

**CONSUMER FINANCIAL PROTECTION BUREAU  
REQUEST FOR EMERGENCY PROCESSING AND APPROVAL  
MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O) 12 CFR PART 1015**

**EMERGENCY JUSTIFICATION**

The Bureau of Consumer Financial Protection (CFPB) respectfully requests emergency processing and approval of the collection of information discussed below because the use of normal clearance procedures is reasonably likely to prevent and disrupt an existing collection of information.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, Section 1097, 124 Stat. 1376, 2102 (2010) (Dodd-Frank Act) transferred rulemaking authority for Mortgage Assistance Relief Services (MARS) pursuant to Section 626 of the 2009 Omnibus Appropriations Act, Pub. L. 111-8, 123 Stat. 524, 678 (2009) (Omnibus Appropriations Act), as clarified by Section 511 of the Credit Card Accountability and Responsibility and Disclosure Act of 2009, Pub. L. 111-24, 123 Stat. 1734, 1763 (2009) (Credit CARD Act), and as amended by the Dodd-Frank Act, to the CFPB on July 21, 2011. In addition to the transfer of rulemaking authority under the Dodd-Frank Act, the CFPB received certain enforcement authorities with respect to MARS.

The CFPB is in the process of publishing for public comment an interim final rule establishing a new regulation in 12 CFR Part 1015 (Regulation O). Regulation O was originally submitted for OMB review by the Federal Trade Commission (FTC) as a final rule (FTC Final Rule) on November 24, 2010. This interim final rule substantially replicates the FTC Final Rule, and will not impose any new substantive obligations on regulated entities or any new information collection requirements.

As the CFPB now has enforcement authority over certain populations that have been under the jurisdiction of another agency, the CFPB is requesting approval of a new OMB control number for its collection activities under Regulation O. To prevent a disruption of an approved information collection, the CFPB is requesting emergency processing and approval of the following information collection request. Upon receipt of emergency approval from the Office of Management and Budget, the CFPB will begin a standard approval process for this collection and will seek public input at that time.

**CONSUMER FINANCIAL PROTECTION BUREAU  
INFORMATION COLLECTION REQUEST - SUPPORTING STATEMENT  
MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O) 12 CFR PART 1015  
(OMB CONTROL NUMBER: 3170-XXXX)**

**A. JUSTIFICATION**

**1. Circumstances Necessitating the Data Collection**

Disclosure requirements

Regulation O retains the disclosure requirements of the FTC Final Rule and adds no additional disclosure requirements. In commercial communications for a general audience, MARS providers are required to make the following disclosure:

- (1) “(Name of company) is not associated with the government and our service is not approved by the government or your lender”; and
- (2) in some instances, that “[e]ven if you accept this offer and use our service, your lender may not agree to change your loan.”

In addition, MARS providers must disclose to consumers, in any subsequent commercial communication directed to a specific consumer, the following information:

- (1) that “You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services”;
- (2) that “(Name of company) is not associated with the government and our service is not approved by the government or your lender”; and
- (3) in some instances, that “[e]ven if you accept this offer and use our service, your lender may not agree to change your loan.”

Furthermore, MARS providers are required to disclose to consumers in all communications in which the provider represents that the consumer should temporarily or permanently discontinue payments, in whole or in part, the following information:

“If you stop paying your mortgage, you could lose your home and damage your credit rating.”

Finally, after a provider has obtained an offer of mortgage assistance relief from the lender or servicer and presented the consumer with a written agreement incorporating the offer, the MARS provider must disclose the following:

(1) “This is an offer of mortgage assistance relief service from your lender [or servicer]. You may accept or reject the offer. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to § 1015.4(b)(1)] for our services”; and

(2) a description of all “material differences” between the terms, conditions, and limitations of the consumer’s current mortgage and those associated with the offer for mortgage relief, provided in a written notice from the consumer’s lender or servicer.

Regulation O also retains the FTC Final Rule’s requirements on making the disclosures clear and prominent that are specific to the media used. The FTC concluded the disclosures were necessary for the following reasons:

- Non-affiliation with the government or lenders: The FTC and state law enforcement officials have brought numerous law enforcement actions against MARS providers who have misrepresented their affiliation with government agencies or programs, lenders, or servicers, in connection with offering MARS. These providers have used a variety of techniques to create such misimpressions, including advertising under trade names that resemble the names of legitimate government programs. Given that the government, for-profit entities, and nonprofit entities assist financially distressed consumers with their mortgages, and allowing for the frequency of deceptive affiliation claims, the requirement that MARS providers disclose their nonaffiliation with the government or with consumers’ lenders or servicers is reasonably related to the goal of preventing deception.
- Risk of Nonpayment of Mortgage: The FTC’s rulemaking record demonstrates that MARS providers frequently encourage consumers, often through deception, to stop paying their mortgages and instead pay providers. Consumers who rely on these deceptive statements frequently suffer grave financial harm. Requiring MARS providers who encourage consumers not to pay their mortgages to disclose the risks of following this advice is necessary to prevent deception.
- Total amount a consumer must pay: The total cost of mortgage assistance relief services is perhaps most material to consumers in making well-informed decisions on whether to purchase those services. Requiring the clear and prominent disclosure of total cost information in every communication directed at a specific consumer before the consumer enters into an agreement would decrease the likelihood that MARS providers will deceive prospective customers with incomplete, inaccurate, or confusing cost information. Requiring MARS providers to disclose total cost information clearly and prominently is reasonably related to the prevention of deception.

