

**BUREAU OF CONSUMER FINANCIAL PROTECTION
PAPERWORK REDUCTION ACT SUBMISSION
INFORMATION COLLECTION REQUEST**

SUPPORTING STATEMENT PART A

**MORTGAGE ASSISTANCE RELIEF SERVICES
(REGULATION O) 12 CFR PART 1015
(OMB CONTROL NUMBER: 3170-0007)**

OMB TERMS OF CLEARANCE:

Not applicable. The Office of Management and Budget (OMB) did not provide Terms of Clearance when they last approved this information collection on September 22, 2015.

ABSTRACT:

The required disclosures under Regulation O 12 CFR 1015 assist prospective purchasers of Mortgage assistance relief services (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 Bureau of Consumer Financial Protection (Bureau or BCFP) and the Federal Trade Commission (FTC) for enforcement purposes and to ensure compliance by MARS providers with Regulation O. The information is requested only on a case-by-case basis.

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The Mortgage Assistance Relief Service Rule was created under section 626 of the 2009 Omnibus Appropriations Act, Pub. L. No. 111-8, published as the MARS rule under 16 CFR 322, and clarified by section 511 of the Credit Card Accountability and Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24 (Credit CARD Act). The Dodd-Frank act (Pub. L. 111-203, Sec. 1097) transfers rulemaking authority and shared enforcement authority to the BCFP under 12 CFR 1015. This rule covers Mortgage Assistance Relief Service providers, which are for-profit services which assist consumers who are struggling to meet mortgage obligations and/or avoid foreclosure.

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 requires making the disclosures clear and prominent, specific to the media used. Disclosures are necessary for the following reasons:

- Non-affiliation with the government or lenders: The BCFP, 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: There have been numerous cases where 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 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: Historically, 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 BCFP's and FTC's law enforcement experience, the BCFP 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

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.¹

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.

The information obtained from the law enforcement record establishes the need for these recordkeeping requirements. There appears to be widespread deception and unfair practices in the MARS industry, targeting financially vulnerable consumers. Accordingly, strong recordkeeping 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 BCFP 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.

¹5 CFR 1320.3(b)(2).

4. Efforts to Identify Duplication

The disclosure and recordkeeping provisions in Regulation O do not duplicate any other federal information collection requirements. The BCFP 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. 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 BCFP's and 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 BCFP 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

In accordance with 5 CFR §1320.8(d)(1), the Bureau published a notice Federal Register allowing the public 60 days to comment on this proposed the extension (renewal) of this currently approved collection of information. No responsive comments were received in response to this notice. Further and in accordance with 5 CFR §1320.5(a)(1)(iv), the Bureau also published a notice in the Federal Register allowing the public 30 days to comment on the submission of this information collection request to the Office of Management and Budget.

9. Payments or Gifts to Respondents

No payments or gifts are provided to respondents.

10. Assurances of Confidentiality

To the extent that information covered by a recordkeeping requirement is collected by the BCFP for law enforcement purposes, the confidentiality provisions of BCFP's rules on Disclosure of Records and Information, 12 CFR Part 1070, would apply.

11. Justification for Sensitive Questions

The BCFP collects no information under Regulation O, which requires institutions to provide general and transaction-specific disclosures to consumers and keep records of those disclosures, as well as records of contracts and communication with consumers. No questions of a sensitive nature are asked of respondents.

12. Estimated Burden of Information Collection

Labor Hours: 360

Ongoing Labor Burden

| Regulation | Description | No. of Respondents | Annual Burden Hours per Respondent | Hourly Rate | Total Burden Hours | Associated Labor Costs |
|-----------------|---|--------------------|------------------------------------|-------------|--------------------|------------------------|
| 1015.4(a) | General Commercial Communications Disclosure | 120 | 1.2 | 32.63 | 144 | \$4,699 |
| 1015.4(b) | Consumer-Specific Communications Disclosure(s) | 120 | 1.2 | 32.63 | 144 | \$4,699 |
| 1015.4(c) | Contingent Consumer-Specific Disclosures | 120 | 1.2 | 32.63 | 144 | \$4,699 |
| 1015.5(b) & (c) | Additional Contingent Consumer-Specific Disclosure(s) | 120 | 1.2 | 32.63 | 144 | \$4,699 |

| | | | | | | |
|---------------------------|--|-----|-----|-------|-----|----------|
| 1015.5(d) | Additional Contingent Consumer-Specific Disclosure(s) for trial loan modifications | 120 | 1.2 | 32.63 | 144 | \$4,699 |
| 1015.9 | Recordkeeping | 120 | | | 0 | 0 |
| Total Labor Burden | | | | | 720 | \$23,494 |
| CFPB Share | | | | | 360 | \$11,747 |

