the greater of 20% of the interest due or 5 cents, to a maximum of \$25.00. If you are delinquent two payments, or 32 days in the case of a single payment contract, the late fee is not limited.  
**Security Interest:** You are giving a security interest in the goods or Property Being Purchased, as described above. The goods or Property Being Purchased secures other obligations now or hereafter owed by you to the Creditor and other collateral held by the Creditor, including funds on deposit with the Creditor, secures this contract (see reverse side under Security).  
**Additional Information:** See the contract (reverse side) for additional information about nonpayment, default and any required repayment in full before the scheduled date.

Credit Life and Credit Disability Insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you on this date.

**Required Insurance**  
 Creditor requires buyer to acquire and maintain comprehensive and collision insurance for the term of this contract in an amount equal to the cash value of the goods or property, with a loss payable clause in the name of the Creditor, and providing 10 days notice of cancellation to Creditor.


NOTICE TO THE BUYER

- Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.
- The Seller intends to assign this contract to Alaska USA Federal Credit Union.
- Any change in this contract must be in writing and signed by you and the Creditor.

**ASSIGNMENT**  
 By signing below, the Seller accepts this contract. If no other Assignee is named in a separate assignment attached to this contract, the Seller assigns it to Alaska USA Federal Credit Union.

Seller: SEEKINS FORD-LINC-MERC.  
 By \_\_\_\_\_ Date 02/28/06

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.** (Does not apply if purchased for commercial or agricultural use. In that case, you (debtor) will not assert against any assignee or subsequent holder of this contract any claims, defenses or setoffs which you may have against the Seller or manufacturer of the goods purchased.)

**QUESTIONS?**  
  
 PLEASE CALL US AT  
 863-4687  
 1-800-625-9044 (Outside Anchorage)

Buyer acknowledges receipt of a true and completely filled in copy of this contract at the time of signing.  
 \_\_\_\_\_ Date 02/28/2006  
 Buyer's Signature \_\_\_\_\_ Date \_\_\_\_\_ Co-Buyer's Signature \_\_\_\_\_ Date \_\_\_\_\_

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS OF THIS CONTRACT

WHITE - Creditor YELLOW - Seller PINK - Buyer

Luggins

DellB



Advanced Search

DEPOSIT INSURANCE	CONSUMER PROTECTION	INDUSTRY ANALYSIS	REGULATION & EXAMINATIONS	ASSET SALES	NEWS & EVENTS
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[Home](#) > [Regulation & Examinations](#) > [Laws & Regulations](#) > FDIC Law, Regulations, Related Acts

## FDIC Law, Regulations, Related Acts

[\[Main Tabs\]](#)   [\[Table of Contents - 6500\]](#)   [\[Index\]](#)   [\[Previous Page\]](#)   [\[Next Page\]](#)   [\[Search\]](#)

### 6500 - FDIC Consumer Protection

{{2-28-02 p.6641}}

#### PART 226—TRUTH IN LENDING (REGULATION Z)

##### Subpart A—General

###### Sec.

- [226.1 Authority, purpose, coverage, organization, enforcement and liability.](#)
- [226.2 Definitions and rules of construction.](#)
- [226.3 Exempt transactions.](#)
- [226.4 Finance charge.](#)

##### Subpart B—Open-End Credit

- [226.5 General disclosure requirements.](#)
- [226.5a Credit and charge card applications and solicitations.](#)
- [226.5b Requirements for home equity plans.](#)
- [226.6 Initial disclosure statement.](#)
- [226.7 Periodic statement.](#)
- [226.8 Identification of transactions.](#)
- [226.9 Subsequent disclosure requirements.](#)
- [226.10 Prompt crediting of payments.](#)
- [226.11 Treatment of credit balances.](#)
- [226.12 Special credit card provisions.](#)
- [226.13 Billing error resolution.](#)
- [226.14 Determination of annual percentage rate.](#)
- [226.15 Right of rescission.](#)
- [226.16 Advertising.](#)

##### Subpart C—Closed-End Credit

- [226.17 General disclosure requirements.](#)
- [226.18 Content of disclosures.](#)
- [226.19 Certain residential mortgage and variable-rate transactions.](#)
- [226.20 Subsequent disclosure requirements.](#)
- [226.21 Treatment of credit balances.](#)
- [226.22 Determination of annual percentage rate.](#)
- [226.23 Right of rescission.](#)
- [226.24 Advertising.](#)

**Subpart D—Miscellaneous**

- 226.25 Record retention.
- 226.26 Use of annual percentage rate in oral disclosures.
- 226.27 Spanish language disclosures.
- 226.28 Effect on state laws.
- 226.29 State exemptions.
- 226.30 Limitation on rates.

**Subpart E—Special Rules for Certain Home Mortgage Transactions**

- 226.31 General rules.
- 226.32 Requirements for certain closed-end home mortgages.
- 226.33 Requirements for reverse mortgages.
- 226.34 Prohibited acts or practices in connection with credit secured by a consumer's dwelling.
- 226.35 [Reserved]

**Subpart F—Electronic Communication**

- 226.36 Requirements for electronic communication.
- Appendix A—Effect on state laws.
- Appendix B—State exemptions.
- Appendix C—Issuance of staff interpretations.
- Appendix D—Multiple advance construction loans.

{{2-28-02 p.6642}} Appendix E—Rules for card issuers that bill on a transaction-by-transaction basis.

- Appendix F—Annual percentage rate computations for certain open-end credit plans.
- Appendix G—Open-end model forms and clauses.
- Appendix H—Closed-end model forms and clauses.
- Appendix I—Federal enforcement agencies.
- Appendix J—Annual percentage rate computations for closed-end credit transactions.
- Appendix K—Total annual loan cost rate computations for reverse mortgage transactions.
- Appendix L—Assumed loan periods for computations of total annual loan cost rates.

**AUTHORITY:** 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

**SOURCE:** The provisions of this Part 226 appear at 46 Fed. Reg. 20892, April 7, 1981, effective October 1, 1982, and 58 Fed. Reg. 50512, September 28, 1993, except as otherwise provided.

**Subpart A—General****§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.**

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100--86, 101 Stat. 552). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100--0199.

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

(c) *Coverage.* (1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met: (i) the credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly;<sup>(1)</sup>

{<sup>1</sup> The meaning of "regularly" is explained in the definition of "creditor" in § 226.2(a).}

(iii) the credit is subject to a finance charge or is payable by a written agreement in more than 4 installments; and (iv) the credit is primarily for personal, family, or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than 4 installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home equity plans to consumers.

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth: (i) the authority, purpose, coverage, and organization of the regulation; (ii) the definitions of basic terms; (iii) the transactions that are exempt from coverage; and (iv) the method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home equity plans subject to the requirements of §§ 226.5a and 226.5b, respectively. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising rules.

{{12-31-01 p.6643}}

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, Spanish language disclosure in Puerto Rico, record retention, effect on state laws, state exemptions, and rate limitations.

(5) Subpart E contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions.

(6) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total annual loan cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204(c) of Title XII of the Competitive Equality Banking Act of 1987, Pub. L. No. 100--86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

[Codified to 12 C.F.R. § 226.1]

[Section 226.1 amended at 49 Fed. Reg. 46991, November 30, 1984, effective December 31, 1984; 52 Fed. Reg. 43181, November 9, 1987, effective December 9, 1987; 54 Fed. Reg. 13865, April 6, 1989, effective April 3, 1989, but compliance is optional until August 31, 1989; 54 Fed. Reg. 24686, June 9, 1989, effective June 7, 1989, but compliance is optional until November 7, 1989; 60 Fed. Reg. 15471, March 24, 1995, effective March 22, 1995, compliance is optional until October 1, 1995; 66 Fed. Reg. 65617, December 20, 2001, effective December 20, 2001, but compliance is mandatory as of October 1, 2002]

## § 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.* )

(2) *Advertisement* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved]<sup>(2)</sup>

{<sup>2</sup> [Reserved]}

(4) *Billing cycle* or *cycle* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(5) *Board* means the Board of Governors of the Federal Reserve System.

(6) *Business day* means a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial, or agricultural use, or a person who {{12-31-01 p.6644}}has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *Closed-end credit* means consumer credit other than "open-end credit" as defined in this section.

(11) *Consumer* means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15 and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. "Charge card" means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) *Credit sale* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *Creditor* means:

(i) A person (A) who regularly extends consumer credit<sup>(3)</sup>

{<sup>3</sup> A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than five times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more such credit extensions through a mortgage broker.}

that is subject to a finance charge or is payable by written agreement in more than four installments (not including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 226.4(c)(8) (discounts), 226.9(d) (Finance charge imposed at time of

transaction), and 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f), the finance charge disclosures contained in §§ 226.6(a) and 226.7(d) through (g) and the right of rescission set forth in § 226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

(18) *Downpayment* means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

- (i) The creditor reasonably contemplates repeated transactions;
- (ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and
- (iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under §§ 226.6 and 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

- (1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.
- (2) Where the words "obligation" and "transaction" are used in this regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word "credit" is used in this regulation, it means "consumer credit" unless the context clearly indicates otherwise.
- (3) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.
- (4) Footnotes have the same legal effect as the text of the regulation.
- (5) Where the word "amount" is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

[Codified to 12 C.F.R. § 226.2]

[Section 226.2 amended at 46 Fed. Reg. 29245, June 1, 1981; 47 Fed. Reg. 7392, February 19, 1982; 48 Fed. Reg. 14886, April 6, 1983, effective October 1, 1982; 54 Fed. Reg. 13865, April 6, 1989, effective April 3, 1989, but compliance is optional until August 31, 1989; 60 Fed. Reg. 15471, March 24, 1995, effective March 22, 1995, compliance is optional until October 1, 1995; 61 Fed. Reg. 49245,

September 19, 1996, effective October 21, 1996; 69 Fed. Reg. 16773, March 31, 2004]

{{4-30-04 p.6646}}

### § 226.3 Exempt transactions.

This regulation does not apply to the following:

(a) *Business, commercial, agricultural, or organizational credit.*<sup>(4)</sup>

<sup>(4)</sup> The provisions in § 226.12(a) and (b) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.)

(1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over \$25,000 not secured by real property or a dwelling.* An extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds \$25,000 or in which there is an express written commitment to extend credit in excess of \$25,000.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

[Codified to 12 C.F.R. § 226.3]

[Section 226.3 amended at 48 Fed. Reg. 14886, April 6, 1983, effective October 1, 1982]

### § 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Example of finance charge.* The finance charge includes the following types of charges, except for

charges specifically excluded by paragraphs (c) through (e) of this section:

{{10-31-96 p.6647}}

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) *Debt cancellation fees.* Charges or premiums paid for debt cancellation coverage written in connection with a credit transaction, whether or not the debt cancellation coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary, and credit report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in § 167(b) of the act.

(d) *Insurance and debt cancellation coverage.* (1) *Voluntary credit.* Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

{{10-31-96 p.6648}}

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

(2) Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property,<sup>(5)</sup>

{<sup>5</sup> This includes single interest insurance if the insurer waives all right of subrogation against the consumer.}

may be excluded from the finance charge if the following conditions are met:

- (i) The insurance coverage may be obtained from a person of the consumer's choice.<sup>(6)</sup>

{<sup>6</sup> A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.}

and this fact is disclosed.

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation fees.* (i) Charges or premiums paid for debt cancellation coverage of the type specified in paragraph (d)(3)(ii) of this section may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(A) The debt cancellation agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(B) The fee or premium for the initial term of coverage is disclosed. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(C) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

(ii) Paragraph (d)(3)(i) of this section applies to fees paid for debt cancellation coverage that provides for cancellation of all or part of the debtor's liability for amounts exceeding the value of the collateral securing the obligation, or in the event of the loss of life, health, or income or in case of accident.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable. {{8-31-01 p 6648 01}}

(3) *Taxes on security instruments.* Any tax levied on security instruments or documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

[Codified to 12 C.F.R. § 226.4]

[Section 226.4 amended at 61 Fed. Reg. 49245, September 19, 1996, effective October 21, 1996]

[[Main Tabs](#)] [[Table of Contents - 6500](#)] [[Index](#)] [[Previous Page](#)] [[Next Page](#)] [[Search](#)]

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[Home](#) > [Regulation & Examinations](#) > [Laws & Regulations](#) > [FDIC Law, Regulations, Related Acts](#)

## FDIC Law, Regulations, Related Acts

[\[Main Tabs\]](#)   [\[Table of Contents - 6500\]](#)   [\[Index\]](#)   [\[Previous Page\]](#)   [\[Next Page\]](#)   [\[Search\]](#)

### 6500 - FDIC Consumer Protection

{{2-28-03 p.6685}}

#### PART 213—CONSUMER LEASING (REGULATION M)

##### Sec.

- 213.1 [Authority, scope, purpose, and enforcement.](#)
- 213.2 [Definitions.](#)
- 213.3 [General disclosure requirements.](#)
- 213.4 [Content of disclosures.](#)
- 213.5 [Renegotiations, extensions, and assumptions.](#)
- 213.6 [Electronic communication.](#)
- 213.7 [Advertising.](#)
- 213.8 [Record retention.](#)
- 213.9 [Relation to state laws.](#)

##### [Appendix A to Part 213—Model Forms](#)

##### [Appendix B to Part 213—Federal Enforcement Agencies](#)

##### [Appendix C to Part 213—Issuance of Staff Interpretations](#)

##### [Supplement I to Part 213—Official Staff Commentary to Regulation M](#)

AUTHORITY: 15 U.S.C. 1604; 1667f

SOURCE: The provisions of this Part 213 appear at 46 Fed. Reg. 20951, April 7, 1981; amended at 46 Fed. Reg. 29245, June 1, 1981, effective October 1, 1982, and 58 Fed. Reg. 50512, September 28, 1993, except as otherwise noted.

#### § 213.1 Authority, scope, purpose, and enforcement.

(a) *Authority.* The regulation in this part, known as Regulation M<sup>1</sup> is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending Act, which is Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 7100-0202.

(b) *Scope and purpose.* This part applies to all persons that are lessors of personal property under consumer leases as those terms are defined in § 213.2(e)(1) and (h). The purpose of this part is:

- (1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions;
- (2) To limit the amount of balloon payments in consumer lease transactions; and
- (3) To provide for the accurate disclosure of lease terms in advertising.

(c) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the act contain the liability provisions for failing to comply with the requirements of the act and this part.

[Codified to 12 C.F.R. § 213.1]

[Section 213.1 amended at 61 Fed. Reg. 52258, October 7, 1996, effective October 31, 1996; 62 Fed. Reg. 15367, April 1, 1997, effective April 1, 1997 but its compliance is optional until October 1, 1997]

### § 213.2 Definitions.

For the purposes of this part the following definitions apply:

(a) *Act* means the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Consumer Leasing Act is chapter 5 of the Truth in Lending Act.

(b) *Advertisement* means a commercial message in any medium that directly or indirectly promotes a consumer lease transaction.

(c) *Board* refers to the Board of Governors of the Federal Reserve System.

(d) *Closed-end lease* means a consumer lease other than an open-end lease as defined in this section.

{{2-28-03 p.6686}}

(e)(1) *Consumer lease* means a contract in the form of a bailment or lease 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 \$25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. Unless the context indicates otherwise, in this part "lease" means "consumer lease."

(2) The term does not include a lease that meets the definition of a credit sale in Regulation Z (12 CFR 226.2(a)). It also does not include a lease for agricultural, business, or commercial purposes or a lease made to an organization.

(3) This part does not apply to a lease transaction of personal property which is incident to the lease of real property and which provides that:

(i) The lessee has no liability for the value of the personal property at the end of the lease term except for abnormal wear and tear; and

(ii) The lessee has no option to purchase the leased property.

(f) *Gross capitalized cost* means the amount agreed upon by the lessor and the lessee as the value of the leased property 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. *Capitalized cost reduction* means the total amount of any rebate, cash payment, net trade-in allowance, and noncash credit that reduces the gross capitalized cost. The *adjusted capitalized cost* equals the gross capitalized cost less the capitalized cost reduction, and is the amount used by the lessor in calculating the base periodic payment.

(g) *Lessee* means a natural person who enters into or is offered a consumer lease.

(h) *Lessor* means a person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who has leased, offered, or arranged to lease personal property more than five times in the preceding calendar year or more than five times in the current calendar year is subject to the act and this part.

(i) *Open-end lease* means a consumer lease in which the lessee's liability at the end of the lease term is based on the difference between the residual value of the leased property and its realized value.

(j) *Organization* means a corporation, trust, estate, partnership, cooperative, association, or government entity or instrumentality.

(k) *Person* means a natural person or an organization.

(l) *Personal property* means any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease.

(m) *Realized value* means:

(1) The price received by the lessor for the lease property at disposition;

(2) The highest offer for disposition of the leased property; or

(3) The fair market value of the leased property at the end of the lease term.

(n) *Residual value* means the value of the leased property at the end of the lease term, as estimated or assigned at consummation by the lessor, used in calculating the base periodic payment.

(o) *Security interest and security* mean any interest in property that secures the payment or performance of an obligation.

(p) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

[Codified to 12 C.F.R. § 213.2]

[Section 213.2 amended at 61 Fed. Reg. 52258, October 7, 1996, effective October 31, 1996; 62 Fed. Reg. 15367, April 1, 1997, effective April 1, 1997, but compliance is optional until October 1, 1997]

### § 213.3 General disclosure requirements.

(a) *General requirements.* A lessor shall make the disclosures required by § 213.4 as applicable. The disclosures shall be made clearly and conspicuously in writing in a form the consumer may keep, in accordance with this section.

{{8-31-01 p.6687}}

(1) *Form of disclosures.* The disclosures required by § 213.4 shall be given to the lessee together in a dated statement that identifies the lessor and the lessee; the disclosures may be made either in a separate statement that identifies the consumer lease transaction or in the contract or other document evidencing the lease. Alternatively, the disclosures required to be segregated from other information under paragraph (a)(2) of this section may be provided in a separate dated statement that identifies the lease, and the other required disclosures may be provided in the lease contract or other document evidencing the lease. In a lease of multiple items, the property description required by § 213.4(a) may be given in a separate statement that is incorporated by reference in the disclosure statement required by this paragraph.

(2) *Segregation of certain disclosures.* The following disclosures shall be segregated from other information and shall contain only directly related information: §§ 213.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1). The headings, content, and format for the disclosures referred to in this paragraph (a)(2) shall be provided in a manner substantially similar to the applicable model form in appendix A of this part.

(3) *Timing of disclosures.* A lessor shall provide the disclosures to the lessee prior to the consummation of a consumer lease.

(4) *Language of disclosures.* The disclosures required by § 213.4 may be made in a language other than English provided that they are made available in English upon the lessee's request.

(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 213.6.

(b) *Additional information; nonsegregated disclosures.* Additional information may be provided with any disclosure not listed in paragraph (a)(2) of this section, but it shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosure required by this part.

(c) *Multiple lessors or lessees.* When a transaction involves more than one lessor, the disclosures required by this part may be made by one lessor on behalf of all the lessors. When a lease involves more than one lessee, the lessor may provide the disclosures to any lessee who is primarily liable on the lease.

