

**SUPPORTING STATEMENT FOR  
MORTGAGE ASSISTANCE RELIEF SERVICES  
(REGULATION O)  
OMB CONTROL NO.: 3170-0007**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Mortgage Assistance Relief Service regulation 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<sup>1</sup>, (Credit CARD Act). The Dodd-Frank Act<sup>2</sup> transfers rulemaking authority and shared enforcement authority to the CFPB under 12 Code of Federal Regulations (CFR) 1015. This regulation 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

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<sup>1</sup> Pub. L. No. 111-24

<sup>2</sup> Pub. L. 111-203, Sec. 1097

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 CFPB, 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 non-affiliation 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 CFPB's and FTC's law enforcement experience, the CFPB 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.<sup>3</sup>

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

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<sup>3</sup>5 CFR 1320.3(b)(2).

(5) taking corrective action if salespersons fail to comply with Regulation O, including training and disciplining salespersons.

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 involving the targeting of financially vulnerable consumers. Accordingly, strong recordkeeping requirements are needed to ensure effective and efficient enforcement of Regulation O and to identify injured consumers.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

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 CFPB 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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using 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. section 3504.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.**

The disclosure and recordkeeping provisions in Regulation O do not duplicate any other federal information collection requirements. The CFPB is unaware of any state requirements that are duplicative in nature.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

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. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

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 CFPB'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 CFPB to complete investigations and to identify victims.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The information collections in Regulation O are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

**8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection-of-information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

In accordance with 5 CFR §1320.8(d)(1), the Bureau has published a notice in Federal Register that provides the public 60 calendar days to comment on the extension of reporting requirements contained within OMB Control No. 3170-0007.<sup>4</sup> No comments were received.

Also, in accordance with 5 CFR §1320.5(a)(1)(iv), the Bureau has also published a notice in the Federal Register providing the public 30 days to comment on reporting requirements contained within this information collection request.<sup>5</sup>

**9. Explain any decision to provide any payments or gifts to respondents, other than remuneration of contractors or grantees.**

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<sup>4</sup> 87 FR 10343 (published on 2/24/2022).

<sup>5</sup> 87 FR 40513 (published on 7/7/2022).

No payments or gifts are provided to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

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

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

The CFPB 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. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. General, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Labor Hours: 354

Collection of Information	Number of Respondents	Frequency	Number of Responses	Response Time (Hours)	Burden (Hours)
1015.4(a)	118	1	118	1.2	142
1015.4(b)	118	1	118	1.2	142
1015.4(c)	118	1	118	1.2	142

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1015.5(b) & 5(c)	118	1	118	1.2	142
1015.5(d)	118	1	118	1.2	142
1015.9	118	1	118	0	0
TOTAL	118		118		355 <sup>6</sup>

CFPB’s estimates of burdens for the ongoing requirements under Regulation O are based on an analysis conducted after the regulation was restated by the CFPB. 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 CFPB and FTC share enforcement authority and thus split the PRA burden associated with affected entities.<sup>7</sup> This burden amounts to 708 hours total, of which 354 hours are attributed to the CFPB.

The CFPB estimates that there are 118 MARS providers in the United States.<sup>8</sup> The CFPB 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 118 entities yields a total burden of 710 hours total, of which 355 hours are imposed by the CFPB.

Associated Labor costs: \$12,195

To calculate associated labor costs the CFPB assumes a wage of \$34.45/hr.<sup>9</sup> Multiplying this wage by the total burden yields an associated labor cost of \$24,390, of which the CFPB assumes half, or \$12,195.

**13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

Additional Material Burden: \$32,450

Burden Type	Number of Respondents	Per Unit Cost	Quantity per respondent	Total Material cost
Additional Compliance Support	118	\$550	1	\$64,900
<b>CFPB Share</b>				\$32,450

<sup>6</sup> The Bureau’s share of the imposed Federal burden is 355 hours annually.

<sup>7</sup> Under Dodd-Frank Act, the CFPB shares with the FTC half of the burden imposed non-depository institutions.

<sup>8</sup> 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.

<sup>9</sup> See BLS Occupational Employment and Wages estimate of the median hourly wage for a Compliance Officer (occupation code 13-1041) of \$34.45. Available at <https://www.bls.gov/oes/current/oes131041.htm>.

The CFPB does not believe there is any additional burden imposed by the recordkeeping requirement in 5 CFR 1015.9.<sup>10</sup> The CFPB estimates that each MARS provider bears an additional \$550 in material fees<sup>11</sup> for acquiring relevant legal and technical compliance information. Across all 118 respondents the total additional material burden is \$64,900, of which the CFPB allocates to itself half, or \$32,450.

**14. Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.**

There are no additional costs to the Federal Government.

**15. Explain the reasons for any program changes or adjustments.**

The Bureau is making no program changes to this information collection.

However, the Bureau is reducing the number of respondents (from 120 to 118). The Bureau is also making a slight adjustment to burden (360 hours to 355 hours) to account for and remedy past rounding errors. The information collection requirements (and the related burden per response) remain unchanged.

ICR Summary of Burden					
	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Previously Approved
Annual Number of Responses	118	0	0	-2	120
Annual Time Burden (Hours)	355	0	0	-5	360
Annual Cost Burden (\$)	32,450	0	0	-550	33,000

**16. For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

<sup>10</sup> CFPB 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.

<sup>11</sup> \$550 is the estimated cost for the purchase of information regarding regulatory updates from law offices or trade associations.

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

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The information collection is not collected in a manner that allows the display of the current expiration date. However, the expiration date can be found under the “Information Collections under Review” section of [www.reginfo.gov](http://www.reginfo.gov) (<https://www.reginfo.gov/public/do/PRAMain>).

**18. Explain each exception to the certification statement.**

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.