

**Federal Trade Commission Supporting Statement for
Mortgage Assistance Relief Services (Regulation O)
12 C.F.R. Part 1015
OMB Control No. 3084-0157**

The Federal Trade Commission (FTC or Commission) requests clearance from the Office of Management and Budget (OMB) for its shared enforcement authority with the Consumer Financial Protection Bureau (CFPB) for the disclosure and recordkeeping requirements contained in the CFPB's Regulation O.

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Public Law 111-203, 124 Stat. 1376 (2010), transferred the Commission's rulemaking authority under the mortgage provisions in section 626 of the 2009 Omnibus Appropriations Act, as amended,¹ to the CFPB.² On December 16, 2011, the CFPB republished the Mortgage Assistance Relief Services ("MARS") Rule as Regulation O (12 C.F.R. 1015).³

As a result, the Commission subsequently rescinded its MARS Rule (16 C.F.R. Part 322).⁴ Nonetheless, under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation O.⁵

1. Necessity for Collecting the Information

The required disclosures assist prospective purchasers of mortgage assistance relief services in making well-informed decisions and avoiding deceptive and unfair acts and practices. 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

¹ Public Law 111-8, section 626, 123 Stat. 524 (Mar. 11, 2009).

² Dodd-Frank Act, § 1061, 12 U.S.C. § 5581 (2010).

³ 76 Fed. Reg. 78130.

⁴ 77 Fed. Reg. 22200 (April 13, 2012).

⁵ Dodd-Frank Act, § 1061(b)(5), 12 U.S.C. § 5581(b)(5).

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 requires that the disclosures be “clear and prominent,” as defined specific to the media used. These disclosures are necessary for the following reasons:

Non-affiliation with the government or lenders: Federal 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 given 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 law enforcement experience and 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 can 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 MARS is material to consumers in making well-informed decisions about 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 prohibits providers from collecting fees until the consumer has accepted the results obtained by the provider. To effectuate 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 law enforcement experience and rulemaking record demonstrates 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 relief. 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, 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 and therefore pay the MARS provider. 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 deception.

Recordkeeping requirements

Regulation O's recordkeeping requirements generally 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.⁶

2. Use of the Information

The required disclosures under Regulation O assist prospective purchasers of MARS to make well-informed decisions and to avoid deceptive and unfair acts and practices.

The information that must be kept under Regulation O's recordkeeping requirements is used by the Commission, or by persons authorized by the Commission, and other law enforcement 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. Consideration to Use Improved Information Technology to Reduce Burden

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 Commission is unaware of any duplicative state requirements.

5. Efforts to Minimize Burden on Small Organizations

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 5 C.F.R. § 1320.3(b)(2).

6. Consequences of Conducting the Collection Less Frequently

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 that: (1) MARS providers are not associated with the government or with consumers' lenders; and (2) 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 Commission'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 experience 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 FTC to complete investigations and to identify victims.

7. Circumstances Requiring Collection Inconsistent With Guidelines

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

8. Consultation Outside the Agency

The Commission consulted with the CFPB, and recently sought public comment on the PRA aspects of the Rule, as required by 5 C.F.R. 1320.8(d). See 81 Fed. Reg. 81,140 (November 17, 2016). No germane comments were received.⁷ The Commission is providing a second opportunity for public comment while seeking OMB approval to extend

⁷ The Commission received four non-germane comments.

the existing PRA clearance for the notice provisions of the Rules.

9. Payments 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. Furthermore, much of the information to be disclosed is of a routine business nature.

12. Estimated Annual Hours and Labor Cost Burden

Because the FTC and CFPB share enforcement authority for this rule, the FTC is seeking clearance for one-half of the following estimated PRA burden that the FTC attributes to the disclosure and recordkeeping requirements under Regulation O. The potential entities providing MARS services are varied, and there are no ways to formally track them. By extension, there is no clear path to track how many affected individual entities have newly entered and departed from one year to the next or from one triennial PRA clearance cycle to the next. However, based on law enforcement experience and the CFPB's recent analysis conducted after the MARS Rule was restated as Regulation O, the FTC estimates that Regulation O affects roughly 107 MARS providers.⁸ This estimate informs the additional estimates detailed below.

Estimated annual hours burden: 321 (for the FTC).

The above hours estimate is based on the assumption that compliance with all MARS disclosures requires 6 hours of labor annually.⁹ Multiplying this figure by 107 entities yields a total burden of 642 hours, of which 321 hours are attributed to the FTC.¹⁰

⁸ See Bureau of Consumer Financial Protection, Agency Information Collection Activities: Submission for OMB Review; Supporting Statement (Jul. 23, 2015), available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201507-3170-002; OMB Control No: 3170-0007, clearance expires on Sept. 30, 2018.

⁹ *Id.*

¹⁰ *Id.* Both the FTC and CFPB attribute the significant drop in burden hours from prior estimates to several factors, including the lack of one-time startup costs associated with new entrants into the market (since there are not expected to be any new market entrants in the next three years), the lack of rule modification, and a reduction in the estimated number of MARS providers. The decrease in the estimated number of MARS providers is consistent with Regulation O's causing a reduction in purported providers of mortgage relief services who were not in fact providing legitimate relief

Estimated associated labor cost: \$10,677 (for the FTC).

Commission staff assumes that a compliance officer or equivalent will prepare the required disclosures for 6 hours annually at an hourly rate of \$33.26.¹¹ Thus, the estimated labor cost is \$21,353 (107 providers x 6 hours x \$33.26) of which the FTC assumes half, or \$10,677.

13. Estimate of Capital or Other Non-Labor Costs

Estimated non-labor cost: \$29,425 (for the FTC).

Based on the CFPB's analysis, the FTC assumes that each of the estimated 107 MARS providers bears an additional \$550 in material fees for acquiring relevant legal and technical compliance information, for a total additional burden of \$58,850, of which the FTC assumes half, or \$29,425. Based on law enforcement experience, the FTC assumes that any disclosures will likely be made electronically and thus will not generate additional non-labor costs such as printing and distribution.

14. Estimate of Cost to Federal Government

Annualized for a prospective 3-year PRA clearance, estimated fiscal year cost to enforce the Rule will be approximately \$200,000. This estimate is based on the assumption that one full attorney work year will be expended in that effort. Clerical and other support services are also included in this estimate.

15. Program Changes/Adjustments

As explained in footnotes 8 and 10, the drop in burden hours reflects a significant reduction in the estimated MARS providers and the lack of one-time startup costs associated with new entrants into the market, since there are not expected to be new market entrants in the next three years. The decrease in the estimated number of MARS providers is consistent with Regulation O's causing a reduction in purported providers of mortgage relief services which were not in fact providing legitimate relief services, causing overestimation.

16. Plans for Tabulation and Publication

Not applicable.

services, causing overestimation.

¹¹ This estimate is based on the mean hourly wage for a Compliance Officer provided by the Bureau of Labor Statistics in its Table entitled "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2015."

17. Failure to Display the OMB Expiration Date

Not applicable.

18. Exceptions to Certification

Not applicable.