(d) *Use of estimates.* If an amount or other item needed to comply with a required disclosure is unknown or unavailable after reasonable efforts have been made to ascertain the information, the lessor may use a reasonable estimate that is based on the best information available to the lessor, is clearly identified as an estimate, and is not used to circumvent or evade any disclosures required by this part.

(e) *Effect of subsequent occurrence.* If a required disclosure becomes inaccurate because of an event occurring after consummation, the inaccuracy is not a violation of this part.

(f) *Minor variations.* A lessor may disregard the effects of the following in making disclosures:

- (1) That payments must be collected in whole cents;
- (2) That dates of scheduled payments may be different because a scheduled date is not a business day;
- (3) That months have different numbers of days; and
- (4) That February 29 occurs in a leap year.

[Codified to 12 C.F.R. § 213.3]

[Section 213.3 amended at 61 Fed. Reg. 52259, October 7, 1996, effective October 31, 1996; 66 Fed. Reg. 17328, March 30, 2001, effective March 30, 2001]

### § 213.4 Content of disclosures.

For any consumer lease subject to this part, the lessor shall disclose the following information, as

applicable:

(a) *Description of property.* A brief description of the leased property sufficient to identify the property to the lessee and lessor.

{{8-31-01 p.6688}}

(b) *Amount due at lease signing or delivery.* The total amount to be paid prior to or at consummation by delivery, if delivery occurs after consummation, using the term "amount due at lease signing or delivery." The lessor shall itemize each component by type and amount, including any refundable security deposit, advance monthly or other periodic payment, and capitalized cost reduction, and in motor-vehicle leases, shall itemize how the amount due will be paid, by type and amount, including any net trade-in allowance, rebates, noncash credits, and cash payments in a format substantially similar to the model forms in appendix A of this part.

(c) *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.

(d) *Other charges.* The total amount of other charges payable to the lessor, itemized by type and amount, that are not included in the periodic payments. Such charges include the amount of any liability the lease imposes upon the lessee at the end of the lease term; the potential difference between the residual and realized values referred to in paragraph (k) of this section is excluded.

(e) *Total of payments.* The total of payments, with a description such as "the amount you will have paid by the end of the lease." This amount is the sum of the amount due at lease signing (less any refundable amounts), the total amount of periodic payments (less any portion of the periodic payment paid at lease signing), and other charges under paragraphs (b), (c), and (d) of this section. In an open-end lease, a description such as "you will owe an additional amount if the actual value of the vehicle is less than the residual value" shall accompany the disclosure.

(f) *Payment calculation.* In a motor-vehicle lease, a mathematical progression of how the scheduled periodic payment is derived, in a format substantially similar to the applicable model form in appendix A of this part, which shall contain the following:

(1) *Gross capitalized cost.* The 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. If requested by the lessee, the itemization shall be provided before consummation.

(2) *Capitalized cost reduction.* The 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."

(3) *Adjusted capitalized cost.* The adjusted capitalized cost, with a description such as "the amount used in calculating your base [periodic] payment."

(4) *Residual value.* The 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."

(5) *Depreciation and any amortized amounts.* The depreciation and any amortized amounts, which is the difference between the adjusted capitalized cost and the residual value, 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."

(6) *Rent charge.* The rent charge, with a description such as "the amount charged in addition to the depreciation and any amortized amounts." This amount is the difference between the total of the base periodic payments over the lease term minus the depreciation and any amortized amounts.

(7) *Total of base periodic payments.* The total of base periodic payments with a description such as "depreciation and any amortized amounts plus the rent charge."

(8) *Lease payments.* The lease payments with a description such as "the number of payments in your lease."

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

(10) *Itemization of other charges.* An itemization of any other charges that are part of the periodic payment.

(11) *Total periodic payments.* The sum of the base periodic payment and any other charges that are part of the periodic payment.

{{4-30-01 p.6689}}

(g) *Early termination--(1) Conditions and disclosure of charges.* 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.

(2) *Early-termination notice.* In a motor-vehicle lease, 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 this charge is likely to be."

(h) *Maintenance responsibilities.* The following provisions are required:

(1) *Statement of responsibilities.* A statement specifying whether the lessor or the lessee is responsible for maintaining or servicing the leased property, together with a brief description of the responsibility;

(2) *Wear and use standard.* A statement of the lessor's standards for wear and use (if any), which must be reasonable; and

(3) *Notice of wear and use standard.* In a motor-vehicle lease, a notice regarding wear and use 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 shall also specify the amount or method for determining any charge for excess mileage.

(i) *Purchase option.* A statement of whether or not the lessee has the option to purchase the leased property, and:

(1) *End of lease term.* If at the end of the lease term, the purchase price; and

(2) *During lease term.* If prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.

(j) *Statement referencing nonsegregated 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.

(k) *Liability between residual and realized values.* A statement of the lessee's liability, if any, at early termination or at the end of the lease term for the difference between the residual value of the leased property and its realized value.

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

(m) *Liability at end of lease term based on residual value.* If the lessee is liable at the end of the lease term for the difference between the residual value of the leased property and its realized value:

(1) *Rent and other charges.* The rent and other charges, paid by the lessee and required by the lessor as an incident to the lease transaction, with a description such as "the total amount of rent and other charges imposed in connection with your lease [state the amount]."

(2) *Excess liability.* A statement about a rebuttable presumption that, at the end of the lease term, the residual value of the leased property is unreasonable and not in good faith to the extent that the residual value exceeds the realized value by more than three times the base monthly payment (or more than three times the average payment allocable to a monthly period, if the lease calls for periodic payments other than monthly); and that the lessor cannot collect the excess amount unless the lessor brings a successful court action and pays the lessee's reasonable attorney's fees, or unless the excess of the residual value over the realized value is due to unreasonable or excessive wear or use of the leased property (in which case the rebuttable presumption does not apply).

(3) *Mutually agreeable final adjustment.* A statement that the lessee and lessor are permitted, after termination of the lease, to make any mutually agreeable final adjustment regarding excess liability.

(n) *Fees and taxes.* The total dollar amount for all official and license fees, registration, title, or taxes required to be paid in connection with the lease.

{{4-30-01 p.6690}}

(o) *Insurance.* A brief identification of insurance in connection with the lease including:

(1) *Through the lessor.* If the insurance is provided by or paid through the lessor, the types and amounts of coverage and the cost to the lessee; or

(2) *Through a third party.* If the lessee must obtain the insurance, the types and amounts of coverage required of the lessee.

(p) *Warranties or guarantees.* A statement identifying all express warranties and guarantees from the manufacturer or lessor with respect to the leased property that apply to the lessee.

(q) *Penalties and other charges for delinquency.* The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.

(r) *Security interest.* A description of any security interest, other than a security deposit disclosed under paragraph (b) of this section, held or to be retained by the lessor; and a clear identification of the property to which the security interest relates.

(s) *Limitations on rate information.* If a lessor provides a percentage rate in an advertisement or in documents evidencing the lease transaction, a notice stating that "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The lessor shall not use the term "annual percentage rate," "annual lease rate," or any equivalent term.

(t) *Non-motor vehicle open-end leases.* Non-motor vehicle open-end leases remain subject to section 182(10) of the act regarding end of term liability.

[Codified to 12 C.F.R. § 213.4]

[Section 213.4 amended at 61 Fed. Reg. 52259, October 7, 1996, effective October 31, 1996; 62 Fed. Reg. 15367, April 1, 1997, effective April 1, 1997, but compliance is optional until October 1, 1997; 63 Fed. Reg. 52109, September 29, 1998, effective September 24, 1998]

### § 213.5 Renegotiations, extensions, and assumptions.

(a) *Renegotiation.* A renegotiation occurs when a consumer lease subject to this part is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation requires new disclosures, except as provided in paragraph (d) of this section.

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

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

(d) *Exceptions.* New disclosures are not required for the following, even if they meet the definition of a renegotiation or an extension:

- (1) A reduction in the rent charge;
- (2) The deferment of one or more payments, whether or not a fee is charged;
- (3) The extension of a lease for not more than six months on a month-to-month basis or otherwise;
- (4) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;
- (5) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average periodic payment does not change by more than 25 percent; or
- (6) An agreement resulting from a court proceeding.

[Codified to 12 C.F.R. § 213.5]

[Section 213.5 amended at 61 Fed. Reg. 52260, October 7, 1996, effective October 31, 1996; 62 Fed. Reg. 15367, April 1, 1997, effective April 1, 1997, but compliance is optional until October 1, 1997]

{{8-31-01 p.6691}}

### § 213.6 Electronic communication.

(a) *Definition.* "Electronic communication" means a message transmitted electronically between a lessor and a lessee in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a lessor may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When a consent is required.* Under the E-Sign Act, a lessor is required to obtain a lessee's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under § 213.7 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A lessor that uses electronic communication to provide disclosures required by this part shall:

- (1) Send the disclosure to the consumer's electronic address; or
- (2) Make the disclosure available at another location such as a web site; and
  - (i) Alert the lessee of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the lessor's option). The notice shall identify the transaction involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the lessee of the disclosure, whichever comes later.

(3) *Exceptions.* A lessor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosures required under § 213.7.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a lessor undelivered, the lessor shall take reasonable steps to attempt redelivery using information in its files.

[Codified in 12 C.F.R. § 213.6]

[Section 213.6; added at 66 Fed. Reg. 17328, March 30, 2001, effective March 30, 2001]

### § 213.7 Advertising.

(a) *General rule.* An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.

(b) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously.

(1) *Amount due at lease signing or delivery.* Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the disclosure required under paragraph (d)(2)(ii) of this section shall not be more prominent than that disclosure.

(2) *Advertisement of a lease rate.* If a lessor provides a percentage rate in an advertisement, the rate shall not be more prominent than any of the disclosures in § 213.4, with the exception of notice in § 213.4(s) required to accompany the rate; and the lessor shall not use the term "annual percentage rate," "annual lease rate," or equivalent term.

(c) *Catalogs and multipage advertisements.* A catalog or other multipage advertisement that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(d) *Advertisement of terms that require additional disclosure--(1) Triggering terms.* An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment; or

(ii) A 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.

(2) *Additional terms.* An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:

(i) That the transaction advertised is a lease;

(ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

(iii) The number, amounts, and due dates or periods of scheduled payments under the lease;

(iv) A statement of whether or not a security deposit is required; and

(v) A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(e) *Alternative disclosures--merchandise tags.* A merchandise tag stating any item listed in paragraph (d)(1) of this section may comply with paragraph (d)(2) of this section by referring to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures.

(f) *Alternative disclosures--television or radio advertisements--(1) Toll-free number or print advertisement.* An advertisement made through television or radio stating any item listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the items listed in paragraphs (d)(2)(i) through (iii) of this section, and:

(i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by paragraph (d)(2) of this section is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least

ten days after the broadcast.

(2) *Establishment of toll-free number.* (i) The toll-free telephone number shall be available for no fewer than ten days beginning on the date of the broadcast.

(ii) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

[Codified to 12 C.F.R. § 213.7]

[Section 213.7 amended at 61 Fed. Reg. 52261, October 7, 1996, effective October 31, 1996; 62 Fed. Reg. 15367, April 1, 1997, effective April 1, 1997, but compliance is optional until October 1, 1997; 63 Fed. Reg. 52109, September 29, 1998, effective September 24, 1998]

#### § 213.8 Record retention.

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

[Codified to 12 C.F.R. § 213.8]

[Section 213.8 amended at 61 Fed. Reg. 52261, October 7, 1996, effective October 31, 1996]

{{4-30-01 p.6692.01}}

#### § 213.9 Relation to state laws.

(a) *Inconsistent state law.* A state law that is inconsistent with the requirements of the act and this part is preempted to the extent of the inconsistency. If a lessor cannot comply with a state law without violating a provision of this part, the state law is inconsistent within the meaning of section 186(a) of the act and is preempted, unless the state law gives greater protection and benefit to the consumer. A state, through an official having primary enforcement or interpretative responsibilities for the state consumer leasing law, may apply to the Board for a preemption determination.

(b) *Exemptions.*--(1) *Application.* A state may apply to the Board for an exemption from the requirements of the act and this part for any class of lease transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of leasing transactions is subject to state law requirements substantially similar to the act and this part or that lessees are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Enforcement and liability.* After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the act and this part. No exemption will extend to the civil liability provisions of sections 130, 131, and 185 of the act.

[Codified to 12 C.F.R. § 213.9]

[Section 213.9 added at 61 Fed. Reg. 52261, October 7, 1996, effective October 31, 1996]

{{10-30-98 p.6693}}

#### Appendix A to Part 213—Model Forms

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
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Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosure

Federal Consumer Lending Act Disclosures

Date \_\_\_\_\_

Lessor(s) \_\_\_\_\_ Lessee(s) \_\_\_\_\_

Amount Due at Lease Signing or Delivery (Excludes below)	Monthly Payments	Other Charges (not part of your monthly payments)	Total of Payments (The amount you will have paid by the end of the lease)
\$ _____	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 \$ _____.	Excludes the (if you do not purchase the vehicle) \$ _____  Total \$ _____	\$ _____  You will own an additional amount if the agreed value of the vehicle is less than the residual value.

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	_____	Refund and rebate credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____		
Registration fees	_____		
<b>Total</b>	<b>\$ _____</b>	<b>Total</b>	<b>\$ _____</b>

Your monthly payments in dollars are 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 illustration of this amount, please check this box

Capital cost reduction. The amount of any net trade-in allowance, rebate, security 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 term is calculating your base monthly payment.	_____
Depreciation and any associated amounts. The amount charged for the vehicle's decline in value through 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 maintenance fee.	_____
<b>Total monthly payment</b>	<b>_____</b>
Rent and other charges. The total amount of rent and other charges imposed in connection with your lease.	\$ _____

**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 amount of the charge will depend on when the lease is terminated. The earlier you end the lease, the greater the charge is likely to be.

**Excessive Wear and Tear:** You may be charged for excessive wear based on the 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 for of \$ \_\_\_\_\_) (If 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, fire and theft charges, insurance, and any security interest, if applicable.

{{10-30-98 p.6694}}

Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

Page 1 of 1

The following provisions are the incorporated 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 sales taxes over the term of your lease, whether included with your monthly payments or assessed otherwise, is \_\_\_\_\_.

**Insurance.** The following types and amounts of insurance will be required in addition to what you have:

- \_\_\_\_\_ We (lessor) will provide the insurance coverage quoted above for a total premium cost of \$ \_\_\_\_\_.
- \_\_\_\_\_ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

**End of Term Liability.** (a) The residual value (\$) \_\_\_\_\_ of the vehicle is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the residual value, you will have no further liability under this lease, except for any charges already incurred that are entitled to a credit or refund of any surplus. If the actual value of the vehicle is less than the residual value, you will be liable for any difference up to \$ \_\_\_\_\_ (if there is monthly payments). For any difference in excess of that amount, you will be liable only if:

1. A deductible or co-insurance (as described in paragraph \_\_\_\_\_) (representing more than normal wear and tear) resulted in an unusually low value at the end of the term.
2. The motor is not otherwise insured and we set a higher liability you set for a higher payment.
3. You voluntarily agree with us after the end of the lease term to make a higher payment.

Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the decline in value was reasonable because of an unanticipated decline in value for that type of vehicle. We agree also pay your attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreement to both of us, a professional appraisal of the \_\_\_\_\_ value of the leased vehicle which could be realized in sale. The appraisal value shall then be used as the actual value.

**Standards for Wear and Tear.** The following standards are applicable in determining wear and tear or excess use 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:

**Wear and Tear.** The leased vehicle is subject to the following excess wear and tear:

**Early Termination and Default.** (a) If you occur an event that terminates 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:

If you such termination we shall be entitled to the following charges, fee:

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

**Security Interest.** We reserve a security interest 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.** (1) as have an option to purchase the leased vehicle prior to the end of the lease. The price will be \$ \_\_\_\_\_ (the residual or depreciated value price). (2) You do not have an option to purchase the leased vehicle.

{{10-29-04 p 6695}}

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

Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date \_\_\_\_\_

Lessor(s) \_\_\_\_\_ Lessee(s) \_\_\_\_\_

Amount Due at Lease Signing or Delivery (Residual below)	Monthly Payments	Other Charges (not part of your monthly payments)	Total of Payments (The amount you will have paid by the end of the lease)
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 \$ _____.		Disposition fee (if you do not purchase the vehicle) \$ _____ Total \$ _____	\$ _____ You will see the actual amount if the actual value of the vehicle is less than the residual value.

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	_____	Reflex and other credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____		
Registration fees	_____		
<b>Total</b>	<b>\$ _____</b>	<b>Total</b>	<b>\$ _____</b>

Your monthly payments 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 illustration of this amount, please check the box

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, downsize 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 to your lease \_\_\_\_\_  
 Base monthly payment \_\_\_\_\_  
 Monthly sales tax \_\_\_\_\_  
**Total monthly payment** \_\_\_\_\_  
 Rent and other charges. The total amount of rent and other charges imposed in connection with your lease \$ \_\_\_\_\_

**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 Tear.** 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, fire and theft charges, insurance, and any security interest, if applicable.

{{10-29-04 p.6696}}

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

Page 2 of 2

The following provisions are the lease agreed disclosures required under Regulation M.I.

Characteristics of Leased Property				
You	Name	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 calculated separately, is \_\_\_\_\_.

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

\_\_\_\_\_ We finance and provide the insurance coverage specified above for a total premium cost of \$ \_\_\_\_\_.

\_\_\_\_\_ You choose to provide insurance coverage to the amount and type indicated above.

**Standards for Wear and Use.** The following standards are applicable for determining wear and tear at the end of the lease term:

**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:]

**Warranty.** The leased vehicle is subject to the following warranty limitations:

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

The charge for each early termination is \_\_\_\_\_.

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

You must compensate us shall be entitled to the following charge(s) for:

(i) To the extent your charge does not recover the value of the vehicle at term, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party acceptable to both of us, a professional appraisal of the \_\_\_\_\_ value of the leased vehicle which would 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.]

{{10-30-98 p.6697}}

Appendix A-3 Model Furniture Lease Disclosures

Federal Consumer Lending Act Disclosures

Date \_\_\_\_\_

Lessor(s) \_\_\_\_\_ Lessee(s) \_\_\_\_\_

Item		Description of Leased Property		
	Color	Serial #	Mfg.	Quantity
<b>Amount Due at Lease Signing or Delivery</b>		<b>Monthly Payments</b>		<b>Other Charges (an part of your monthly payments)</b>
First monthly payment \$ _____		You first monthly payment of \$ _____ is due on _____ followed by _____ payments of \$ _____ due on the _____ of each month. The end of your monthly payment is \$ _____.		Monthly fee \$ _____ Final \$ _____
Estimated property damage \$ _____				<b>Total of Payments (The amount you will have paid by the end of the lease)</b>
Excise/Excise tax \$ _____				\$ _____
Total \$ _____				

**Purchase Option at End of Lease Term.** (You have an option to purchase the leased property at the end of the lease term for \$ \_\_\_\_\_ [and a purchase option fee of \$ \_\_\_\_\_].) (You do not have an option to purchase the leased property at the end of the lease term.)

