

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 January 31, 2020. Under the Dodd-Frank Act, the Commission shares enforcement authority with the Consumer Financial Protection Bureau (CFPB). Thus, the two agencies share burden estimates for Regulation N.¹

(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 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

¹ The CFPB’s associated PRA clearance for Regulation N was approved by the OMB on July 2, 2019, through July 31, 2022 (OMB Control Number 3170–0009).

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**

For the current PRA clearance request, the FTC sought public comment on the Rule’s information collection requirements and on the associated estimates of PRA burden. *See* 84 Fed. Reg. 51,160 (September 27, 2019). No germane comments were received.² 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. The Commission has consulted with and will continue to consult with the CFPB, and, as appropriate, federal banking agencies.

² The Commission received two non-germane comments.

(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 total annual hours burden: 1,500 hours (for the FTC).

Commission staff estimates that the Rule's recordkeeping requirements will affect approximately 1,000 persons³ who would not otherwise retain such records in the ordinary course of business. As noted, this estimate includes lead generators and rate aggregators that may provide commercial communications regarding mortgage credit product terms.⁴ Although the Commission cannot estimate with precision the time required to gather and file the required records, it is reasonable to assume that covered persons will each spend approximately 3 hours per year to do these tasks, for a total of 3,000 hours (1,000 persons × 3 hours). Since the FTC generally shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,500 annual hours.⁵

³ 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: 1,000 lead generators and rate aggregators, based on staff's administrative experience.

⁴ The Commission does not know what percentage of these persons are, in fact, engaged in covered conduct under the Rule, i.e., providing commercial communications about mortgage credit product terms. For purposes of these estimates, the Commission has assumed all of them are covered by the recordkeeping provisions and are not retaining these records in the ordinary course of business.

⁵ This estimate reflects the same burden compared to prior FTC estimates, because many entities can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law, as discussed above. *See* 84 FR 51,160. The FTC notes that the CFPB's recent information collection filing with OMB for Regulation N also reflects the view that, in large part, most entities either retain records in the ordinary course of business or to demonstrate compliance with other laws. *See* generally Bureau of Consumer Financial Protection, Agency Information Collection Activities: Submission for OMB Review; Comment Review, 83 FR 61376 (Nov. 29, 2018), available at <https://www.govinfo.gov/content/pkg/FR-2018-11-29/pdf/2018-25973.pdf>.

Estimated labor costs: \$24,375.

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. Staff further assumes that office support file clerks will handle the Rule's record retention requirements at an hourly rate of \$16.25.⁶ Based upon the above estimates and assumptions, the total annual labor cost to retain and file documents, for the FTC's allotted burden, is \$24,375 (1,500 hours × \$16.25 per hour).

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

Absent information to the contrary, staff anticipates that existing storage media and equipment that covered persons use in the ordinary course of business will satisfactorily accommodate incremental recordkeeping under the Rule. Accordingly, staff does not anticipate that the Rule will require 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 \$44,016. 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

This estimated burden stays the same as the most recent FTC estimate from 2016. The estimated annual labor costs went up slightly based on slightly higher estimated wage rates.

(16) Plans for Tabulation and Publication

Not applicable.

⁶ 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 2018, table 1 (“National employment and wage data from the Occupational Employment Statistics survey by occupation”), released March 29, 2019, available at <http://www.bls.gov/news.release/pdf/ocwage.pdf>.

(17) **Display of Expiration Date for OMB Approval**

Not applicable.

(18) **Exceptions to Certification**

Not applicable.