

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

SUPPORTING STATEMENT PART A

**MORTGAGE ACTS AND PRACTICES
(REGULATION N) 12 CFR 1014
(OMB CONTROL NUMBER: 3170-0009)**

OMB TERMS OF CLEARANCE:

Not applicable. The Office of Management and Budget (OMB) did not provide Terms of Clearance when approved this information collection on September 21, 2015

ABSTRACT:

Regulation N (12 CFR 1014), 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 (24) months from last dissemination. The information that Regulation N requires covered persons to retain is necessary to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area.

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The Omnibus Appropriations Act of 2009, as clarified by Section 511 of the Credit CARD Act (123 STAT. 1737, Public Law 111-24), and as amended by Section 1097 of the Dodd-Frank Act (Pub. L. 111-203) directs the Bureau of Consumer Financial Protection (BCFP) to issue rules that “relate to unfair or deceptive acts or practices” regarding mortgage loans. Regulation N (12 CFR 1014) implements the terms of those statutes by prohibiting misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons (mortgage credit providers) keep certain related records for a period of twenty-four (24) months from last dissemination. Specifically, Regulation N requires covered persons to 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 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 a violation of Regulation N.¹

Historical record supports the conclusion that the information that Regulation N requires covered persons to retain is necessary 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 Regulation N or making prohibited misrepresentations, it is necessary 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. Furthermore, a strong recordkeeping provision is necessary to foster effective enforcement of Regulation N.

2. Use of the Information

The information that must be kept under Regulation N may be used by the BCFP, the Federal Trade Commission (FTC), and state regulatory agencies for enforcement purposes and to ensure compliance by covered persons with Regulation N.

3. Use of Information Technology

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

4. Efforts to Identify Duplication

The recordkeeping provision in the Regulation N does not duplicate any other federal information collection requirements. There are laws in all states that explicitly or implicitly require mortgage advertisers to keep records of their advertisements, however, few of these state laws explicitly require retention of the specific terms advertised to each consumer. The federal recordkeeping requirement does require records of all different terms advertised. This distinction is only relevant for the relatively small number of covered persons who engage in targeted advertising, but represents an important distinction between state and federal recordkeeping requirements.

5. Efforts to Minimize Burdens on Small Entities

Regulation N 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 N.

¹ Regulation N, § 1014.5.

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

Regulation N is tailored to minimize the frequency of recordkeeping as much as possible. Historical record supports the conclusion that the 24-months retention requirement strikes an appropriate balance between ensuring efficient and effective compliance efforts, while avoiding the imposition of unnecessary costs.

7. Circumstances Requiring Special Information Collection

The collection of information in Regulation N is consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

The Bureau consulted with the FTC and industry experts to gather information relating to the burdens of Mortgage Acts and Practices (MAP) and Regulation N when first estimating this burden. 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 comments were received in response to that notice. Furthermore 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

Regulation N only requires covered persons to retain records of communications and advertisements sent to consumers. As such no questions of a sensitive nature are asked of respondents.

12. Estimated Burden of Information CollectionLabor Hours: 483**Exhibit 1: Burden Hour Summary**

Ongoing Labor Burden							
Regulation	Description	No. of Respondents	Responses per Respondent	Annual Burden Hours per Respondent	Hourly Rate	Total Burden Hours	Associated Labor Costs
1015.4(a)	General Commercial Communications Disclosure	483	1,377,729	1	38.04	483	\$18,373
1015.4(b)	Consumer-Specific Communications Disclosure(s)	2,046,607	-	0		0	-
Total Labor Burden		2,047,090.0				483	\$18,373
CFPB Share						242	\$9,187

BCFP's estimate of the burden for the ongoing recordkeeping requirement under Regulation N is based on an analysis conducted after the regulation was restated by the BCFP. For PRA purposes regarding regulation N, the BCFP and Federal Trade Commission (FTC) share enforcement authority and thus evenly split the PRA burden associated with affected entities.² This burden amounts to 483 hours total, of which 242 hours are attributed to the BCFP.

To estimate respondents, the BCFP first identified all entities, including firms and individuals, who are considered respondents under the law. There are an estimated 2,047,090 respondents who may be considered covered persons and must comply with Regulation N. The bulk of these respondents are mortgage lenders, brokers, servicers, real estate agents, and advertising firms. The BCFP maintains the position taken by the FTC in previous supporting statements that mortgage lenders, brokers, and servicers customary and usual business practice is to maintain records of advertising material and thus these respondent's are "excluded from the [calculation of] burden" as defined by OMB.³ The BCFP staff also identified other state and federal regulations⁴ which explicitly or implicitly require respondents including real estate agents, brokers, and others⁵ to retain records of the mortgage advertising activities to demonstrate compliance. Respondents who are not explicitly required to retain records of mortgage

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

³ See PRA 5. C.F.R. § 1320.3(b)(2).