**Other Important Terms.** See your lease document 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 average good disclosure required under Regulation M-1

**Official Fees and Taxes.** The total amount you will pay for official fees 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 accepted in connection with this lease: \_\_\_\_\_.

\_\_\_\_ (Lessor) will provide the insurance coverage stated above for a total premium cost of \$ \_\_\_\_\_.

You (Lessee) agree to provide insurance coverage in the amounts and types indicated above.

**Standards for Wear and Use.** The following standards are applied for determining wear and use of the leased property: \_\_\_\_\_.

**Maintenance.**

(You are responsible for the following maintenance and servicing of the leased property: \_\_\_\_\_.)

(We are responsible for the following maintenance and servicing of the leased property: \_\_\_\_\_.)

**Warranty.** The leased property 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 each 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: \_\_\_\_\_.

{{10-30-98 p.6698}}

**Early Termination and Default.** (continued)

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

**Security Interest.** We exercise 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: \_\_\_\_\_.

**Purchase Option Prior to the End of the Lease Term**

(You have an option to purchase the leased property 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 property.)

[Codified to 12 C.F.R. Part 213, Appendix A]

[Appendix A amended at 61 Fed. Reg. 52263, October 7, 1996, effective October 31, 1996; 62 Fed. Reg. 15369, April 1, 1997, effective April 1, 1997, but compliance is optional until October 1, 1997; 63 Fed. Reg. 52109, September 29, 1998, effective September 24, 1998]

{{10-31-96 6699}}

#### **Appendix B to Part 213--Federal Enforcement Agencies**

The following list indicates which federal agency enforces Regulation M (12 CFR Part 213) for particular classes of business. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. *National banks and federal branches and federal agencies of foreign banks*

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

2. *State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserves Act*

Federal Reserve Bank serving the District in which the institution is located.

3. *Nonmember insured banks and insured state branches of foreign banks*

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

4. *Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)*

Office of Thrift Supervision regional director for the region in which the institution is located.

5. *Federal credit unions*

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

6. *Air carriers*

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

7. *Those subject to Packers and Stockyards Act*

Nearest Packers and Stockyards Administration area supervisor.

8. *Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations*

Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, D.C. 20578

9. *All other lessors (lessors operating on a local or regional basis should use the address of the FTC regional office in which they operate)*

Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

[Codified to 12 C.F.R. Part 213, Appendix B]

[Appendix B amended at 61 Fed. Reg. 52269, October 1, 1996, effective October 31, 1996]

#### **Appendix C to Part 213--Issuance of Staff Interpretations**

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this Regulation M (12 CFR Part 213). These interpretations provide the formal protection afforded under section 130(f) of the act. Except in unusual circumstances, interpretations will

not be issued separately but will be incorporated in an official commentary to Regulation M (Supplement I of this part), which will be amended periodically. No staff interpretations will be issued approving lessor's forms, statements, or calculation tools or methods.

[Codified to 12 C.F.R. Part 213, Appendix C]

[Appendix C amended at 61 Fed. Reg. 52269, October 7, 1996, effective October 31, 1996]

[The page following this is 6719.]

{{4-30-02 p.6719}}

## SUPPLEMENT I TO PART 213—OFFICIAL STAFF COMMENTARY TO REGULATION M

**CODIFICATION:** Official Staff Commentary to Regulation M codified to 12 C.F.R. Part 213.

**AUTHORITY:** 15 U.S.C. 1604; 1667f.

**SOURCE:** The provisions of this Part 213 appear at 47 Fed. Reg. 20554, May 13, 1982, effective May 12, 1982; 62 Fed. Reg. 16058, April 4, 1997; effective April 1, 1997 but compliance is optional until October 1, 1997.

### *Introduction*

1. *Official status.* The commentary in Supplement I is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M (12 CFR part 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640(f)). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 213.4(f) are further divided by subparagraph, such as comment 4(f)(1)-1 and comment 4(f)(2)-2. In other cases, comments have more general application and are designated, for example, as comment 4(a)-1. This introduction may be cited as comments I-1 through I-4. An appendix may be cited as comment app. A-1.

4. *Illustrations.* Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. Illustrative lists are introduced by phrases such as "including," "such as," "to illustrate," and "for example."

### **Section 213.1--Authority, Scope, Purpose, and Enforcement**

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p). The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

### **Section 213.2--Definitions**

#### **2(b) Advertisement**

1. *Coverage.* The term advertisement includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

- i. Messages in newspapers, magazines, leaflets, catalogs, and fliers.
- ii. Messages on radio, television, and public address systems.
- iii. Direct mail literature.

iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

v. Telephone solicitations.

vi. On-line messages, such as those on the Internet.

{{4-30-02 p.6720}}

2. *Exclusions.* The term does not apply to the following:

i. Direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice.

iv. News articles controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to § 213.7(a).

#### 2(d) Closed-End Lease

1. *General.* In closed-end leases, sometimes referred to as "walk-away" leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

#### 2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.1(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, {{4-30-02 p.6721}} and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal,

family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

#### 2(g) Leases

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

#### 2(h) Lessor.

1. *Arranger of a lease.* To "arrange" for the lease of personal property means to provide or offer to provide a lease that is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease. To illustrate:

i. An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it for execution to the leasing company (to whom the obligation is payable on its face) is "arranging" for the lease.

ii. An automobile dealer who, without receiving a fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. *Consideration.* The term "other consideration" as used in comment 2(h)-1 refers to an actual payment corresponding to a fee or similar compensation and not to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances where the assignee has substantial involvement in the lease transaction. See cf. *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155 (1981) (held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction).

4. *Multiple lessors.* See the commentary to § 213.3(c).

#### 2(j) Organization

1. *Coverage.* The term "organization" includes joint ventures and persons operating under a business name.

#### 2(l) Personal Property

1. *Coverage.* Whether property is personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

{{4-30-02 p 6722}}

#### 2(m) Realized Value

1. *General.* Realized value refers to either the retail or wholesale value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term typically is based on the difference between the residual value (or the adjusted lease balance) of the leased property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in § 213.2(m). If the lessor sells the property prior to making the determination about liability, the price received for the property (or the fair market value) is the realized value. If the lessor does not sell the property prior to making that determination, the highest offer or the fair market value is the realized value.

3. *Determination of realized value.* Disposition charges are not subtracted in determining the realized value but amounts attributable to taxes may be subtracted.

4. *Offers.* In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. *Lessor's appraisal.* See commentary to § 213.4(l).

**2(o) Security Interest and Security**

1. *Disclosable interests.* For purposes of 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.

2. *General coverage.* 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.

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

**Section 213.3—General Disclosure Requirements****3(a) General Requirements**

1. *Basis of disclosures.* Disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with no penalty for termination after a one-year minimum term, disclosures are based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§ 213.4(g)(1), (k) and (l).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* A lessor may use a multipurpose disclosure form provided the lessor is able to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

{{4-30-02 p.6723}}

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: as a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

iii. When a lessor includes an outstanding lease or credit balance in a lease transaction, the lessor may disclose the outstanding balance as part of a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

**3(a)(1) Form of Disclosures**

1. *Cross-references.* Lessors may include in the nonsegregated disclosures a cross-reference to items in the segregated disclosures rather than repeat those items. A lessor may include in the segregated disclosures numeric or alphabetic designations as cross-references to related information so long as such references do not obscure or detract from the segregated disclosures.

2. *Identification of parties.* While disclosures must be made clearly and conspicuously, lessors are not required to use the word "lessor" and "lessee" to identify the parties to the lease transaction.

3. *Lessor's address.* The lessor must be identified by name; an address (and telephone number) may be provided.

4. *Multiple lessors and lessees.* In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee as long as the disclosure statement identifies all the lessors and lessees.

5. *Lessee's signature.* The regulation does not require that the lessee sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract. Nevertheless, to provide evidence that disclosures are given before a lessee becomes obligated on the lease transaction, the lessor may, for example, ask the lessee to sign the disclosure statement or an acknowledgement of receipt, may place disclosures that are included in the lease documents above the lessee's signature, or

include instructions alerting a lessee to read the disclosures prior to signing the lease.

### 3(a)(2) Segregation of Certain Disclosures

1. *Location.* The segregated disclosures referred to in § 213.3(a)(2) may be provided on a separate document and the other required disclosures may be provided in the lease contract, so long as all disclosures are given at the same time. Alternatively, all disclosures may be provided in a separate document or in the lease contract.

2. *Additional information among segregated disclosures.* The disclosures required to be segregated may contain only the information required or permitted to be included among the segregated disclosures.

3. *Substantially similar.* See commentary to appendix A of this part.

### 3(a)(3) Timing of Disclosures

1. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law.

### 3(b) Additional Information; Nonsegregated Disclosures

1. *State law disclosures.* A lessor may include in the nonsegregated disclosures any state law disclosures that are not inconsistent with the act and regulation under § 213.9 as long as, in accordance with the standard set forth in § 213.3(b) for additional information, the state law disclosures are not used or placed to mislead or confuse or detract from any disclosure required by the regulation.

{{4-30-02 p.6724}}

### 3(c) Multiple Lessors or Lessees

1. *Multiple lessors.* If a single lessor provides disclosures to a lessee on behalf of several lessors, all disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

### 3(d) Use of Estimates

#### 3(d)(1) Standard

1. *Time of estimated disclosure.* The lessor may, after making a reasonable effort to obtain information, use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor may rely on the representations of other parties. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery. See commentary § 213.4(n) for estimating official fees and taxes.

3. *Residual value of leased property at termination.* In an open-end lease where the lessee's liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see § 213.4(m)). A lessor should generally use an accepted trade publication listing estimated current or future market prices for the leased property unless other information or a reasonable belief based on its experience provides the better information. For example:

- i. An automobile lessor offering a three year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values.
- ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications if the lessor reasonably believes based on its experience that the values are understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination of an open-end lease provided the choice is consistent with the lessor's general practice when determining the value of the property at the end of the lease term. The lessor should indicate whether the value disclosed is a retail or wholesale value.

5. *Labelling estimates.* Generally, only the disclosure for which the exact information is unknown is

labelled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate every affected disclosure or only the disclosure primarily affected.

### 3(e) Effect of Subsequent Occurrence

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. An increase in official fees or taxes.

{{4-30-02 p.6725}}

iii. An increase in insurance premiums or coverage caused by a change in the law.

iv. Late delivery of an automobile caused by a strike.

2. *Rediscovery.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.5.

3. *Lessee's failure to perform.* The lessor does not violate the regulation if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest. For example, the addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease is not a violation of the regulation.

## Section 213.4--Content of Disclosures

### 4(a) Description of Property

1. *Placement of description.* Although the description of leased property may not be included among the segregated disclosures, a lessor may choose to place the description directly above the segregated disclosures.

### 4(b) Amount Due at Lease Signing or Delivery

1. *Consummation.* See commentary to § 213.3(a)(3).

2. *Capitalized cost reduction.* A capitalized cost reduction is a payment in the nature of a downpayment 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.

3. *"Negative" equity trade-in allowance.* 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 under § 213.4(b). The lessor may disclose the trade-in allowance as zero or not applicable, or may leave a blank line.

4. *Rebates.* Only rebates applied toward an amount due at lease signing or delivery are required to be disclosed under § 213.4(b).

5. *Balance sheet approach.* In motor-vehicle leases, the total for the column labeled "total 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."

6. *Amounts to be paid in cash.* The term cash is intended to include payments by check or other payment methods in addition to currency; however, a lessor 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.

### 4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments that are made at regular or irregular intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under § 213.4(c).

### 4(d) Other Charges

1. *Coverage.* Section 213.4(d) requires the disclosure of charges that are anticipated by the parties incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an "other charge," the lessor may disclose the fee as such without violating § 213.4(d) or the segregation rule under § 213.3(a)(2).

2. *Excluded charges.* This section does not require disclosure of 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:

{{4-30-02 p.6726}}

- i. Late payment.
- ii. Default.
- iii. Early termination.
- iv. Deferral of payments.
- v. Extension of the lease.

3. *Third-party fees and charges.* Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under § 213.4(d).

4. *Relationship to other provisions.* The other charges mentioned in this paragraph are charges that are not required to be disclosed under some other provision of § 213.4. To illustrate:

i. The price of a mechanical breakdown protection (MBP) contract is sometimes disclosed as an "other charge." Nevertheless, the price of MBP is sometimes reflected in the periodic payment disclosure under § 213.4(c) or in states where MBP is regarded as insurance, the cost is to be disclosed in accordance with § 213.4(o).

5. *Lessee's liabilities at the end of the lease term.* Liabilities that the lessor imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under § 213.4(d) include disposition and "pick-up" charges.

6. *Optional "disposition" charges.* Disposition and similar charges that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under § 213.4(d). If, under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under § 213.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the return of the leased property to a location outside the lessor's service area as a default, the fee imposed is not disclosed as an "other charge," although it may be required to be disclosed under § 213.4(q).

#### 4(e) Total of Payments

1. *Open-end lease.* The additional statement is required under § 213.4(e) for open-end leases because, with some limitations, a lessee is liable at the end of the lease term for the difference between the residual and realized values of the leased property.

#### 4(f) Payment Calculation

1. *Motor-vehicle lease.* Whether leased property is a motor vehicle is determined by state or other applicable law.

2. *Multiple-items.* If a lease transaction involves multiple items of leased property, one of which is not a motor vehicle under state law, at their option, lessors may include all items in the disclosures required under § 213.4(f). See comment 3(a)--4 regarding disclosure of multiple transactions.

#### 4(f)(1) Gross Capitalized Cost

1. *Agreed upon value of the vehicle.* The agreed upon value of a motor vehicle includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, licenses, and registration that are capitalized. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or credit transaction are not included in the agreed upon value.

2. *Itemization of the gross capitalized cost.* The lessor may choose to provide the itemization of the gross capitalized cost only on request or may provide the itemization as a matter of course. In the latter case, the lessor need not provide a statement of the lessee's option to receive an itemization. The gross capitalized cost must be itemized by type and amount. The lessor may include in the itemization an identification of the items and amounts of some or all of the items contained in the agreed upon value of the vehicle. The itemization must be provided at the same time as the other disclosures required by § 213.4, but it may not be included among the segregated disclosures.

{{4-30-02 p.6726.01}}

#### 4(f)(7) Total of Base Periodic Payment

1. *Accuracy of disclosure.* If the periodic payment calculation under § 213.4(f) has been calculated correctly, the amount disclosed under § 213.4(f)(7)--the total of base periodic payments--is correct for

disclosure purposes even if that amount differs from the base periodic payment disclosed under § 213.4(f)(9) multiplied by the number of lease payments disclosed under § 213.4(f)(8), when the difference is due to rounding.

#### 4(f)(8)

1. *Lease Term.* The lease term may be disclosed among the segregated disclosures. {{4-30-02 p.6727}}

#### 4(g) Early Termination

##### 4(g)(1) Conditions and Disclosure of Charges

1. *Reasonableness of charges.* See the commentary to § 213.4(q).

2. *Description of the method.* Section 213.4(g)(1) requires 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. Descriptions that are full, accurate, and not intended to be misleading will comply with § 213.4(g)(1), even if the descriptions are complex. In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost portion (also known as the "adjusted lease balance") of its early termination charges. For example, a lessor may state that the "constant yield" method will be utilized in obtaining 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 imposed upon the consumer. Additionally, 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 consumer. The lessor has the option of providing the explanation as a matter of course in the lease documents or on a separate document.

3. *Timing of written explanation of a named method.* While a lessor may provide an address or telephone number for the consumer to request a written explanation of the named method used to calculate the adjusted leased balance, if at consummation a consumer requests such an explanation, the lessor must provide a written explanation at that time. If a consumer requests an explanation after consummation, the lessor must provide a written explanation within a reasonable time after the request is made.

4. *Default.* When default is a condition for early termination of a lease, default charges must be disclosed under § 213.4(g)(1). See the commentary to § 213.4(q).

5. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the method of determining the amount of the difference must be disclosed under § 213.4(g)(1).

##### 4(h) Maintenance Responsibilities

1. *Standards for wear and use.* No disclosure is required if a lessor does not set standards or impose charges for wear and use (such as excess mileage).

##### 4(i) Purchase Option

1. *Mandatory disclosure of no purchase option.* Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of a purchase option disclosure, however, a lessor must disclose affirmatively that the lessee has no option to purchase the leased property if the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists under the lease is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(i) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase-option fee.* A purchase-option fee is disclosed under § 213.4(i), not § 213.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.

4. *Official fees and taxes.* Official fees such as those for taxes, licenses, and registration charged in connection with the exercise of a purchase option may be disclosed under § 213.4(i) as part of the purchase-option price (with or without a reference to their inclusion in that price) or may be separately disclosed and itemized by category. Alternatively, a lessor may provide a statement indicating that the purchase-option price does not include fees for tags, taxes, and registration.

5. *Purchase-option price.* Lessors 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 {{4-30-02 p 6728}}available independent source. The reference should provide sufficient information so that the lessee will be able to determine the actual price when the option becomes available.

Statements of a purchase price as the "negotiated price" or the "fair market value" do not comply with the requirements of § 213.4(i)

#### 4(j) Statement Referencing Nonsegregated Disclosures

1. *Content.* A 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.

#### 4(l) Right of Appraisal

1. *Disclosure inapplicable.* The lessee does not have the right to an independent appraisal merely because the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use. Thus, the disclosure under § 213.4(l) does not apply. For example:

i. The automobile lessor might expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it may hold the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the disclosure under § 213.4(l) is not required.

2. *Lessor's appraisal.* If the lessor obtains an appraisal of the leased property to determine its realized value, that appraisal does not suffice for purposes of section 183(c) of the act; the lessor must disclose the lessee's right to an independent appraisal under § 213.4(l).

3. *Retail or wholesale.* In providing the disclosures in § 213.4(l), a lessor must indicate whether the wholesale or retail appraisal value will be used.

4. *Time restriction on appraisal.* The regulation does not specify a time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease.

#### 4(m) Liability at end of Lease Term Based on Residual Value

1. *Open-end leases.* Section 213.4(m) applies only to open-end leases.

2. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay the lessee's attorney's fees in all actions under § 213.4(m), whether successful or not.

#### 4(m)(1) Rent and other charges

1. *General.* This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor (such as official fees and voluntary insurance) are not included in the § 213.4(m)(1) disclosure.

#### 4(m)(2) Excess liability

1. *Coverage.* The disclosure limiting the lessee's liability for the value of the leased property does not apply in the case of early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the disclosures governing the liability limitation are not applicable for the minimum term.

3. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability at the end of the lease term that is based on the difference between the residual value of the leased property and its realized value. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:

- i. Disposition charges.
- ii. Excess mileage charges.
- iii. Late payment and default charges.

