

Supporting Statement
Regulation N
12 C.F.R. Part 1014
OMB Control No. 3084-0156

Background

The Federal Trade Commission (FTC or Commission) requests renewal of the existing Paperwork Reduction Act (PRA) clearance from the Office of Management and Budget (OMB) for its allotted burden associated with recordkeeping requirements of Regulation N (the Mortgage Acts and Practices—Advertising Rule), at 12 C.F.R. 1014. That clearance expires on November 30, 2013. The FTC’s current clearance (OMB Control Number 3084-0156) for Regulation N is under the FTC’s Mortgage Acts and Practices—Advertising Rule, which, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),¹ was republished by the Consumer Financial Protection Bureau (CFPB) as Regulation N on December 16, 2011, and became effective December 30, 2011. 76 Fed. Reg. 78,130. The Commission rescinded the Mortgage Acts and Practices—Advertising Rule on, and effective, April 13, 2012. 77 Fed. Reg. 22,200.

Under the Dodd-Frank Act, the Commission shares enforcement authority with the CFPB. Thus the CFPB has incorporated into its recently approved burden estimates for Regulation N one half of the FTC’s pre-existing cleared burden estimates.²

(1) Necessity for Collecting the Information

Regulation N’s recordkeeping requirements constitute a “collection of information” for purposes of the PRA. The Rule does not impose a disclosure requirement.

Regulation N prohibits misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons keep certain related records for a period of twenty-four months from last dissemination. Specifically, covered persons must retain: (1) copies of all materially different commercial communications disseminated, including but not limited to sales scripts, training materials, related marketing materials, websites, and weblogs; (2) documents describing or evidencing all mortgage credit products

¹ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (CFPB) the Commission’s rulemaking authority under section 626 of the 2009 Omnibus Appropriations Act on July 21, 2011.

² The CFPB clearance for their information collections associated with Regulation N was approved by the OMB on July 25, 2012 (OMB Control Number 3170-0009) through July 31, 2015.

available to consumers during the time period in which each commercial communication was disseminated, including but not limited to the names and terms of each such mortgage credit product available to consumers; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which each commercial communication was disseminated, including but not limited to the names and terms of each such additional product or service available to consumers. A failure to keep such records is an independent violation of the rule.

The information that must be retained under the rule is needed to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area. To gauge whether covered persons are complying with the proposed rule or making prohibited misrepresentations, the FTC, the CFPB and state enforcement agencies need to review the commercial communications that were disseminated and the information about the mortgage credit products and relevant additional products or services available during the time period in which each commercial communication was disseminated. The Commission's law enforcement experience establishes the need for strong recordkeeping provisions to foster effective enforcement of the rule.

These requirements are pursuant to the Dodd-Frank Act, and section 626 of the 2009 Omnibus Appropriations Act, Pub. L. No. 111-8, 123 Stat. 524, 678 (2009) (codified at 15 U.S.C. § 1638 note), as clarified by section 511 of the Credit Card Accountability and Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24 (Credit CARD Act).

(2) **Use of the Information**

As noted above, the Commission, the CFPB and state law enforcement agencies use the required recordkeeping information for enforcement purposes. Without it, the ability of these agencies to enforce the rule's prohibitions on deceptive practices would be significantly impaired.

(3) **Consideration of the Use of Improved Information Technology**

The recordkeeping provisions do not limit use of available technology to maintain required records. Rather, they allow covered persons to retain them in any legible form, and in the same manner, format, or place as such records are kept in the ordinary course of business. Thus, the rule is consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. 3504 note.

(4) Efforts to Identify Duplication

The recordkeeping provisions do not duplicate any other federal information collection requirements. To the extent that some states require retention of mortgage advertisements and other records that may include evidence of mortgage credit products or relevant additional products or services, covered persons subject to those requirements would already retain this information, and the rule's provisions do not require separate or duplicative storage or collection of such records.

(5) Efforts to Minimize Burden on Small Organizations

The Commission believes that there are no feasible or appropriate exemptions for small entities. Because the population of affected persons likely includes both small and large entities, exemptions based on size would undermine the protective purposes of this rulemaking, which is designed to prevent misrepresentations in commercial communications about mortgage credit products. In any event, the rule seeks to minimize compliance burdens for all entities. For example, covered persons must retain only "materially different" commercial communications disseminated and may do so in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. The rule also limits the record retention period to two years.

(6) Consequences of Conducting the Collection Less Frequently

The rule seeks to minimize the frequency and extent of recordkeeping to avoid imposing any unnecessary burden. As noted, covered persons must retain only "materially different" commercial communications disseminated. The records that must be retained are necessary to enable the Commission and state agencies to review the commercial communications for any misrepresentations that violate the rule and to bring enforcement actions as appropriate. In addition, the Commission believes that a two-year record retention period strikes an appropriate balance between ensuring efficient and effective compliance efforts, while avoiding the imposition of unnecessary costs.

(7) Circumstances Requiring Collection Inconsistent with Guidelines

The collection of information in the rule is consistent with all applicable guidelines contained in 5 C.F.R. §1320.5(d)(2).