In addition, Regulation O retains the FTC Final Rule’s requirement that prohibits providers from collecting fees until the consumer has accepted the results obtained by the provider. To effectuate fully the advance fee ban, it also is necessary for the provider to inform consumers that they may withdraw from the service and may accept or reject the result delivered by the provider. This disclosure is reasonably related to preventing unfair and deceptive acts and practices by MARS providers.

- No guarantee: The FTC’s record reveals that MARS providers often misrepresent their likelihood of success in obtaining a significant loan modification for consumers. These

deceptive success claims lead consumers to overestimate MARS providers' abilities to obtain substantial loan modifications or other mortgage relief from MARS providers. Requiring MARS providers to inform consumers that lenders might not agree to change consumers' loans, even if those consumers purchase the services that the MARS provider offers, is reasonably related to the goal of preventing deception.

- Written Notice from Lender or Servicer: Based on the FTC's law enforcement experience and the rulemaking record, the CFPB believes that providing the consumer with a notice from the consumer's lender or servicer describing all material differences between the consumer's current mortgage loan and the offered mortgage relief is essential to consumers' ability to evaluate whether they should accept the offer. Requiring that the lender or servicer prepare the written disclosure also better ensures that the information provided is consistent with the terms of the offer, and mitigates against the risk that MARS providers would mislead consumers about the offer. This disclosure is reasonably related to the goal of protecting consumers from the deception.

#### Recordkeeping requirements

Regulation O also retains the FTC Final Rule's recordkeeping requirements and adds no additional recordkeeping requirements. In some instances, these requirements pertain to records that are customarily kept in the ordinary course of business, such as copies of contracts and consumer files containing the name and address of the borrower and materially different versions of sales scripts and related promotional materials. Thus, the retention of these documents does not constitute a "collection of information," as defined by OMB's regulations that implement the PRA.<sup>1</sup>

In other instances, the recordkeeping requirements pertain to requiring providers to create and retain documents demonstrating their compliance with specific rule requirements. These include the requirement that providers document the following activities:

- (1) performing MARS and retaining documentation provided to the consumer;
- (2) monitoring sales presentations by recording and testing oral representations if engaged in telemarketing of services;
- (3) establishing a procedure for receiving and responding to consumer complaints;
- (4) ascertaining, in some instances, the number and nature of consumer complaints; and
- (5) taking corrective action if sales persons fail to comply with Regulation O, including training and disciplining sales persons.

At the time it submitted the FTC Final Rule for OMB review, the FTC determined that the information obtained from the rulemaking record established the need for these recordkeeping requirements. The FTC concluded that there appeared to be widespread deception and unfair practices in the MARS industry, targeting financially vulnerable consumers. Accordingly, strong recordkeeping

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<sup>1</sup>5 C.F.R. § 1320.3(b)(2).

requirements are needed to ensure effective and efficient enforcement of Regulation O and to identify injured consumers.

## **2. Use of the Information**

The required disclosures under Regulation O assist prospective purchasers of MARS in making well-informed decisions and avoiding deceptive and unfair acts and practices.

The information that must be kept under Regulation O's recordkeeping requirements is used by the CFPB and other relevant agencies for enforcement purposes and to ensure compliance by MARS providers with Regulation O. The information is requested only on a case-by-case basis.

## **3. Use of Information Technology**

The disclosures required by Regulation O are format-neutral and do not limit MARS providers' use of available information technology that might reduce compliance burdens. Likewise, Regulation O's recordkeeping provisions do not limit the use of available technology to maintain required records. Rather, Regulation O specifically allows providers to keep the records in any form and in the same manner, format, or place as they keep records in the ordinary course of business. Thus, Regulation O is consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note.

## **4. Efforts to Identify Duplication**

The disclosure and recordkeeping provisions in Regulation O do not duplicate any other federal information collection requirements. The CFPB is unaware of any duplicative state requirements.

## **5. Efforts to Minimize Burdens on Small Entities**

Regulation O attempts to minimize compliance burdens for all entities. Inasmuch as the population of affected providers likely consists largely of small entities, exemptions based on size would undermine the protective aims of Regulation O.