{{4-30-02 p.6729}}

iv. In simple-interest accounting leases, amount by which the unamortized cost exceeds the residual value because the lessee has not made timely payments.

#### 4(n) Fees and Taxes

1. *Treatment of certain taxes.* Taxes paid in connection with the lease are generally disclosed under § 213.4(n), but there are exceptions. To illustrate:

- i. Taxes paid by lease signing or delivery are disclosed under § 213.4(b) and § 213.4(n).
- ii. Taxes that are part of a regularly scheduled payments are reflected in the disclosure under § 213.4(c), (f), and (n).
- iii. A tax payable by the lessor that is passed on to the consumer and is reflected in the lease documentation must be disclosed under § 213.4(n). A tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.

iv. Taxes charged in connection with the exercise of a purchase option are disclosed under § 213.4 (i), not § 213.4(n).

2. *Estimates.* In disclosing the total amount of fees and taxes under § 213.4(n), lessors may need to base the disclosure on estimated tax rates or amounts and are afforded great flexibility in doing so. Where a rate is applied to the future value of leased property, lessors have flexibility in estimating that value, including, but not limited to, using the mathematical average of the agreed upon value and the residual value or published valuation guides; or a lessor could prepare estimates using the agreed upon value and disclose a reasonable estimate of the total fees and taxes. 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 leased property at the time a fee or tax is assessed.

#### 4(o) Insurance

1. *Coverage.* If insurance is obtained through the lessor, information on the type and amount of insurance coverage (whether voluntary or required) as well as the cost, must be disclosed.

2. *Lessor's insurance.* 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 § 213.4 (o) even if it provides an incidental benefit to the lessee.

3. *Mechanical breakdown protection and other products.* 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, § 213.4(o) disclosures are not required. In such cases the lessor may, however, disclose this information in accordance with the additional information provision in § 213.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, by indicating that the mechanical breakdown contract insures parts of the automobile for up to 100,000 miles.

#### 4(p) Warranties or Guarantees

1. *Brief identification.* 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 in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty. If a lessor provides a comprehensive list of warranties that may not all apply, to comply with § 213.4(p) the lessor must indicate which warranties apply or, alternatively, which warranties do not apply.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.3(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law. {{4-30-02 p 6730}}

#### 4(q) Penalties and Other Charges for Delinquency

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(1). The § 213.4(q) and (g)(1) disclosures may, but need not, be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional rent charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the rent charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. But in either case, if the additional charge accrues at a rate higher than the normal rent charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(q).

4. *Extension charges.* Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(q).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

**4(r) Security Interest**

1. *Disclosable security interests.* See § 213.2(o) and accompanying commentary to determine what security interests must be disclosed.

**4(s) Limitations on Rate Information**

1. *Segregated disclosures.* A lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

**Section 213.5--Renegotiations, Extensions and Assumptions****5(a) Renegotiations**

1. *Basis of disclosures.* Lessors have flexibility in making disclosures so long as they reflect the legal obligation under the renegotiated lease. For example, assume that a 24-month lease is replaced by a 36-month lease. The initial lease began on January 1, 1998, and was renegotiated and replaced on July 1, 1998, so that the new lease term ends on January 1, 2001.

i. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. In this example, since the renegotiated lease covers a 36-month period beginning January 1, 1998, the disclosures must reflect payments made since that date. On the model form, the "total of base periodic payments" disclosed under § 213.4(f)(7) should reflect periodic payments to be made over the entire 36-month term. Payments received since January 1, 1998, are added as a new line item disclosed as "total of payments received" and are subtracted from the "total of base periodic payments" in calculating a new item disclosed as the "total of base periodic payments remaining." For example, if 6 monthly payments of \$300 were received since January 1, 1998, the disclosure form should include a "total of base periodic payments" line from which \$1,800 is subtracted to arrive at the "total of base periodic payments remaining." The remainder of the disclosures would not change.

ii. If the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.

{{4-30-02 p.6731}}

**5(b) Extensions**

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. If the lease is extended on a month-to-month basis and the cumulative extensions exceed six months, new disclosures are required at the commencement of the seventh month and at the commencement of each seventh month thereafter for as long as the extensions continue. If a consumer lease is extended for terms of varying durations, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

3. *Basis of disclosures.* The disclosures should be based on the extension period, including any upfront costs paid in connection with the extension. For example, assume that initially a lease ends on March 1, 1999. In January 1999, agreement is reached to extend the lease until October 1, 1999. The disclosure would include any extension fee paid in January and the periodic payments for the seven-month extension period beginning in March.

**Section 213.6--Electronic Communication****6(b) General rule**

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text.

2. *Clear and conspicuous standard.* A lessor must provide electronic disclosures using a clear and conspicuous format. Also in accordance with the E-Sign Act:

- i. The lessor must disclose the requirements for accessing and retaining disclosures in that format;
- ii. The lessee must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and
- iii. The lessor must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery.* When a lessor permits the lessee to consummate a lease transaction on-line, the lessee must be required to access the required disclosures before becoming obligated. A link to the disclosures satisfies the timing rule if the lessee cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on screen, even if multiple screens are required to view the entire disclosure. The lessor is not required to confirm that the lessee has read the disclosures.

4. *Retainability of disclosures.* A lessor satisfies the requirement that disclosures be in a form that the lessee may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

5. *Disclosures provided on lessor's equipment.* To the extent applicable in connection with a lease transaction, a lessor that controls the equipment providing electronic disclosures to lessees (for example, a computer terminal in a lessor's place of business) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the lessee may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the lessee's e-mail address or must be made available at another location

{{4-30-02 p.6732}} such as the lessor's Internet web site, unless the lessor provides a printer that automatically prints the disclosures.

#### 6(d) Address or Location to Receive Electronic Communication

##### Paragraph 6(d)(1)

1. *Electronic Address.* A lessee's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the lessor.

##### Paragraph 6(d)(2)

1. *90-day rule.* The actual disclosures provided to a lessee must be available for at least 90-days, but the lessor had discretion to determine whether they should be available at the same location for the entire period.

#### 6(e) Redelivery.

1. *E-mail message returned as undeliverable.* If an e-mail message to the lessee (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the lessor sends the disclosure to a different e-mail address or postal address that the lessor has on file for the lessee. Sending the disclosures a second time to the same electronic address is not sufficient if the lessor has a different address for the lessee on file.

### Section 213.7--Advertising

#### 7(a) General Rule

1. *Persons covered.* All "persons" must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in § 213.2(h). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(b) of the act, however, owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the act.

2. *"Usually and customarily."* Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

#### 7(b) Clear and Conspicuous Standard

1. *Standard.* The disclosures in an advertisement in any media must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see

and read or hear, and cannot comprehend, the information required to be disclosed.

*7(b)(1) Amount Due at Lease Signing or Delivery*

1. *Itemization not required.* Only a total of amounts due at lease signing or delivery is required to be disclosed, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under § 213.4.

2. *Prominence rule.* Except for a periodic payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

3. *Electronic advertisements.* For advertisements using electronic communication, to satisfy the prominence rule in § 213.7(b)(1), both the triggering terms and the required disclosures must appear in the same location so that they can be viewed simultaneously.

{{4-30-02 p.6733}}

*7(b)(2) Advertisement of a Lease Rate*

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any other § 213.4 disclosure stated in the advertisement. For advertisements using electronic communication, to comply with proximity rule in, both the rate and the accompanying notice must appear in the same location so that they can be viewed simultaneously. The prominent rule in § 213.7(b)(2) is not met if the disclosures can be viewed only by use of a link that connects the consumer to the information appearing at another location.

*7(c) Catalogs or Other Multi Page Advertisements; Electronic Advertisements*

1. *General rule.* The multiple-page advertisements referred to in § 213.7(c) are advertisements consisting of a series of numbered pages---for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A catalog or other multiple-page advertisement or an electronic advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2)(i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information (but see comments under § 213.7(b) about rules regarding the prominence of disclosures).

*7(d)(1) Triggering Terms*

1. *Typical example.* When any triggering term appears in a lease advertisement, the additional terms enumerated in § 213.7(d)(2) (i) through (v) must also appear. In a multi-lease advertisement, an example of one or more typical leases with a statement of all the terms applicable to each may be used. The examples must be labeled as such and must reflect representative lease terms that are made available by the lessor to consumers.

*7(d)(2) Additional Terms*

1. *Third-party fees that vary by state or locality.* The disclosure of a periodic payment or total amount due at lease signing or delivery may:

- i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or
- ii. Provide a periodic payment or total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

*7(e) Alternative Disclosures—Merchandise Tags*

1. *Multiple-item leases.* Multiple-item leases that utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

*7(f) Alternative Disclosures—Television or Radio Advertisements*

*7(f)(1) Toll-Free Number or Print Advertisement*

1. *Publication in general circulation.* A reference to a written advertisement appearing in a newspaper circulated nationally, for example, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in § 213.7(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of § 213.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made {{4-30-02 p.6734}} from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to reverse the phone charges when calling for information.

3. *Multi-purpose number.* When an advertised toll-free number responds with a recording, lease disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several dialing options--such as providing directions to the lessor's place of business--the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

4. *Statement accompanying toll free number.* Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as "call 1-800-000-0000 for details about costs and terms."

### **Section 213.8--Record Retention**

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained in paper form, on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately. The lessor need retain only enough information to reconstruct the required disclosures or other records.

### **Section 213.9--Relation to State Laws**

1. *Exemptions granted.* Effective October 1, 1982, the Board granted the following exemptions from portions of the Consumer Leasing Act:

i. *Maine.* Lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4, and 5 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a lessor.)

ii. *Oklahoma.* Lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the federal act. (The exemption does not apply to sections 132 through 135 of the federal act, nor does it apply to transactions in which a federally chartered institution is a lessor.)

### **Appendix A--Model Forms**

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. 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. The model form may also be modified to reflect that a transaction is an extension. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using "lessee," "lessor," or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state "plain English" requirements.

v. Deleting or blocking out inapplicable disclosures filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multi-purpose standard forms).

vi. Adding language or symbols to indicate estimates.

vii. Adding numeric or alphabetic designations.

{{4-30-02 p.6735}}

viii. Rearranging the disclosures into vertical columns, except for § 213.4(b) through (e) disclosures

ix. Using icons and other graphics.

3. *Model closed-end or net vehicle lease disclosure.* Model A-2 is designed for a closed-end or net vehicle lease. Under the "Early Termination and Default" provision a reference to the lessee's right to an independent appraisal of the leased vehicle under § 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's realized value.

4. *Model furniture lease disclosures.* Model A--3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination required under § 213.4(l) because few closed-end furniture leases base the lessee's liability at early termination on the realized value of the leased property. The disclosure should be added if it is applicable.

[The page following this is 6871.]

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[\[Main Tabs\]](#) [\[Table of Contents - 6500\]](#) [\[Index\]](#) [\[Previous Page\]](#) [\[Next Page\]](#) [\[Search\]](#)

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**SB**

**303**

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/17/06

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Transportation Committee considered SENATE BILL NO. 303

**SB 303 KNIK ARM BRIDGE AND TOLL AUTHORITY**

"An Act amending the Knik Arm Bridge and Toll Authority Act and the powers and authority of the authority to finance construction and maintenance of the Knik Arm Bridge, to set and collect tolls, and to carry out its duties, and making conforming changes to statutes relating to issuance, renewal, or reinstatement of driver's licenses and to levy on permanent fund dividends; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS Senate Bill 303 (TRA)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>CS Senate Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>SCS House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DOT	2/27/06			X	
DNR	2/28/06			X	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John C. French</i> Cowdey	X			
<i>John C. French</i> French			X	
<i>Albert Kookesh</i> Kookesh			X	
CHAIR: <i>[Signature]</i>	X			

# ALASKA STATE LEGISLATURE

**Vice Chair:**  
House Finance Committee

**Chair:**  
House Finance Subcommittees for;  
Department of Public Safety  
Department of Law



**STOLTZE**  
STATE REPRESENTATIVE  
Representative\_Bill\_Stoltze@legis.state.ak.us

**Session:**  
Alaska State Capitol, Rm 501  
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600 E. Railroad Ave.  
Wasilla, AK 99654

## Summary of Changes Senate CS for HB 471 (FIN) am

### Section 1:

#### Page 3-4, lines 29-2

1. Deleted language inserted in the House that would require a prior approval of the Governor for the Knik Arm Bridge and Toll Authority (KABATA) to exercise their powers of eminent domain.
2. Inserted language that explicitly states that Knik Arm Bridge and Toll Authority's authority regarding eminent domain does not exceed the state's authority.

FIN

House  
Floor  
amend

### Section 9:

#### Page 10, Line 9

1. Deleted the language regarding the ability to put a lien on a vehicle owner's Permanent Fund Dividend if a fee or toll is unpaid after 30 days passed the due date.
2. Deleted the language regarding the ability to bar a vehicle owner from obtaining or renewing a vehicle registration or license if a toll or fee is unpaid after 30 days passed the due date.

House  
Floor  
Changes

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP  
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

# Public-private partnership

From Wikipedia, the free encyclopedia

Jump to: [navigation](#), [search](#)

**Public-private partnership (PPP)** is a system in which a government service or private business venture is funded and operated through a partnership of government and one or more private sector companies. These schemes are sometimes referred to as PPP or P3.

In some types of PPP, the government uses tax revenue to provide capital for investment, with operations run jointly with the private sector or under contract (see contracting out). In other types (notably the Private Finance Initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services. Government contributions to a PPP may also be in kind (notably the transfer of existing assets).

Typically, a private sector consortium forms a special company called a "special purpose vehicle" (SPV) to build and maintain the asset. The consortium is usually made up of a building contractor, a maintenance company and a bank lender. It is the SPV that signs the contract with the government and with subcontractors to build the facility and then maintain it. A typical PPP example would be a hospital building financed and constructed by a private developer and then leased to the hospital authority. The private developer then acts as landlord, providing housekeeping and other non medical services while the hospital itself provides medical services.

## REASONS FOR ELIMINATING GARA AMENDMENT

**1. Purpose Of Legislation Is:**

CSSB 303 and CSHB 471 are fundamentally housekeeping bills designed *to clarify and make more specific the powers and authority of KABATA for the purpose of assuring the public and private sectors that KABATA has adequate authority to obtain the necessary supplemental financing.*

CSSB 303 and CSHB 471 *reflect advice provided KABATA by the U.S. Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) executives and other public and private financing experts* that these clarifying amendments are essential for the participation of both the public and private sectors in financing of this project.

**2. Certainty and predictability is essential.**

**3. Economic development**

**4. Low cost to State** - 80%± of project paid for out of operating revenues against a 20% -- down payment.

**5. Adequate Protection of Property Owner** under existing state statutes and required court procedures.

**6. Prohibition against using Federal funds** for economic development primarily benefiting private entities.

**AGENCIES AND ENTITIES AUTHORIZED USE OF EMINENT DOMAIN**

**Municipalities**

Electric and Telephone Cooperatives

Alaska Housing Finance Corporation

Regional Electric Authority

AkDOT&PF

AkDNR for Historic Preservation

Alaska Natural Gas Development Authority

**Public Utilities**

Alaska Railroad Corporation with Governor's prior approval, *but power of acquisition is with the chief executive officer*

Joint Action Agencies (two or more electric utilities purchasing power from Alaska Energy Authority).

Knik Arm Bridge and Toll Authority

**SUMMARY OF  
EMINENT DOMAIN LIMITATIONS and PROCEDURES UNDER ALASKA LAW**

**Statutory  
Reference  
Alaska Statutes**

**I. Prerequisites for the Exercise of Eminent Domain**

A. Use Must Be An Authorized Use. (*Authorized Uses Listed in AS 09.55.240 attached*) 09.55.275

1. Use of property must be authorized by law;
2. The acquisition is necessary to the use authorized; and
3. If the property is in public use, the acquisition is a more necessary public use.

B. Platting.

1. Preliminary and final plat approval by local jurisdiction with power of land use regulation required unless waived by the Governor for anoverriding State interest.

09.55.275

**II. Judicial Control of Acquisition by Eminent Domain.**

09.55.300

A. May limit the amount of property acquired to what the Court determines as the amount necessary for the authorized use.

09.55.300(a)(1)

B. Determines whether use of the property is a public use.

09.55.240  
09.55.300(b)

C. Property owner may have a court-appointed master determine the amount of just compensation and, if not satisfied, have jury determine the amount of compensation or waive the jury and have the judge determine compensation.

09.55.300(b)

**III. §726 of PL 109-115, div. A. Transportation, Treasury, Housing and Urban Development, the Judiciary, & Independent Agencies Appropriation Act, 2006.**

Prohibits the use of federal funds for property acquisitions for "*economic development that primarily benefits private entities.*"

**IV. AS 34.60.120 Uniform Real Property Acquisition With Federal Funds**

34.60.120

# ALASKA STATE LEGISLATURE

*Vice Chair:*  
House Finance Committee

*Chair:*  
House Finance Subcommittees for,  
Department of Public Safety  
Department of Law



*Session:*  
Alaska State Capitol  
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PO Box 464  
Chugiak, AK 99567

## **BILL STOLTZE** **State Representative**

Representative\_Bill\_Stoltze@legis.state.ak.us

### **Senate CS for House Bill 471(FIN) am** **Knik Arm Bridge and Toll Authority**

The Legislature created the Knik Arm Bridge and Toll Authority (KABATA) in 2003 to construct a toll bridge across the Knik Arm and connect the Municipality of Anchorage and the Matanuska-Susitna Borough to develop, stimulate, and advance the economic welfare of the state and further the development of public transportation systems in the vicinity of the Upper Cook Inlet. To accomplish the task assigned by the Legislature, KABATA must supplement the federal-aid funds authorized by Congress with significant additional public and private sector financing.

The changes to KABATA's statute reflects advice provided to KAI ATA from the Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) executives and other public and private financing experts that these clarifying amendments are essential for their participation in the financing of this project.

The provisions of HB 471:

- Provide exclusive authority to KABATA to set the amount of the bridge tolls.
- Provide explicit authority to enter into public-private partnerships for the construction, maintenance and operation of the toll bridge.
- Authorize obtaining non-recourse loans from the US DOT's TIFIA loan program.
- Set the dollar of non-recourse revenue bonds that may be issued and refunded.
- Provide means for the collection of tolls and other obligations owing KABATA in the operation of the toll bridge.

I ask for your support of HB 471 to give KABATA the authority to finalize financial arrangements to complete the financing of the construction, operation and maintenance of the bridge.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP  
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

## HB 471 Talking Points

- This is fundamentally a housekeeping bill. HB 471 clarifies and makes more specific the powers and authority of KABATA for the purpose of assuring the public and private sectors that they have adequate authority to obtain the necessary supplemental financing.
- HB 471 effectively reflects the advice provided to KABATA by the US Dept. of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) executives and other public and private financing experts.
- HB 471 will give KABATA the authority to set the amount of the bridge tolls.
- Provides explicit authority to enter into public-private partnerships for the construction, maintenance, and operation of the toll bridge.
- Authorize obtaining non-recourse loans from the US DOT's TIFIA loan program.
- Sets the dollar amount of non-recourse revenue bonds that may be issued and refunded (\$500 million ceiling).
- KABATA will be the entity responsible for the bonds. The state will hold no liability for those bonds. Only the revenue of the authority and its property will be subject to repayment.
- Regardless of the amount of federal and state funding, KABATA must obtain additional public and private financing to complete the project and this bill clarifies its authority to look at those financing possibilities.