⁴ A number of state laws explicitly require mortgage advertisement retention, e.g. WA (WAC 208-660-450) and DE (76 Del. Laws, c. 421, § 1)

⁵ Including advertising agencies, lead generators, online media distributors, home builders and renovators, rate aggregators, and other depository institutions.

advertising ordinarily do so in the course of regular business to demonstrate compliance with other state and federal laws⁶. According to OMB guidelines, this burden is not counted in this analysis because the burden “Would be imposed even in the absence of a federal requirement.”⁷ For this reason the BCFP does not assign any burden for the majority of respondents.

There are some respondents for whom the requirement in §1014.5 to keep “Copies of all materially different commercial communications” may impose an additional recordkeeping burden above and beyond the ordinary course of business and beyond what would be necessary to demonstrate compliance with state and federal regulations. These are respondents who practice targeted advertising, a practice of offering different credit terms to consumers with different credit backgrounds. Exhibit 1 displays information to the respondents who incur additional burden as a result of the federal regulation. The BCFP estimates that there are approximately 483 such respondents. Based on information provided by industry, law, and supervisory sources, the BCFP estimates that these respondents need an hour annually to review and maintain compliance with Regulation N.

Associated Labor Costs: \$ 9,187

The BCFP calculated labor costs by applying appropriate hourly cost figures to the 241.5 burden hours attributed to the BCFP as described above. The wage estimate is based on data from the Bureau of Labor statistics.⁸ With a composite wage of \$38.04, the cost for these labor hours is given as 483 hours * \$38.04/hour = \$18,373 labor cost overall, of which 242 hours * \$38.04/hour = \$9,187 labor cost is attributed to the BCFP.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

Associated Material Cost: \$2,671,177.36

Exhibit 2: Additional Materials Cost

BCFP’s estimate of the non-labor cost for the ongoing recordkeeping requirement under Regulation N is based on a new analysis conducted after the regulation was restated by the BCFP. For

⁶ See FTC Act § 5, and Regulation Z (12 CFR §1026.25). While §1026.25 does exempt mortgage advertising from the specific recordkeeping requirement, most entities continue to retain records to demonstrate compliance with sections §1026.16 §1026.24. Examples of such state laws include but are not limited to: VA (18 VAC 135-20-190) WA (18.85 RCW) FL (Title XXXII Ch. 475 Part 1).

⁷ See PRA 5. C.F.R. § 1320.3(b)(3).

⁸ Wage burden was calculated as a composite wage, with weighting based on previous estimates and information provided by various industry professionals. Median values from the BLS Occupational Employment and Wages data were used to estimate a composite wage as 5% Compliance Officer (occupation code 13-1041) at \$32.63/hour, 5% Sales Manager (occupation code 11-2022) at \$58.2/hour, 45% Lawyer at \$57.33/hour (occupation code 23-1011), and 45% administrative assistant (occupation code 43-6014) at \$17.11/hour, for a composite wage of \$38.04.

PRA purposes regarding regulation N, the BCFP and Federal Trade Commission (FTC) share enforcement authority and thus evenly split the PRA cost associated with affected entities.

Ongoing Material Burden

Regulation	Description	No. of Respondents	Responses per Respondent	Per Unit Cost	Associated Labor Costs
1015.4(a)	General Commercial Communications Disclosure	483	1,377,729	0.007	\$ 4,658,102
1015.4(b)	Consumer-Specific Communications Disclosure(s)	2,046,607	-	0	\$ -
Total Labor Burden		2,047,090.0			\$4,658,102
CFPB Share					\$2,329,051

Total Material Burden BCFP: \$ 2,329,051

This estimate is entirely attributable to burden incurred by respondents who advertise individualized interest rates. Most respondents are assigned zero burden for the same reasons described above. Regulation N requires advertisers who advertise individualized rates to keep records of the offers made to each individual and to be able substantiate each offer. This particular requirement extends beyond retaining copies of general advertising material and imposes additional burden. The data used to estimate the costs is based on privately collected market data as well as internal BCFP and industry accounting estimates. The high startup cost faced by some respondents results from the need for complex recordkeeping software that can retain individualized offers and relate their terms to contemporaneous financial conditions. The material cost-per-advertisement represents a combination of fixed and marginal costs associated with increasing the size of and information of a recordkeeping system.

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**Exhibit 3: Summary of Burden Changes**

	Total Respondents	Annual Responses	Burden Hours	Cost Burden
Total Requested	483	665,443,107	242	2,329,051
Current OMB Inventory	483	665,443,107	242	2,671,176
Difference	0	0	0	-342,125
Program Change	0	0	0	\$0
Discretionary	0	0	0	\$0
New Statue	0	0	0	\$0
Violation	0	0	0	\$0
Adjustment	0	0	0	-342,125

The BCFP is requesting a reduction in its materials cost allocation of \$342,125 due to the elimination of one-time material burden.

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, as well as in the Code of Federal Regulations. There are no forms or documents on which the display of the OMB control number would be appropriate as this is a record retention regulation.

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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