## **6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction**

Providing the disclosures required by Regulation O less frequently would undermine the protective aims of the rule. As a threshold matter, it is important that consumers know before they begin dealing with MARS providers: (1) that MARS providers are not associated with the government or with consumers' lenders; and (2) that regardless of the service or result the MARS providers represent the consumer will receive by using their services, the lender may not agree to change the consumer's loan. Thus, it is necessary that these disclosures be made in all communications with consumers prior to consumers entering into an agreement to purchase MARS. In addition, these disclosures, along with the disclosure of total cost and the right to cancel the service at any time, are needed in each subsequent commercial communication with specific consumers to increase the chances that consumers will read and understand the required information. Furthermore, the disclosure to the consumer regarding the risk of failing to pay his or her mortgage is necessary in all communications in which the triggering statement is made given the harm that could result from following such advice. These requirements will prevent MARS providers from disclaiming, qualifying, or contradicting disclosures in subsequent

statements to consumers during telemarketing calls or e-mail communications. The FTC's enforcement experience indicates that this practice of contradictory statements by MARS providers is common.

Regulation O also is tailored to minimize the frequency of recordkeeping as much as possible. The rule requires that MARS providers maintain records relating to actual transactions with customers; they are not required to keep records when consumers do not sign contracts or do not agree to an offer. In addition, providers would only be required to retain materially different versions of advertising and related materials. Further, the FTC's record supports the conclusion that the two-year retention requirement is the minimum amount of time necessary for consumers to report violations of Regulation O and for the CFPB to complete investigations and to identify victims.

### **7. Circumstances Requiring Special Information Collection**

The collections of information in Regulation O are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

### **8. Consultation Outside the Agency**

This Supporting Statement is based on the FTC's most recent Supporting Statement for OMB Control Number 3084-0157. The CFPB has consulted with the FTC with respect to burden allocations. As this is a request for emergency processing and approval of the transfer of certain burdens from existing information collections to the CFPB, the CFPB has not sought public comment on this information collection request. Upon receipt of OMB's emergency approval, the CFPB will begin the standard approval process and will seek public input and input from other agencies at that time.

### **9. Payments or Gifts to Respondents**

Not applicable.

### **10. & 11. Assurances of Confidentiality/Justification for Sensitive Questions**

Not applicable. To the extent that information covered by a recordkeeping requirement is collected by the CFPB for law enforcement purposes, the confidentiality provisions of 12 CFR Part 1070 would apply. Furthermore, much of the information to be disclosed is of a routine business nature.

### **12. Estimated Burden of Information Collection**

Hours: 32,500

CFPB's estimate of the burden for ongoing recordkeeping and disclosure requirements under Regulation O is based on the assumption that the total ongoing burden for this regulation remains the same as it was before the regulation was restated by the CFPB. Prior to the passage of the Dodd-Frank Act, the FTC's ongoing recordkeeping and disclosure burdens for Regulation O were approximately 65,000 hours.<sup>2</sup> In light of the changes made by the Dodd-Frank Act, one-half

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<sup>2</sup>For purposes of the current request for emergency review and approval, the CFPB has relied on the estimates previously developed by the FTC concerning the number of entities subject to Regulation O and the hours of paperwork burden under the statute (for a detailed breakdown of the burden estimates of the FTC, please reference the FTC's supporting statement for

or roughly 32,500 hours of that burden is being allocated to the CFPB.

Associated Labor Costs: \$ 1,458,000

The CFPB calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used are those associated with the burden hours assumed from the FTC.

The CFPB estimates that the ongoing recordkeeping and disclosure costs allocated to the CFPB under Regulation O are \$1,458,000. This estimate was calculated by following the FTC's own cost analysis. For a detailed breakdown of the cost analysis, please reference the FTC's supporting statement for Regulation O.

**13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers**

Regulation O should impose no more than minimal non-labor costs. The FTC has estimated total non-labor costs are to be \$500,000 of which \$250,000 is allocated to the CFPB. Associated costs would be reduced if the disclosures are made electronically.

**14. Estimated Cost to the Federal Government**

As the CFPB does not collect any information, the cost to the CFPB is negligible.

**15. Program Changes or Adjustments**

None.

**16. Plans for Tabulation, Statistical Analysis, and Publication**

Not applicable.

**17. Display of Expiration Date**

Not applicable.

**18. Exceptions to the Certification Requirement**

None.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.

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Regulation O, which can be found at [www.reginfo.gov](http://www.reginfo.gov)). The CFPB's enforcement authority is not necessarily limited to the entities covered by these estimates. The CFPB will conduct a more detailed review of burden allocations and provide more detailed estimates in its follow-up application to OMB for a standard approval of this information collection.