**KNIK ARM BRIDGE AND TOLL AUTHORITY**

2005



**KNIK ARM CROSSING PROJECT**

KABATA is governed by a seven-member Board comprised of three private citizens, two regional legislators and two state commissioners. The Alaska State Legislature authorized KABATA, the project proponent, to undertake the permitting, design, financing, and construction and then to own, operate, and maintain the crossing as a toll road.

This Annual Report is submitted in compliance with AS 19.75 to inform the Governor and the Legislature on the status and prospects of the project. This Annual Report will be available to the public on the project web site at [www.knikarmbridge.com](http://www.knikarmbridge.com), or through the KABATA office at 907-269-6698.


Pursuant to AS 44.99.210, this publication was released by the Knik Arm Bridge and Toll Authority at a cost of \$2.30 per copy, to provide information and encourage participation, and was printed in Anchorage, Alaska.

#### PROFESSIONAL PHOTO CREDITS

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Michael Jones/AlaskaStock.com

Letter from the Chairman.....	1
Introduction.....	2
Knik Arm Crossing Project.....	3
2005 Year in Review .....	6
D The NEPA Process .....	6
D Studies and Fieldwork.....	8
D Review of Alternatives.....	10
D Project Finance .....	12
Looking Ahead to 2006 .....	14
Board and Staff.....	16
Letter from the Governor	

**Mission** The Knik Arm Bridge and Toll Authority will develop, stimulate, and advance the economic welfare of the state and further the development of public transportation systems in the vicinity of the Upper Cook Inlet with construction of a bridge to span Knik Arm and connect the Municipality of Anchorage and the Matanuska-Susitna Borough.



It is my pleasure and honor to present the Alaska Legislature with the 2005 Annual Report on the progress of the Knik Arm Crossing Project. This marks the second full year of activity for the Knik Arm Bridge and Toll Authority (KABATA) established by the legislature in 2003 to oversee the project. It has been a busy and fruitful year in moving the project closer to reality.

In January 2005 the Federal Highway Administration (FHWA) published the Notice of Intent on the project and proceeded to develop an Environmental Impact Statement (EIS). FHWA moved promptly to assemble 10 cooperating agencies and 13 participating agencies to form the core group for compliance with the National Environmental Policy Act (NEPA), as applied to the Knik Arm Crossing Project.

Throughout the spring and summer FHWA and KABATA organized and conducted a public involvement program with many presentations to and discussions with the public and community groups. Working with the cooperating and participating agencies they organized an interdisciplinary team to closely examine environmental, scientific, and geophysical aspects of the project including potential short-term and long-term impacts on Anchorage and Mat-Su communities and the natural environment. A noteworthy effort was the government-to-government negotiations with Alaska Native Tribes in the Upper Cook Inlet region.

Providing the structure and mandate for an effective process with dedication to information sharing, FHWA is to be commended for its capable leadership of the project. The "Scoping Summary Report: Comments, Issues and Alternatives" was published in November 2005 and a draft EIS, submitted in December 2005, is currently undergoing FHWA review.

As the year ends, KABATA is focused on developing a realistic and comprehensive financing plan that reflects accurate cost estimates specific to the chosen crossing alternative. Legislative approval of project financing will be necessary in this session to keep the project on schedule.

As Chairman, I am proud of the work done this year and look forward to 2006. We are moving closer to the reality of a bridge that both fills a current need and creates a bridge to the future.



George Wuerch  
Chairman

---

## Meeting the Need

---

Alaska is growing. Living in a state with vast space and few roads, Alaskans are given and cursed with breathtaking beauty and few roads to explore and set roots in the far-reaching lands. Population is growing, and the link between Anchorage, the Mat-Su Valley and beyond is rapidly being outpaced by increasing traffic and a growing concern for safety.

Anchorage is approximately two miles from Port MacKenzie and its adjacent industrial Port District in the Matanuska-Susitna (Mat-Su) Borough across the Knik Arm. Although this physical separation consists of a short span of waterway, the only current surface transportation access between the Municipality of Anchorage (Anchorage) and the Port MacKenzie area is by 80 miles of existing roadway around the head of the 30 mile-long Knik Arm.

More than 80 years of documented transportation, land use, and economic plans and studies for the Upper Cook

Inlet region of Alaska have addressed the need to connect Anchorage with the Mat-Su by providing an efficient and convenient means to cross the Knik Arm. After years of discussion by those who know Alaska best—its residents—the project is again under consideration.

Access to both the undeveloped areas, and more intensively developed centers of economic and cultural activity in Southcentral Alaska may soon be a reality as the proposed Knik Arm Crossing Project is designed, permitted, financed and constructed.

This report outlines current and future development steps leading to a new access route between Anchorage and the Mat-Su. Engineers and planners have been busy studying Knik Arm and its surrounding physical, human and natural environment. What they are finding is that a safe, cost-affordable and environmentally sound bridge can be built.



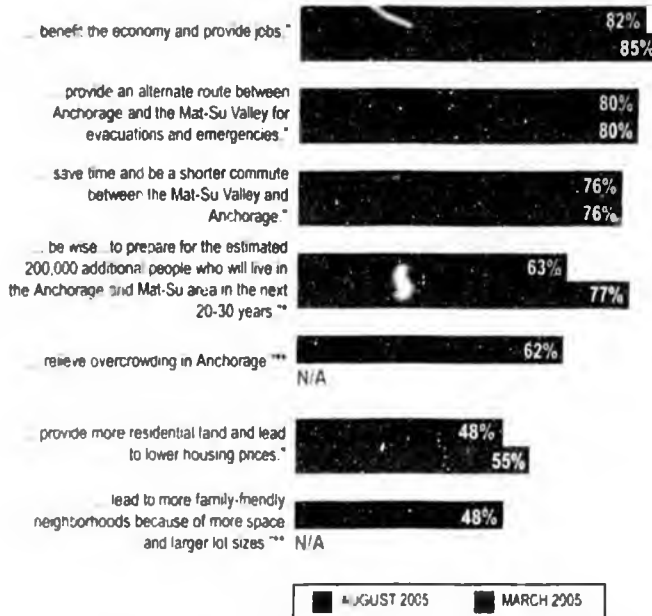
# The Right Track

## Area-Wide Survey

Alaskans want to be sure that projects reflect their needs. Residents want to be assured and have confidence that funds are used appropriately, that projects are done safely and that the design will be environmentally sound, and built to last. KABATA commissioned resident and commuter surveys to evaluate public opinions about the proposed project.

Results of the March and August 2005 surveys show overwhelming concern about current traffic congestion, potential emergency access and future population growth. Over eighty percent of people interviewed supported the project to encourage economic growth and provide jobs. Additionally, in terms of safety, eighty percent of residents surveyed believe that an alternative access route is necessary for evacuation and emergencies.

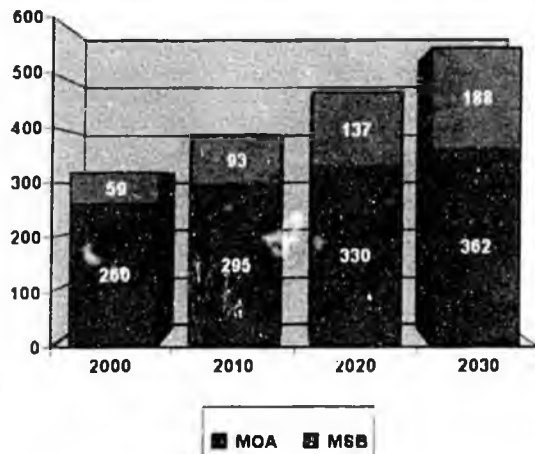
## The Knik Arm Crossing Project would...



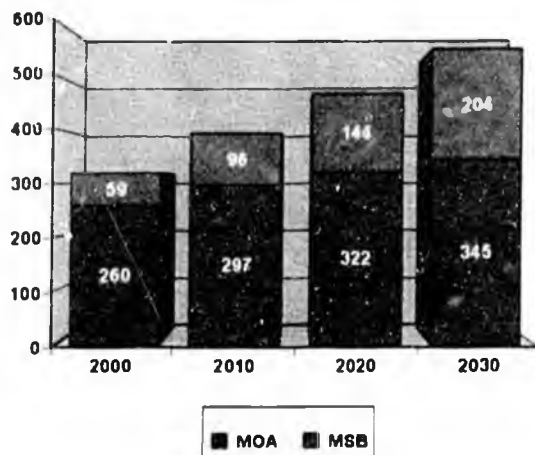
- \* Question asked as "be a wise investment to prepare for future population growth" in March 2005
- \*\* Question was asked only in August 2005

Find these surveys on the KABATA website ([www.knikarmbridge.com](http://www.knikarmbridge.com)), under the "Library" then "Project Documents" links.

Population Forecast - No Bridge



Population Forecast - With Bridge



While the Municipality of Anchorage (MOA) has grown at a compound rate of 2.4% per year, the Mat-Su Borough (MSB) has grown nearly three times as fast – at a rate of 7.3% per year. In 2000, the combined MOA and MSB population was approximately 320,000. In 30 years, the regional population is expected to increase by an additional 194,000 people. Furthermore, economists believe that the primary employment center will remain in the MOA while the MSB will be home for more and more of our growing population. The result equals more traffic on an already crowded Glenn Highway and increasing housing prices as competition for good, accessible land grows.

Traffic planners project that Glenn Highway traffic north of Muldoon will be 65,630 vehicles per day with the project, and 94,100 vehicles per day without the project in 2030.

Source: "Memorandum on the Economic and Demographic Impacts of a Knik Arm Bridge", Institute of Social and Economic Research, University of Alaska, September 2005, prepared for Northern Economics as input to the KABATA EIS.

## Purpose and Need

The proposed project would further the development of transportation systems in the Upper Cook Inlet region by providing improved vehicular access and surface transportation connectivity between Anchorage and the Mat-Su, through the Port MacKenzie District. A financially feasible and efficient crossing would meet the needs for:

- ▶ Improved regional transportation infrastructure to meet existing and projected population growth and locally adopted economic development, land use, and transportation plans, and as directed by the Alaska State Legislature in Alaska Statutes chapter 19.75;
- ▶ Regional transportation connectivity for the movement of people, freight and goods to, from, and distribution between Anchorage, the Mat-Su, and Interior Alaska; and,
- ▶ Safety and transportation system redundancy for alternative travel routing and access between regional airports, ports, hospitals, and fire, police, and disaster relief services for emergency response and evacuation.

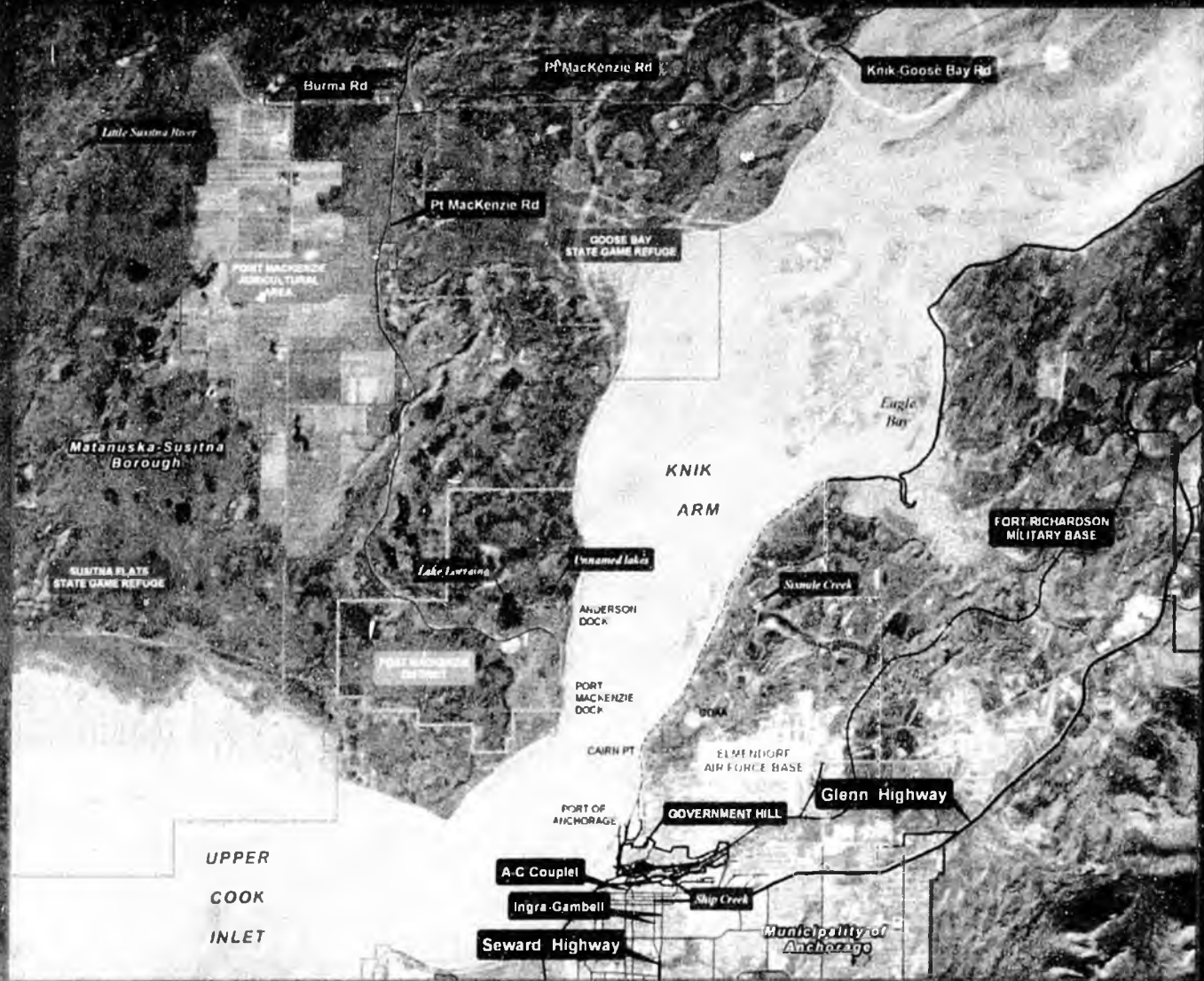
“

The congestion issues are not going away. In fact, with projected population growth, traffic issues will only worsen unless we create alternatives that safely provide relief.

”

Debbie Ossiander  
Anchorage Assembly  
AMATS Committee  
Regional Transportation Planning  
Organization

# Study Area for the Knik Arm Crossing



KNIK ARM CROSSING PROJECT

This year brought shape and breadth to a project intended to solve many transportation challenges facing Alaskans. The investigations completed in 2005 established a firm foundation of project information. This work was done through the objective and regulated National Environmental Policy Act (NEPA) process which required an Environmental Impact Statement (EIS).

The EIS Scoping Process determined the range of actions, alternatives, and resulting impacts to be considered in the EIS. Input was solicited from the public, agencies, local government and tribes. More than 1,000 comments were received, prompted by a wide variety of outreach tools. This extended scoping process was established to allow the project to respond and evolve based on public input.

The "Summary Scoping Report: Comments, Issues and Alternatives" was published in November 2005, and is available at [www.knikarmbridge.com](http://www.knikarmbridge.com). The Draft EIS, completed in December 2005, is currently undergoing FHWA review. It is expected to be available to the public in January 2006 with another series of public meetings. Copies of the Draft EIS will be available electronically as a CD or online, and in hard copy at area libraries.

The following list of events and tools highlights the intensity of the scoping process.

- Agency interdisciplinary team meetings (6)
- Agency one-on-one meetings (13)
- Comment database (1,000)
- Community Council presentations/attendance (8)
- Government-to-Government (tribal) consultation (1)
- Household surveys (2)
- Mailing list (3,104)
- Media outreach
- Meeting advertisements and other notifications
- Native Corporation meetings (1)
- Newsletters (4)
- Newspaper inserts (2 statewide)
- Public Scoping meetings (2 locations, 2 times)
- Press releases (4)
- Principals' Working Group meetings (5)
- Study area tours (24)
- Small group (agency and other entities) meetings (41)
- Speakers' Bureau and presentations (20 organizations)
- Tribal scoping meetings/workshops (6)
- Project website: [www.knikarmbridge.com](http://www.knikarmbridge.com)

“

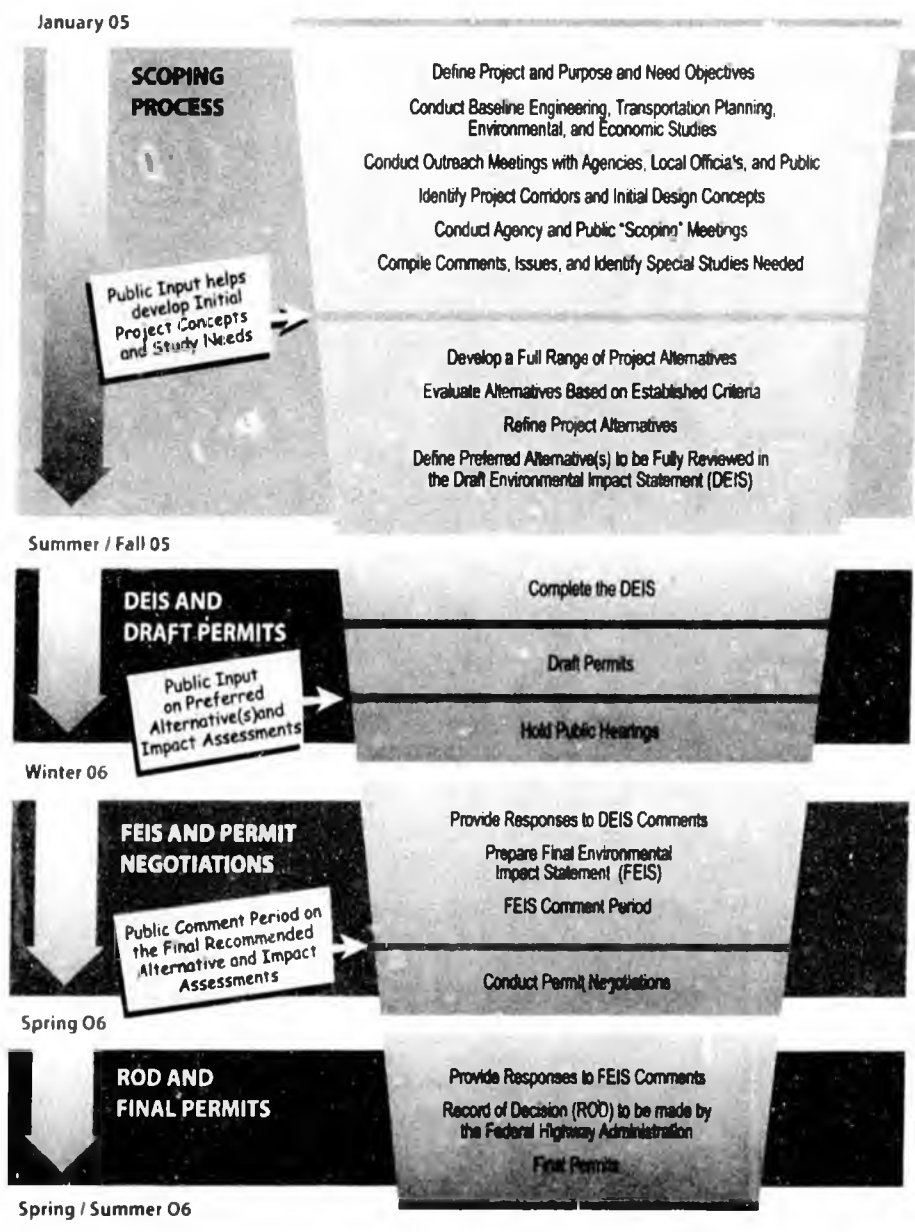
I am confident that the National Environmental Policy Act process has been open, inclusive, comprehensive and responsive.