(8) Consultation Outside the Agency

In connection with the instant PRA clearance request, the FTC sought public comment

on the Rule's information collection requirements and on the associated estimates of PRA burden. See 77 Fed. Reg. 64,994 (October 24, 2012). No comments were received. Pursuant to the OMB regulations that implement the PRA (5 C.F.R. Part 1320), the FTC is providing a second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

In addition, Commission staff have been in contact with interested industry members and trade associations since before the recent implementing rulemaking to the present. See 76 Fed. Reg. 43,845 (July 19, 2011) (Final Rule); 75 Fed. Reg. 60,352 (Sept. 30, 2010) (NPRM); 74 Fed. Reg. 26,118 (June 1, 2009) (ANPRM). None of the comments raise objections specific to the information collection provisions (recordkeeping) that were then proposed and have been in place since August 19, 2011. Representatives of the industry have informed the Commission that the information collection burdens imposed by the rule have lessened over time as technology has improved.

The Commission has consulted with and will continue to consult with the CFPB, Federal Reserve Board, and, as appropriate, other federal banking agencies.

(9) Payment and Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

Not applicable. To the extent that information covered by a recordkeeping requirement is collected by the FTC for law enforcement purposes, the confidentiality provisions of Section 21 of the FTC Act, 15 U.S.C. § 57b-2, would apply.

(12) Estimated Annual Hours and Labor Cost Burden

Estimated annual hours burden: 1,800,000 hours
Estimated labor cost burden: \$24,264,000

The rule covers numerous persons that may provide commercial communications about mortgage credit products. Commission staff estimates that the rule's recordkeeping requirements will affect approximately 1.2 million persons who would not otherwise retain such records in the ordinary course of business.³ As noted in footnote 3, this estimate includes

³ The recordkeeping requirements address documents that FTC staff believes many covered persons, such as mortgage lenders, mortgage brokers, and mortgage servicers, would customarily retain in the ordinary course of November 2013

real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others that may provide commercial communications regarding mortgage credit product terms.

The Commission estimates that covered persons will each spend approximately 3 hours per year to do these tasks, for a total of 3.6 million hours (1.2 million persons × 3 hours). Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,800,000 annual hours.⁴

As noted above, the rule requires that covered persons retain copies of materially different commercial communications disseminated, and documents describing or evidencing mortgage credit products available during the period that the commercial communications were disseminated. The Commission staff estimates that retention and filing of these records requires approximately 3 hours per year, per person, for a total of 1.8 million hours, which will be performed by office support file clerks at an hourly rate of \$13.48,⁵ for a total of \$24,264,000.

business. For those entities, retention of these documents does not constitute a “collection of information,” as defined by OMB’s regulations that implement the PRA. 5 C.F.R. § 1320.3(b)(2). Other covered persons, however – such as real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others – might not currently retain these documents in the ordinary course of business. For them, retention of these documents would constitute a “collection of information.”

No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: (1) 1 million real estate brokers and agents—from the National Association of Realtors, see <http://www.realtor.org> (last visited June 24, 2013); (2) 140,000 home builders—from the National Association of Home Builders, see <http://www.NAHB.org> (last visited June 24, 2013); (3) 350 finance companies—from the American Financial Services Association, see <http://www.afsaonline.org> (last visited June 24, 2013); (4) 29,770 advertising agencies—from the North American Industry Classification System Association’s database of U.S. businesses, see <http://www.naics.com> (last visited June 24, 2013); (5) 1,000 lead generators and rate aggregators—based on staff’s administrative experience. These inputs add to 1,171,120; for rounding, and to account further for potentially unspecified other covered persons, however, staff has increased the resulting total to 1.2 million.

⁴ This burden estimate includes recordkeeping requirements of the FTC’s Mortgage Acts and Practices Rule for the period from December 1, 2013 – December 29, 2013. The Commission retained its authority to enforce the Mortgage Acts and Practices—Advertising Rule from the Rule’s issuance in July 2011 until the CFPB’s republished rule, Regulation N, became effective on December 30, 2011. Thus, the Commission’s Rule had a correlative two-year recordkeeping for the above period concluding on December 29, 2013. Burden imposed on covered entities after that time are covered by the same recordkeeping requirements under Regulation N, which commenced December 30, 2011.

⁵ This estimate is based on mean hourly wages for office support file clerks provided by the Bureau of Labor Statistics. See U.S. Bureau of Labor Statistics, *Occupational Employment and Wages-May 2012*, table 1 (“National employment and wage data from the Occupational Employment Statistics survey by occupation,” released Mar. 29, 2013, available at <http://www.bls.gov/news.release/pdf/ocwage.pdf>).

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(13) Estimate of Capital or Other Non-Labor Costs

Absent information to the contrary, staff believes that existing storage media and equipment that covered persons use in the ordinary course of business satisfactorily accommodates incremental recordkeeping under the rule. Accordingly, staff does not anticipate that the rule requires any new capital or other non-labor expenditures.

(14) Estimate of Cost to Federal Government

Commission staff estimates that a representative year's cost to the FTC of administering the recordkeeping requirements of the proposed rule during a prospective 3-year clearance period will be approximately \$39,520. This estimate is based on the assumption that one-third of an attorney work year will be expended in that effort. Clerical and other support services are included in this estimate.

(15) Program Changes or Adjustments

The decrease in annual burden hours from 1,950,000 in 2011 to 1,800,000 in 2013 is an adjustment reflecting updated estimates of fewer covered persons (1.3 million in 2011 and 1.2 million in 2013).

(16) Plans for Tabulation and Publication

Not applicable.

(17) Display of Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to Certification

Not applicable.