BCFP's estimates of burdens for the ongoing requirements under Regulation O are based on an analysis conducted after the regulation was restated by the BCFP. While we include the recordkeeping provision in the above table, we assume zero additional burden for requirements beyond the normal course of business. For PRA purposes regarding Regulation O, the BCFP and FTC share enforcement authority and thus split the PRA burden associated with affected entities.² This burden amounts to 720 hours total, of which 360 hours are attributed to the BCFP.

The BCFP estimates that there are 120 MARS providers in the United States.³ The BCFP also estimates that compliance with all required MARS disclosures requires 6 hours of labor annually. Distributing these costs equally across the required disclosures and multiplying by 120 entities yields a total burden of 720 hours total, of which 360 hours are attributed to the BCFP.

Associated Labor costs: \$11,747

To calculate associated labor costs the BCFP assumes a wage of \$32.63/hr.⁴ Multiplying this wage by the total burden yields an associated labor cost of \$23,494, of which the BCFP assumes half, or \$11,747.

² Under Dodd-Frank Act, the BCFP shares with the FTC half of the burden imposed non-depository institutions.

³ Estimates are based on available data, which is limited. Nevertheless, California has a public listing of registered MARS providers (see the California Attorney General's "Stop Mortgage Fraud" list of registered loan modification providers), and assuming providers are spread out across the United States at similar proportions to the general population, we estimate the number of registered MARS providers in California to be approximately 120 for-profit non-attorney entities performing loan modification.

⁴ See BLS Occupational Employment and Wages estimate of the median hourly wage for a Compliance Officer (occupation code 13-1041) of \$32.63. Available at <https://www.bls.gov/oes/current/oes131041.htm>.

13. Estimated Total Annual Cost Burden to Respondents or RecordkeepersAdditional Material Burden: \$33,000**Exhibit 2: Cost Burden Summary**

Ongoing Material Burden

| Burden Type | No. of Respondents | Per Unit Cost | Quantity per respondent | Total Material cost |
|-------------------------------|--------------------|---------------|-------------------------|---------------------|
| Additional Compliance Support | 120 | \$550 | 1 | \$66,000 |
| Total Material Burden | | | | \$66,000 |
| CFPB Share | | | | \$33,000 |

The BCFP does not believe there is any additional burden imposed by the recordkeeping requirement in 5 CFR 1015.9.⁵ The BCFP estimates that each MARS provider bears an additional \$550 in material fees⁶ for acquiring relevant legal and technical compliance information. Across all 120 respondents the total additional material burden is \$66,000, of which the BCFP allocates to itself half, or \$33,000.

14. Estimated Cost to the Federal Government

As the BCFP does not collect any information, there are no additional costs to the Federal Government.

15. Program Changes or Adjustments**Summary of Burden Changes**

| | Total Respondents | Annual Responses | Burden Hours | Cost Burden |
|-----------------------|-------------------|------------------|--------------|-------------|
| Total Requested | 120 | 120 | 360 | \$33,000 |
| Current OMB Inventory | 107 | 107 | 322 | \$ 29,425 |
| Difference (+/-) | +13 | +13 | +38 | +\$3,575 |
| Program Change | 0 | 0 | 0 | \$0 |
| Discretionary | +13 | +13 | +38 | +\$3,575 |
| New Statute | 0 | 0 | 0 | \$0 |
| Violation | 0 | 0 | 0 | \$0 |
| Adjustment | 0 | 0 | 0 | 0 |

The Bureau's increase in responses, hours, and burden is due to the increase in

⁵ BCFP assumes that MARS providers keep records of all customer communications in the ordinary course of business. This assumption is based on conversations with industry and supervision personnel.

⁶ \$550 is the estimated cost for the purchase of information regarding regulatory updates from law offices or trade associations.

number of respondents.

16. Plans for Tabulation, Statistical Analysis, and Publication

There are no plans to provide any publications based on the information collection of this regulation.

17. Display of Expiration Date

The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov. There are no required forms or other documents upon which display of the control number and expiration date would be appropriate.

18. Exceptions to the Certification Requirement

The Bureau certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3) and is not seeking an exemption to these certification requirements.

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