”

Edrie Vinson  
Environmental Project Manager  
for FHWA

Process

Knik Arm Crossing Environmental Impact Statement & Permitting Process



## Studies and Fieldwork

From wildlife biology to seismic design criteria, the EIS is a comprehensive and thorough analysis of issues related to development of the Knik Arm Crossing Project. Directed by FHWA, information is carefully collected, compiled, and made available to the public, as well as local, state and federal agencies.

As an outcome of the project, many studies initiated through this project will serve future generations with observations and information added to knowledge of the Knik Arm area. Technical Reports on shorebirds, belugas, fisheries and hydrology will be released in early 2006.

### Birds to Whales

Five species of salmon were collected (Chinook, pink, chum, sockeye, and coho) as well as the invertebrates that they eat. During ice-free conditions between summer of 2004 and 2005, marine life was sampled at eleven different sites in the Knik Arm.



Observers studied baseline conditions to characterize beluga whale movement patterns and habitat use. Whale movements were found to be influenced by tides and season. The highest sighting rates in Knik Arm were in September. Whales appear to ride the ebbing tide down the Knik Arm, and the flooding tide up the Knik Arm.

Gulls, ducks, and shorebirds shared the area with eagles nesting along the tidal flats. Local bird experts provided spotting and identification skills as well key insights into habitat requirements.

### Physical Studies

Geotechnical borings from previous work on the dock at Port MacKenzie, and a detailed site-specific seismic analysis, provided insights into the probability and magnitude of earthquakes in the project corridor.

Gravelly soils are more than satisfactory for construction, and not Bootlegger's Clay found to the south. No earth faults were identified in this area. The bridge would be designed to meet seismic standards, and to resist the forces of ice, currents, tides and wind, while protecting current port facilities.

### Human Studies

Agency, tribal and other local experts defined the presence of cultural and historical resources, considered designs to mitigate potential impacts, and proposed additional special studies for the Draft EIS. With military staff, the project team analyzed security requirements and protection of military mission and facilities in the Port of Anchorage and Elmendorf Air Force Base areas.

### Socioeconomic Studies

Traffic planners collaborated with local government to develop the first regional transportation planning model integrating Mat-Su and Anchorage area traffic patterns and information.

A geographic information systems (GIS) model was developed by the project team, Anchorage and Mat-Su. This tool

profiled land use changes over time, noting that population growth would continue to increase with or without a Knik Arm Bridge.

Households and commuters were surveyed to measure public support and identify potential concerns. Over 66 percent were in favor of the project, citing the need to open more land, shorten commutes and stimulate economic development.

“  
We created the first  
integrated traffic  
model as a tool that  
accurately reflects  
future growth and  
transportation  
needs across the  
region.

”  
John McPherson  
HDR Transportation Planner

## Engineering

The engineering team worked with the regulatory agencies to define the proposed bridge location, length and type. The location was determined based on considerations of military operations and existing facilities, logical landing points on both sides, and the relationship to existing ports and roads. The bridge orientation would be aligned with the currents in the Knik Arm to minimize challenges from ice floes and scour.

The minimum length of the bridge would be about 8,200 feet. Hydraulic analyses have found that there would be no appreciable increase in current tidal flow with the 8,200-foot bridge option, which is key to protecting against scour. The bridge would be concrete or steel with piers and a low profile to minimize

impacts to surrounding military and civil air and marine operations. The Coast Guard and other arc wide vessel operators have helped to determine the minimum bridge deck height to allow at least 50 feet of clearance for vessels.

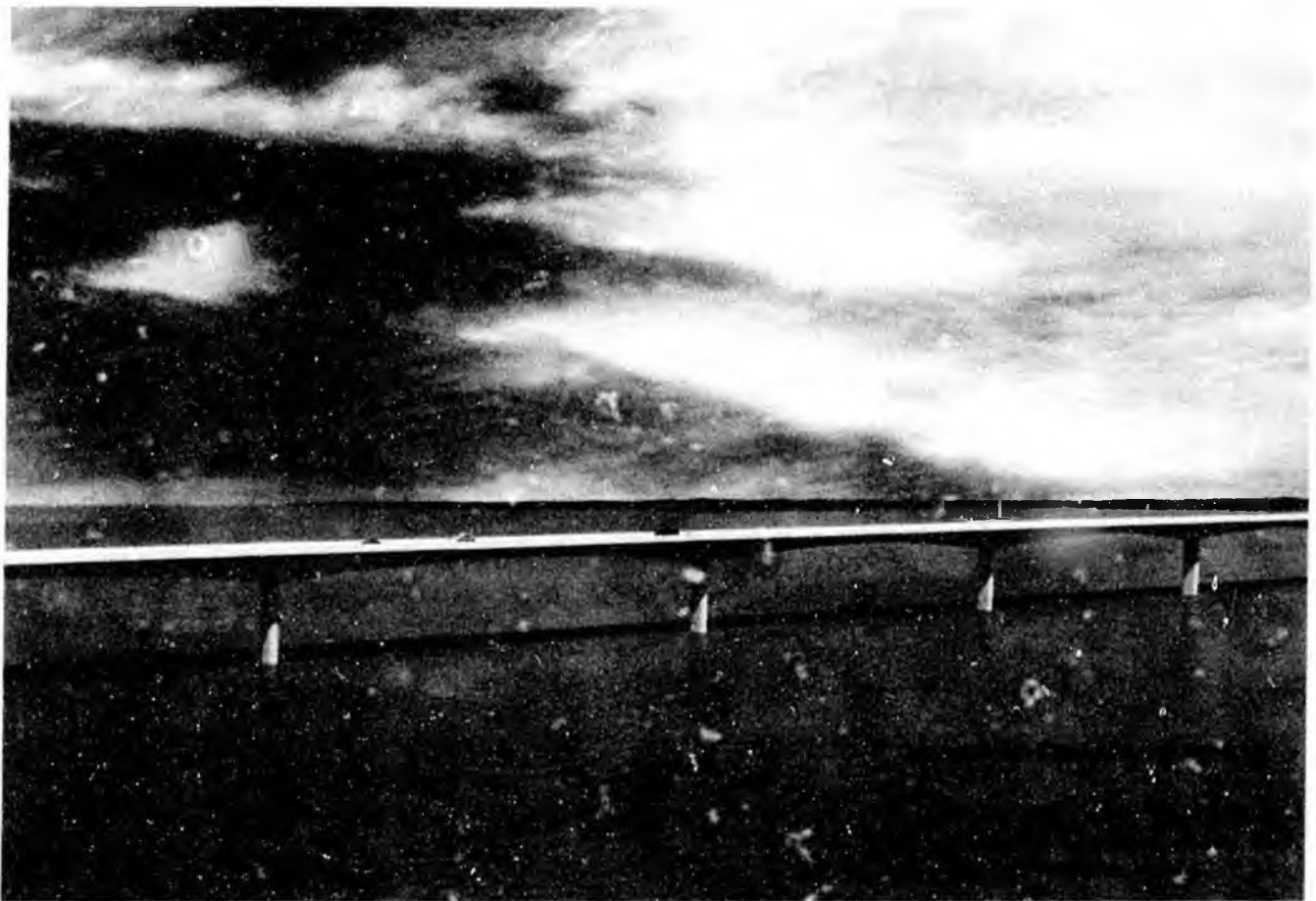
The bridge is designed to be expandable to accommodate four lanes of traffic. It would be two to three lanes on day of opening. Expandability and cost are key factors in defining the final bridge design.

## Cost Estimates

The past several years have proven a challenge for controlling construction costs. Steel, concrete and petroleum-based construction commodities and activities have been increasing at two to three times the historic rate, including commodity spikes associated with

the 2005 hurricane season. Currently, day of opening project cost estimates are around \$600 million. This cost is based on estimates of engineering and quantities from three separate engineering firms. This cost includes construction of the bridge itself; the approaches east to Government Hill and the A/C Couplet, and west to Burma Road; design; project management; and right-of-way acquisition. Options to materially reduce total project costs are actively and continually being pursued. As alternative routes are evaluated, there will be a continued evaluation of alternative project delivery methods, cost-sharing strategies and potential sources of lower cost construction materials.

With continued cost-control discipline, an affordable Knik Arm bridge could be constructed.



## Review and Development of Alternatives

The goal of KABATA is to build a safe, affordable, and environmentally sensitive Knik Arm bridge. The project team has reviewed and evaluated a large number of alternative routes, crossing concepts, and engineering data.

The project team developed preliminary corridors based upon an initial study area. The public and agencies were instrumental in helping to develop the range of modes, termini options and roadway alternatives analyzed for the Knik Arm Crossing Project.

The interactive scoping process led to more than 20 new alternatives in response to public and agency comments.

- Alternative modes were expanded to include assessment of ferry and rail.

- A future corridor connection to Ingra-Gambell Couplet was added to respond to concerns of community cohesion, traffic and mobility.

- A Northern Access Corridor was added to the northern side of Port MacKenzie District, to avoid adverse impacts to the port's operations.

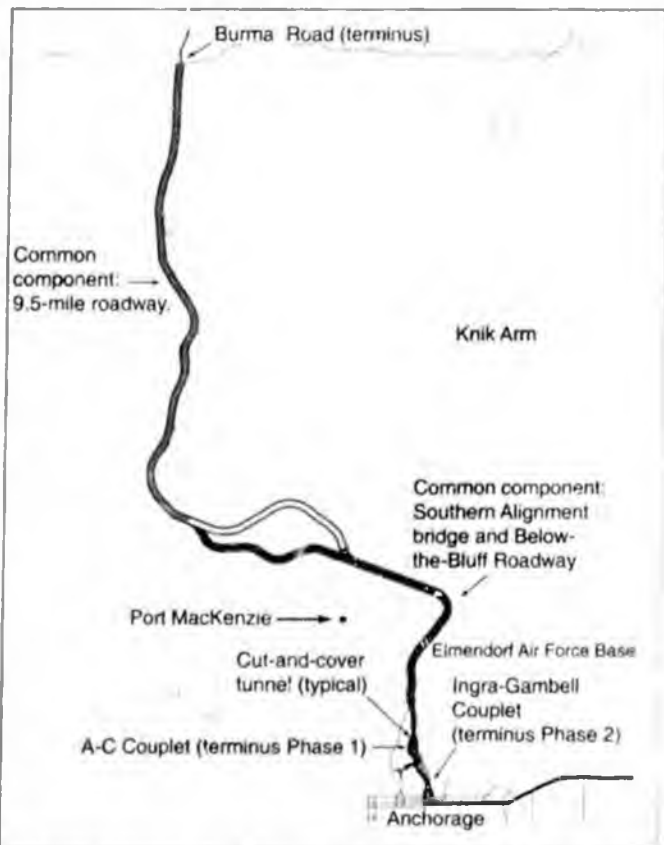
- A Southern Crossing Corridor was added to increase the separation from beluga whale activity and from critical military operations.

- Additional roadway alternatives were added to minimize impacts to the Port of Anchorage, the Government Hill community, downtown businesses, and the intertidal area of Knik Arm.

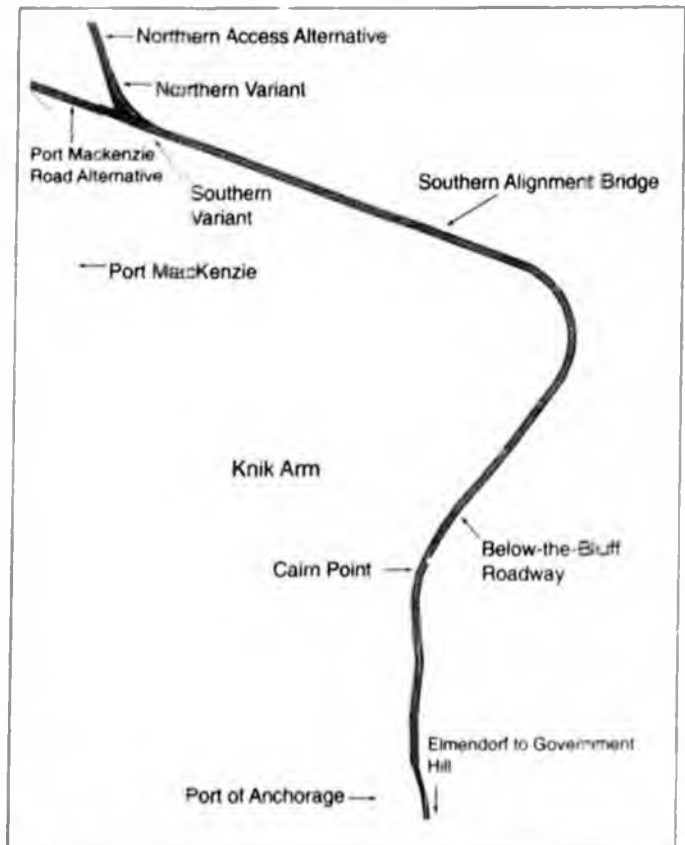
- A bored tunnel was included, in addition to a cut-and-cover tunnel access through Government Hill.

- Bridge types and lengths were added to respond to concerns of cost and environmental impact.

After substantial study and consultation with stakeholders, several of the roadway alternatives were screened out because they proved unacceptably disruptive to military mission and operations, or were not technically reasonable to build. Evaluation of alternative routes will continue to maintain focus on an affordable, buildable and environmentally sound crossing project.



**Figure 1** The proposed project begins at Burma Road with two approach corridors near Port MacKenzie, and ends in Downtown Anchorage.



**Figure 2** The Southern Alignment bridge alternative and Below-the-Bluff Roadway alignment are highlighted in orange.

## Reasonable Alternatives Carried Forward for Draft EIS

FHWA based its choice of reasonable alternatives on the ability to meet projected traffic demand, provide the greatest flexibility and opportunity to travel, provide the shortest travel times, lowest user costs, and least impacts on the communities in the Study Area.

The project team screened a wide range of possible alternatives against criteria for (1) purpose and need and (2) technical merit. The roadway mode with a pile-supported span bridge was found to be the most reasonable mode for the proposed project. Roadway alternatives could accommodate mass transit and ride-sharing transportation options, which are important to regional mobility.

The project team determined that the following corridors were reasonable for linking Anchorage and the Mat-Su through a bridge across Knik Arm and through associated approach roadways.

Figure 1: Mat-Su Approach Corridors

Point MacKenzie Road  
Northern Access Road

Figure 2: Crossing Corridor

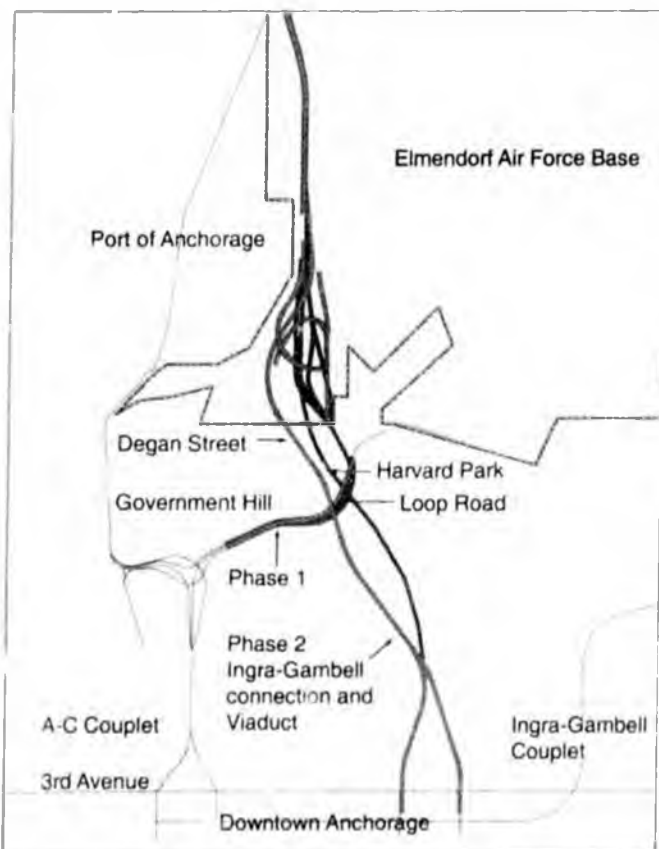
Southern Crossing including the Below-the-Bluff Roadway

Figure 3: Anchorage Approach Corridors

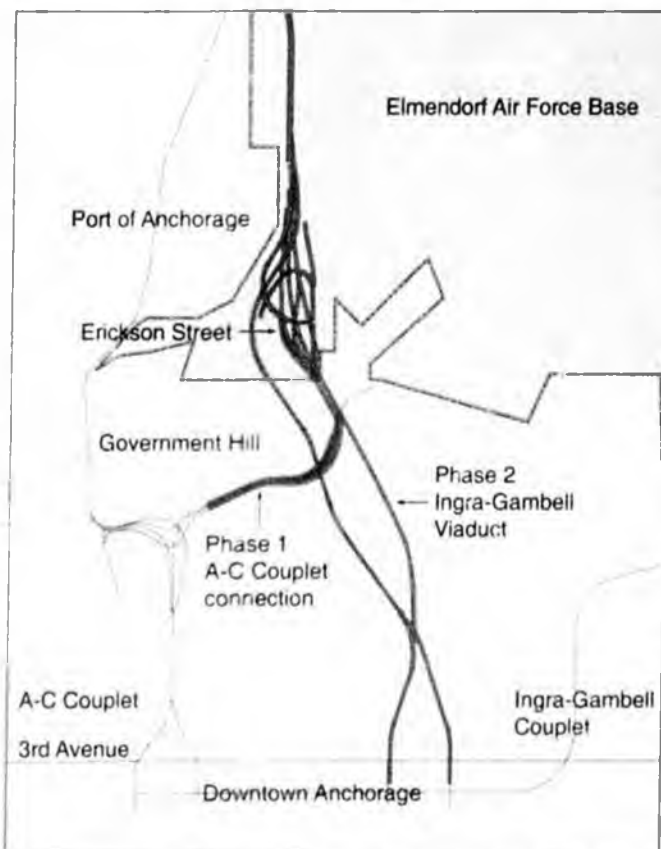
Erickson Street Alternative including Ingra/Gambell and A/C Couplets

Figure 4: Degan Street Alternative

Including Ingra/Gambell and A/C Couplets



**Figure 3** The Erickson Street Alternative alignment is shown in orange. Phase 1 connects to the A/C Couplet, while Phase 2 connects to the Ingra/Gambell Couplet.



**Figure 4** The Degan Street Alternative alignment is shown in orange.

## LETTER FROM THE EXECUTIVE DIRECTOR

The Knik Arm Bridge and Toll Authority (KABATA) will produce independently audited financial statements at the completion of the planning, design, and construction phases when toll operations formally commence, or sooner if financing arrangements to be entered into require such independent audit of KABATA. For periods prior to such independent audit requirement, the State of Alaska Department of Transportation & Public Facilities (DOT&PF) budget, accounting, and reporting procedures are being used by KABATA.

KABATA entered into a Memorandum of Agreement (Agreement) with the DOT&PF effective September 30, 2004. The Agreement pertains solely to the pre-construction phase of the project, including transportation planning, preliminary engineering, environmental and permitting, final engineering design and reconnaissance, utilities and right-of-way phases of the project. It also sets forth procedures and responsibilities for interacting with FHWA.

In addition to other responsibilities under the Agreement, DOT&PF provides technical, professional, administrative and clerical support to KABATA to meet both the State and Federal financial and other regulatory requirements. An audit covering both State and Federal requirements is part of DOT&PF's yearly internal review and audit procedure performed by their internal review function in the Office of the Commissioner.

Respectfully Submitted,



Heinrich Springer  
Executive Director

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### KABATA Contracts with Financial Advisor

The Knik Arm Bridge and Toll Authority (KABATA) has entered into a professional services contract with Kevin Hemenway to serve as Senior Financial Advisor. A resident of Anchorage, Alaska, Mr. Hemenway brings fifteen years of practical experience as a Chief Financial Officer, Treasurer, Controller, and Consultant; and, six years of hands-on experience as a Certified Public Accountant. Mr. Hemenway most recently worked at Alaska Communications Systems. Prior to moving to Alaska, Mr. Hemenway served as Chief Financial Officer, Treasurer, and Controller at Atlantic Tele-Network, Inc., in St. Thomas, U.S. Virgin Islands. He previously held positions as a Certified Public Accountant at both Deloitte & Touche and Grant Thornton.

As Senior Financial Advisor, Mr. Hemenway will provide independent financial advisory services to KABATA related to the authorization, sale, issuance, and delivery of commercial revenue bonds. He will also aid KABATA with the selection of its bond counsel, audit team, underwriting team and banking institution.

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### Wilbur Smith Associates Analyzes Toll Revenues

Wilbur Smith Associates (WSA) prepared for KABATA an analysis of potential toll revenues, to determine their capacity to support debt service on proposed bonds for construction of the bridge and approaches. WSA worked with the technical studies produced for the DEIS, including regional traffic models, survey information from households and commuters, and forecasts of population and employment. The WSA analysis included development of maintenance and operations costs, preliminary operating expenses and capital costs for a toll collection system, and estimation of potential toll revenues.

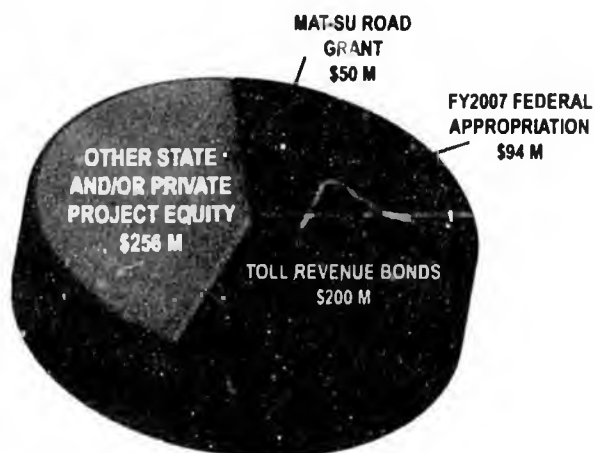
The conclusion of the Preliminary Traffic and Toll Revenue Study was that the net toll revenue stream would be satisfactory to support bonding for approximately \$200 million in debt, and to pay for operations and maintenance over the life of the Knik Arm Crossing, assuming a toll of \$3 to \$5 per passenger vehicle.

Complete report is available on the website:  
[www.knikarmbridge.com](http://www.knikarmbridge.com)

## Fund Sources

Construction cost for the Knik Arm Crossing Project is estimated at approximately \$600 million in opening day dollars. As discussed, the WSA analysis indicates \$200 million of that cost could be funded by toll revenue bonds, or other toll-backed debt financing sources. Congress allocated over \$2.1 billion of Federal Highway funds to Alaska in the SAFETEA-LU transportation bill, to be paid out over five federal fiscal years. In the administration's FY2007 budget submission, Governor Murkowski has requested of the legislature that \$94 million of this federal transportation funding be committed to the Knik Arm Crossing Project, representing 4% of Alaska's federal transportation allocation. KABATA has also suggested that a separate grant of approximately \$50 million be provided to the Mat-Su Borough to upgrade and pave the Port MacKenzie Road to provide a modern, safe and convenient connection to the west side of the project. This is included in the \$600 million estimate. An additional \$256 million would need to be generated from other State or private equity sources in order to complete project funding.

PRO FORMA PROJECT FUNDING - \$600 MILLION



### Current Authorizations and Annual Expenditures January 1, 2005 to December 31, 2005

#### AUTHORIZATIONS

Millions

The Federal Highway Administration (FHWA) has authorized reimbursement of advanced construction funds for the planning and environmental phases of the project, of which \$1.0 million was repaid through two special earmark appropriations and \$7.6 million will be repaid through future appropriations.

SAFETEA-LU FHWA Earmark for 2005 2.0

Total Authorizations \$ 20.2

#### EXPENDITURES

Millions

2002/2003 Expenditures, Primarily by DOT&PF \$ 1.1

2004 Expenditures, Primarily Contracted Professional Services 3.8

2005 Forecast Expenditures, Primarily Contracted Professional Services 12.1

Total Expenditures \$ 17.0

Estimated Project Cost Through Construction \$ 600

#### HIGHLIGHTS of 2005 and 2004 EXPENDITURES

Thousands

##### Contractor / Subcontractor

Forecast 2005 Actual 2004

HDR Alaska, Inc.	\$ 4,058	\$ 611
URS Corporation	2,150	541
LGL Alaska Research Associates, Inc.	1,278	505
PND Incorporated	1,184	615
Northern Economics	587	35
RISE Alaska, LLC	487	238
All Others (approximately 23 in 2005, 12 in 2004)	1,668	600

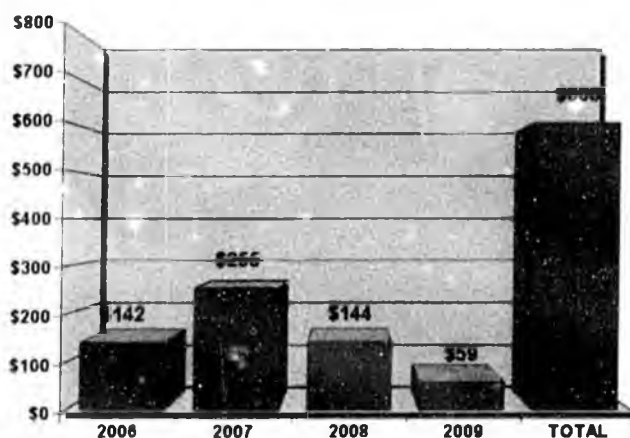
Sub-Total Contractors 11,388 3,143

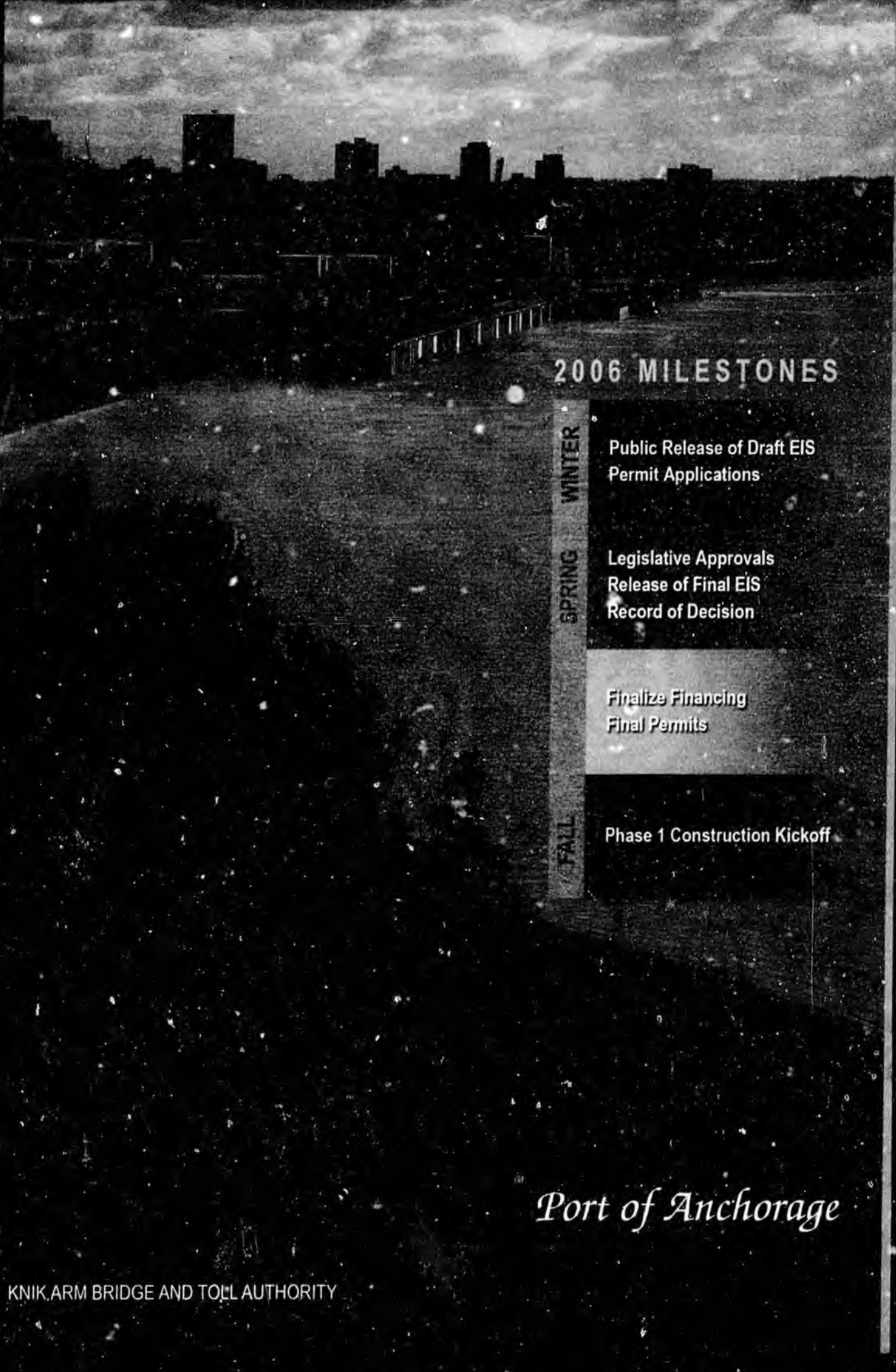
KABATA General and Administrative Costs 750 619

Total Expenditures \$ 12,138 \$ 3,762

### DRAFT STATE TRANSPORTATION PLAN (STIP) Anticipated Project Spending by Federal Fiscal Year

The draft State Transportation Improvement Plan (STIP) for the Knik Arm Crossing Project has anticipated \$600 million to be spent over the next four federal fiscal years ending September 30, 2009. The STIP for the Knik Arm Crossing Project is a planning document of the Alaska Department of Transportation and Public Facilities. Actual funding of the project is subject to State and Federal budget appropriations and the ability of KABATA to issue bonds or other debt financing backed by toll revenues. The chart below depicts the anticipated spending by federal fiscal year.





## 2006 MILESTONES

WINTER

Public Release of Draft EIS  
Permit Applications

SPRING

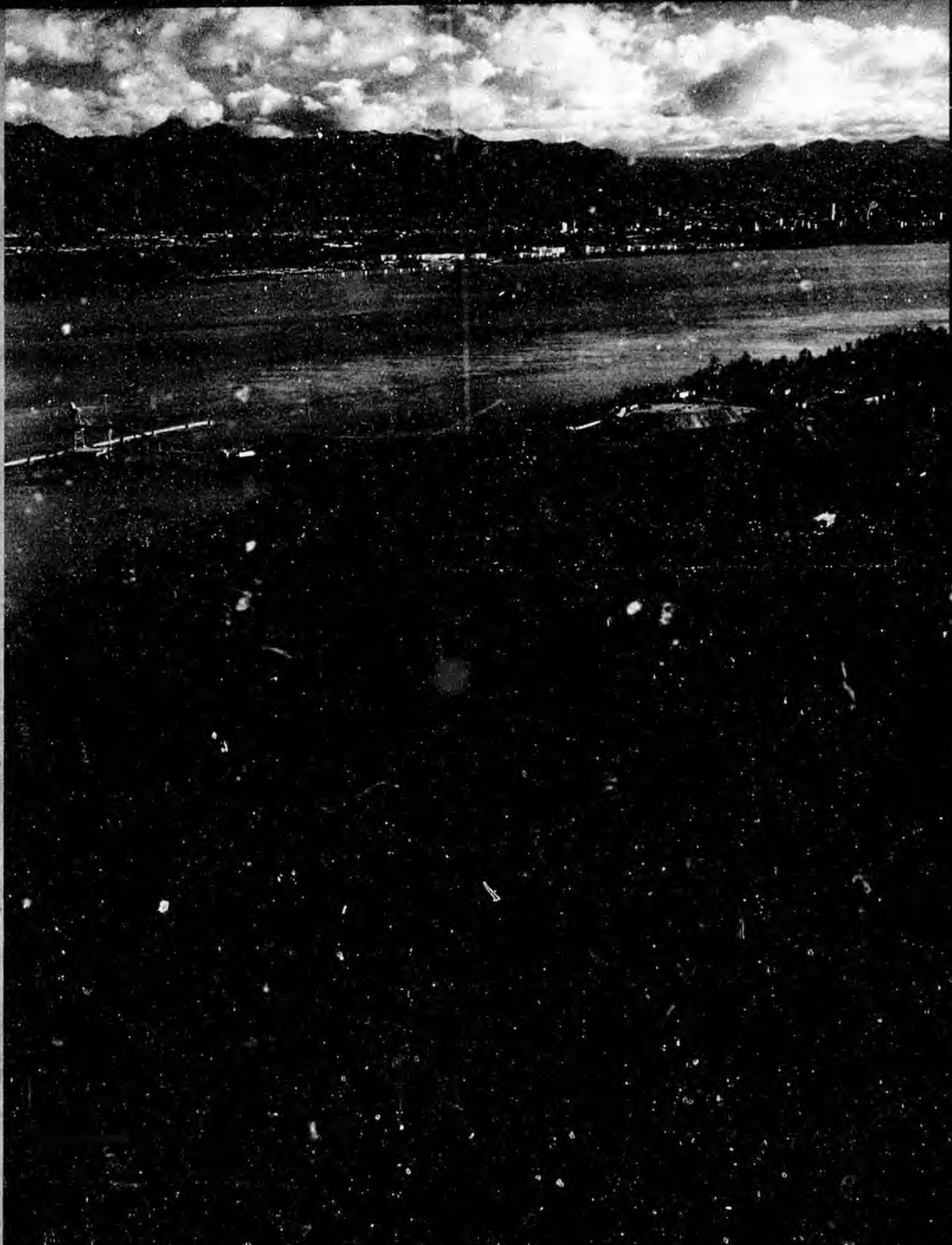
Legislative Approvals  
Release of Final EIS  
Record of Decision

FALL

Finalize Financing  
Final Permits

Phase 1 Construction Kickoff

*Port of Anchorage*



LOOKING AHEAD TO 2006

*Port MacKenzie*



George Wuerch  
Chairman



Henry Springer  
Executive Director  
Staff



Darcie Salmon  
Vice Chairman



Darryl Jordan  
Deputy Executive Director/  
Program Manager  
Staff



Senator Lyda Green



Dale Paulson  
Director of Regulatory and  
Environmental Affairs  
Staff



Representative  
Bill Stoltze



William A. Greene  
Project Counsel



Mike Barton  
Commissioner of DOT&PF



Betty Fauber  
Administrative Manager  
Staff



Bill Corbus  
Commissioner of Revenue



Amanda Torres  
Administrative Clerk  
Staff



Dave Haugen  
Vice President  
Lynden, Inc.



## A Bridge to Alaska's Future Moves Forward

Dear Fellow Alaskans:

A little over two and one-half years ago the Alaska Legislature created the Knik Arm Bridge and Toll Authority to build a bridge to connect the Municipality of Anchorage with the Matanuska-Susitna Borough. The Knik Arm Crossing Project will serve over 50 percent of Alaska's population and create new opportunities for businesses and provide access to attractive residential neighborhoods for the expected growth in population.

Last summer, Congress passed the transportation bill, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The Alaska Congressional Delegation: Senator Stevens, Senator Murkowski, and Congressman Young, are all to be thanked for their help in obtaining funding for Alaska's transportation needs.

The Federal Highway Administration is also to be commended for preparing a Draft Environmental Impact Statement in a timely and effective manner. With their help as the federal lead agency, this project will soon be a reality.

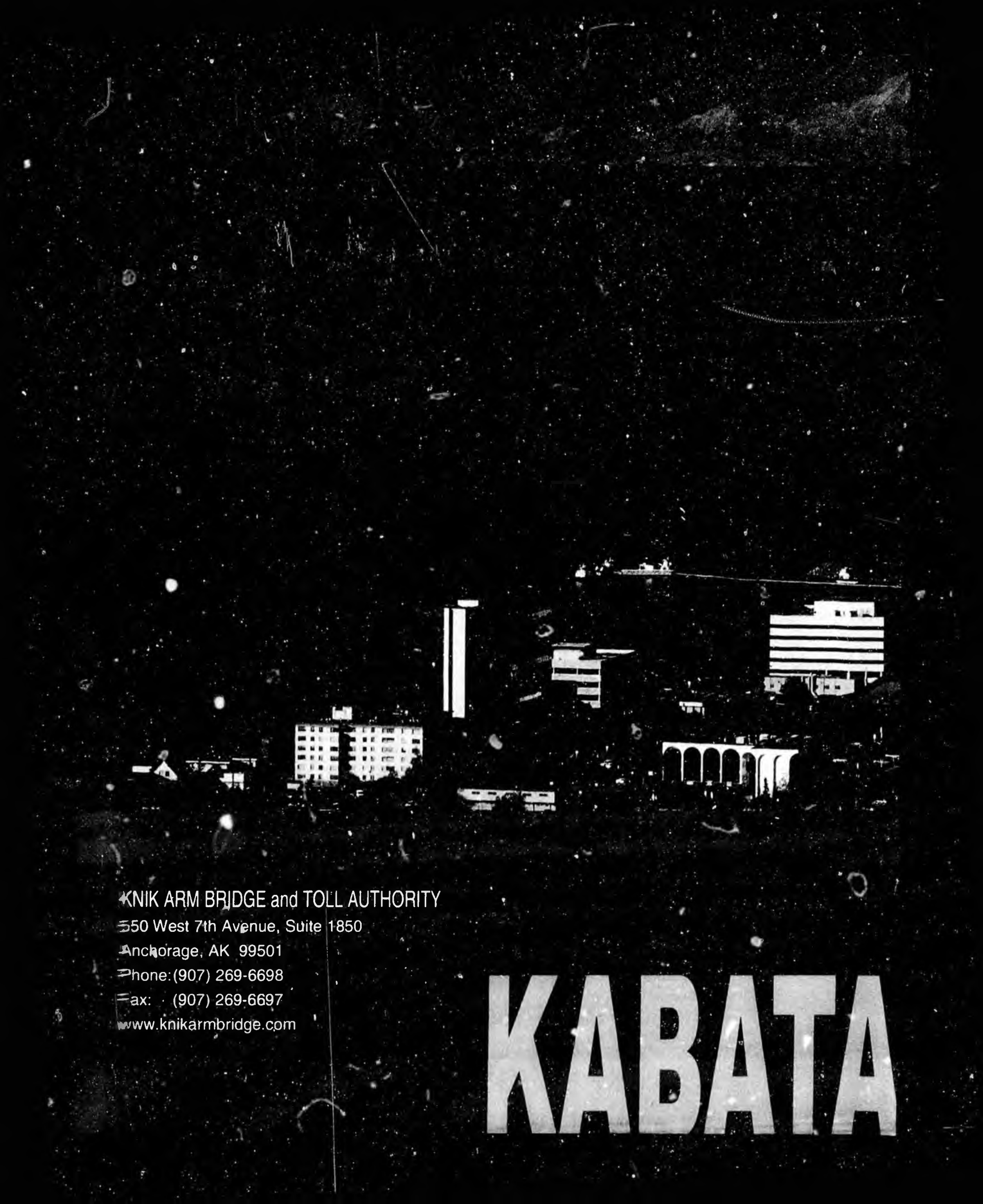
Expanding the state's transportation infrastructure is a high priority in my administration. A good road network is essential to economic prosperity. I am confident that the Legislature's decision to form a toll authority for this project will produce a bridge to Alaska's future.

Sincerely yours,

A handwritten signature in cursive script, reading "Frank H. Murkowski".

Frank H. Murkowski  
Governor





**KNIK ARM BRIDGE and TOLL AUTHORITY**

550 West 7th Avenue, Suite 1850

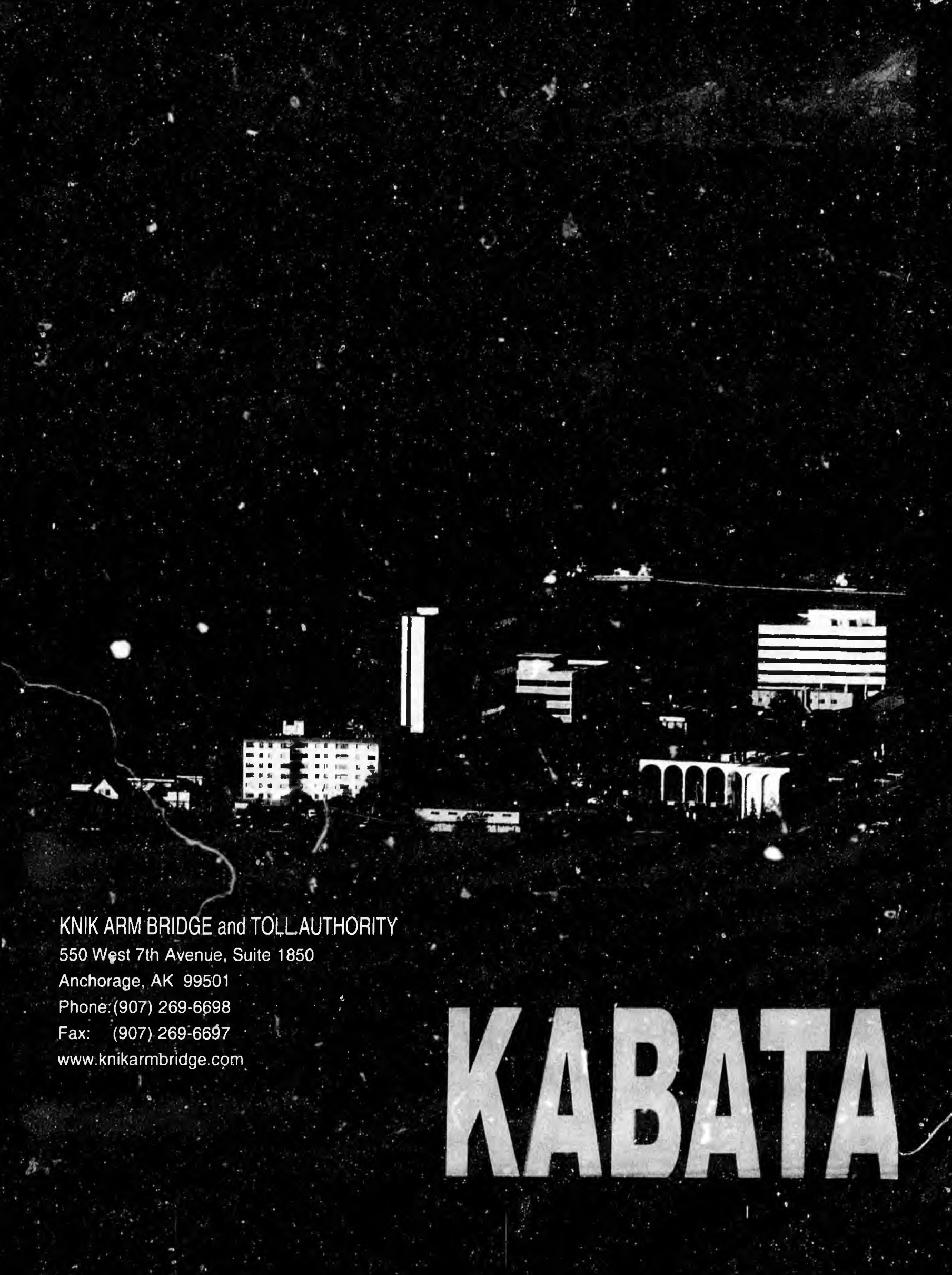
Anchorage, AK 99501

Phone: (907) 269-6698

Fax: (907) 269-6697

[www.knikarmbridge.com](http://www.knikarmbridge.com)

# KABATA



KNIK ARM BRIDGE and TOLL AUTHORITY

550 West 7th Avenue, Suite 1850

Anchorage, AK 99501

Phone: (907) 269-6698

Fax: (907) 269-6697

[www.knikarmbridge.com](http://www.knikarmbridge.com)

# KABATA

If you have any questions or desire further information, please let me know.

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**From:** Ben Mulligan [mailto:Ben\_Mulligan@legis.state.ak.us]  
**Sent:** Monday, April 03, 2006 11:56 AM  
**To:** william a greene  
**Subject:** RE: hb 471

Amendment #1: Took away KABATA's authority to put a lien on a person's permanent fund.

Amendment #2: Merely stated that in order to exercise your powers of eminent domain that you must get the Commissioner of DoT's approval, and that your powers of eminent domain do not exceed the state's power of eminent domain.

**Ben Mulligan**  
Staff to Rep. Stoltze

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**From:** william a greene [mailto:williamagreene@alaska.net]  
**Sent:** Monday, April 03, 2006 11:54 AM  
**To:** Ben Mulligan  
**Subject:** hb 471

BEN: WHAT WERE THE AMENDMENTS? MISSED THEM.

## Knik Arm Bridge Sources of Funds (\$ x 1000)

- \$151,000** TEA-LU, Sect 1702, line # 2465:
- High Priority plan/design/construct Knik Arm Bridge
  - Earmarked specifically for Knik Arm project
  - Funding directed to KABATA
- Appropriations bill PL 109-115, Sect 186:
- Dropped Knik Arm project name
  - Changed funding to ADOT-PF
  - Did not transform to State formula funds
  - State can allocate all or nothing to Knik Arm project
  - State can redirect to other High Priority projects
- \$28,425** TEA-LU, Sect 1702, line #3677:
- High Priority plan/design/construct Knik Arm Bridge
  - Funding to KABATA
- Appropriations Bill – PL 109-115, Sect 186:
- Changed funding to ADOT-PF
  - Continues program status and purpose
  - Requires Secretary, USDOT to reprogram
- \$30,000** TEA-LU, Sect 1302, line #14:
- National Corridor Improvement Program
  - Plan/design/construct Knik Arm Bridge
  - Funding to KABATA
- Appropriations Bill – PL 109-115, Sect 186:
- Same as Sect 1702 above
- \$20,000** TEA-LU, Sect 1934, line #2:
- Transportation Improvements Program
  - For Knik Arm Bridge
- Appropriations Bill – PL 109-115, Sect 186:
- Same as Sect 1702 above
- \$2,000** TEA-LU, Sect 1934, line #14
- Transportation Improvements Program
  - Knik crossing approach routes study/design/engr.
- Appropriations Bill – PL 109-115, Sect 186:
- Same as Sect 1702 above

**Deborah Grundmann**

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**From:** william a greene [williamagreene@alaska.net]  
**Sent:** Tuesday, April 04, 2006 11:40 AM  
**To:** Ben Mulligan; Deborah Grundmann  
**Cc:** Springer, Henry; Wuerch, George; Jordan, Darryl; Paulson, Dale; Kevin Hemenway; Fauber, Betty  
**Subject:** RE: hb 471

Ben: Just listened to what Gara said on Amendment No. 2. to the effect that Kabata is not a state agency and should get Governor's approval as is required for ARR to avoid abuse of the power.

A couple of *additional* points:

- (1) Kabata *is* a state agency. **Sec. 19.75.021 Establishment of authority** states:

There is established the Knik Arm Bridge and Toll Authority. The authority is a public corporation and an instrumentality of the state within the Department of Transportation and Public Facilities, but the authority has a separate and independent legal existence from the state. The exercise by the authority of the powers in this chapter is considered an essential governmental function of the state.

- (2) ARRC is the *only State agency* out of 8 others that requires the Governor's approval for eminent domain and, as noted below, is probably because the eminent domain power of the ARRC is delegated by statute, not to its board of directors, but to its CEO. While I have not had a chance to check it out, this approval requirement may well have been a condition of transfer of the ARR from the federal government to the State. Also, its powers of eminent domain are broader because it has a more extensive scope of activities.
- (3) The private utility companies and port authorities have more flexibility and no such requirement.
- (4) Abuse of the power of eminent domain is strictly controlled by the judicial oversight required by the Alaska Statutes contained in the attachments to my prior email and, of particular significance to Kabata because of federal funding, AS 34.60.120.

Hope this helps.

---

**From:** william a greene [mailto:williamagreene@alaska.net]  
**Sent:** Tuesday, April 04, 2006 9:44 AM  
**To:** 'Ben Mulligan'; deborah\_grundmann@legis.state.ak.us  
**Cc:** Springer, Henry; Wuerch, George (George\_Wuerch@dot.state.ak.us); Jordan, Darryl (darryl\_jordan@dot.state.ak.us); Paulson, Dale (Dale\_Paulson@dot.state.ak.us); Kevin Hemenway (Kevin\_Hemenway@dot.state.ak.us); Fauber, Betty (betty\_fauber@dot.state.ak.us)  
**Subject:** RE: hb 471

Ben: Could you please send me the text of Amendment #2. This amendment is quite troubling and KABATA requests it be removed. This Amendment could cause considerable problems if a Commissioner wants to derail the project for whatever reason, including political, particularly if there is a new administration. Below are the reasons why this amendment is not needed.

- (1) The State Constitution [§18, Art. I] and implementing statutes [AS 09.55.270 - .460] extensively regulate when and how eminent domain may be exercised with considerable Court oversight and protection of property owner rights. (See first attachment). A court must determine whether the use is a "public use" and whether there is a "necessity" to take it. The process is highly structured for Court oversight.
- (2) The entities that may utilize eminent domain are:
1. The State;
  2. A municipality;
  3. Electric or telephone cooperative; (e.g. Chugach Electric)
  4. Alaska Housing Finance Corporation (for many purposes);
  5. A regional electric authority;
  6. Ak DOT&PF (for many purposes);
  7. KABATA;
  8. Port Authorities;
  9. Dept. of Natural Resources for historic property preservation;
  10. Alaska Natural Gas Development Authority;
  11. A public utility; (all utilities regulated by RCA including privately owned utilities);
  12. Alaska Railroad; NOTE: Statute requires authority for eminent domain to be delegated to the ARR CEO, but use of eminent domain is subject to Governor's approval;
  13. Public utility Joint Action Agency under the Alaska Energy Authority Rural and Statewide Energy Program.

None of the entities require prior approval by any executive office of the State except the ARR (requires Governor approval) and that is likely because the exercise of eminent domain is delegated to its CEO.

- (3) Of particular significance is AS 34.60.120 which has an extensive list of preconditions to exercising eminent domain for any project funded by federal monies. (See pages 5-6 of second attachment.)
- (4) KABATA's power of eminent domain is limited to that "necessary for the . . . bridge and appurtenant facilities . . ." [AS 19.75.111(a)(16)]
- (5) The use of the power of eminent domain is strictly circumscribed and limited by the above and Alaska Statutes give the Courts considerable oversight authority and responsibility. Amendment #2 just does not add any real measure of protection while at the same time adds another and unnecessary layer of bureaucratic regulation.

PLEASE PASS ON TO REP. STOLTZE, SEN. HUGGINS AND SEN. GREEN.

If you have any questions or desire further information, please let me know.

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**From:** Ben Mulligan [mailto:Ben\_Mulligan@legis.state.ak.us]  
**Sent:** Monday, April 03, 2006 11:56 AM  
**To:** william a greene  
**Subject:** RE: hb 471

Amendment #1: Took away KABATA's authority to put a lien on a person's permanent fund.

Amendment #2: Merely stated that in order to exercise your powers of eminent domain that you must get the Commissioner of DoT's approval, and that your powers of eminent domain do not exceed the state's power of

**Deborah Grundmann**

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**From:** william a greene [williamagreene@alaska.net]  
**Sent:** Friday, March 31, 2006 10:20 AM  
**To:** Ben Mulligan; 'Betty L. Fauber'; Deborah Grundmann  
**Subject:** RE: HB 471 on the floor Monday April 3rd  
**Attachments:** PRESENTATION OUTLINE.doc; PRESS RELEASE ON LEGISLATION.doc

Ben: Under separate cover, I sent you today comments on the "Fact Sheet" for your use. Attached are two additional docs that might help. Combined, these three docs give all the major points from which you could extract the "talking points" for Rep. Stoltze.

Basically, the two most salient talking points are:

- (1) Regardless of the amount of federal and state funding, the Authority must obtain additional public and private financing to complete the project and this Bill clarifies and makes more certain its authority to do so.
- (2) The other private and public funding will be paid for by toll revenue.
- (3) The attached docs specify the five or six primary results of this legislation as are outlined in the last presentation provided the Senate and House Finance Committees.

If you need further information or help, please let me know. Thanks much for all your help.

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**From:** Ben Mulligan [mailto:Ben\_Mulligan@legis.state.ak.us]  
**Sent:** Wednesday, March 29, 2006 12:13 PM  
**To:** william a greene; Betty L. Fauber  
**Subject:** HB 471 on the floor Monday April 3rd

We just found out that HB 471 will be on the floor on Monday. Please, let Mayor Weurch and Henry know too, I know they are in Seattle.

Bill, I am requesting from you some talking points that you feel would be the best points for Rep. Stoltze to hit on his presentation on the floor. I will be readying some additional information for him, but I would appreciate your assistance with this.

**Ben Mulligan**  
**Staff to Rep. Stoltze**



Legislation press release draft 1

**For Immediate Release**  
March [ ], 2006

For more information contact:  
Darryl Jordan, (907) 269-6496  
Deputy Executive Director and Program Manager

**KNIK ARM BRIDGE AND TOLL AUTHORITY LEGISLATION  
SIGNED INTO LAW BY GOVERNOR MURKOWSKI**

Anchorage, March [ ], 2006 – The Knik Arm Bridge and Toll Authority (KABATA) announced today that amendments to its enabling legislation have passed and were signed into law by Governor Murkowski [legislative bill cite needed in here somewher].

Among other matters, the legislation furnished KABATA with the following statutory authorities:

- authorizes KABATA to enter into Public-Private Partnerships (P3) for the finance, design, construction, operation and maintenance of the proposed Knik Arm toll bridge;
- Provides exclusive authority to KABATA to set toll rates for the proposed Knik Arm toll bridge;
- authorizes the authority to borrow non-recourse loans from the U.S. Department of Transportation's ~~DOT's TIFIA~~ loan program;
- authorizes a \$500 million ceiling on non-recourse revenue bonds that KABATA can issue ~~or refund without further legislative approval~~; and
- provides a means for collecting tolls and other obligations owed to KABATA as a result of operating the proposed the Knik Arm toll bridge.

The Federal Highway Administration is preparing an environmental impact statement (EIS) for the proposed Knik Arm toll bridge, which is expected to be released in the near future. KABATA sought the amendments to its enabling legislation in order to facilitate the financing, design, construction and operation of the Knik Arm toll bridge and in anticipation of obtaining a record of decision on the EIS, which would permit KABATA to proceed with permitting and design and construction of the project.

"KABATA was very pleased with the support of the legislature and the Governor in passing this legislation which is so important to moving the Knik Arm toll bridge project forward." said George Weurch, Chairman of the Board of Directors of KABATA. "We are particularly pleased with the P3 and financing aspects of the legislation. These financing components, together with the public equity in the project ~~reflected in the Governor's budget proposal~~, will enhance KABATA's efforts ~~enable KABATA~~ to obtain the necessary financing to design, construct and operate this important project for all Alaskans once we have received a record of decision on the EIS."

About KABATA - The Alaska Legislature established the Knik Arm Bridge and Toll Authority in 2003 to develop, stimulate, and advance the economic welfare of the state and further the development of public transportation systems in the vicinity of Upper Cook Inlet with construction of a bridge to span Knik Arm and connect the Municipality of Anchorage and the Mat-Su Borough. The Knik Arm Crossing Project is expected to cost approximately \$400 to \$600 million, a portion of which is expected to be funded through toll revenue.