

**SUPPORTING STATEMENT FOR  
MORTGAGE ACTS AND PRACTICES-ADVERTISING  
(REGULATION N)  
OMB CONTROL NO.: 3170-0009**

**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 Omnibus Appropriations Act of 2009, as clarified by Section 511 of the Credit CARD Act<sup>1</sup> and as amended by Section 1097 of the Dodd-Frank Act<sup>2</sup> directs the Consumer Financial Protection Bureau (CFPB or the Bureau) to issue rules that “relate to unfair or deceptive acts or practices” regarding mortgage loans. Regulation N<sup>3</sup> 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:

- 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.<sup>4</sup>

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

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<sup>1</sup> 123 STAT. 1737, Public Law 111-24.

<sup>2</sup> Pub. L. 111-203.

<sup>3</sup> 12 CFR 1014.

<sup>4</sup> Regulation N, Part 1014.5.

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

**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 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<sup>5</sup>.

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

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<sup>5</sup> P. L. 105-277, Title XVII.

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.

**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.**

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

**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 confidentially to the extent permitted by law.**

The collection of information in Regulation N is 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 publication 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. 3170-0009.<sup>6</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>7</sup>

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

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<sup>8</sup> 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.**

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<sup>6</sup> 87 FR 10776 (published on 2/25/2022).

<sup>7</sup> 87 FR 40513 (published on 7/7/2022; comment period ends on 8/8/2022).

<sup>8</sup> 12 CFR Part 1070.

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. 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: 506

Collection of Information	Number of Responses	Frequency	Number of Responses	Response Time (Hours)	Burden (Hours)
12 CFR 1014.5(a) (General Commercial Communications Disclosure)	506	1	506	40.67	506
12 CFR 1014.5(b) (Consumer-Specific Communications Disclosures(s))	3,055,984	0	0	N/A	0
<b>TOTAL</b>	3,055,984		506		506 <sup>9</sup>

CFPB’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 CFPB. For PRA purposes regarding regulation N, the CFPB and Federal Trade Commission (FTC) share enforcement authority and thus evenly split the PRA burden

<sup>9</sup> The Bureau’s share of the imposed Federal burden is 253 hours annually.

associated with affected entities.<sup>10</sup> This burden amounts to 506 hours total, of which 253 hours are attributed to the CFPB.

To estimate respondents, the CFPB 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 CFPB 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 respondents are “excluded from the [calculation of] burden” as defined by OMB.<sup>11</sup> The CFPB staff also identified other state and federal regulations<sup>12</sup> which explicitly or implicitly require respondents including real estate agents, brokers, and others<sup>13</sup> to retain records of the mortgage advertising activities to demonstrate compliance. Respondents who are not explicitly required to retain records of mortgage advertising ordinarily do so in the course of regular business to demonstrate compliance with other state and federal laws<sup>14</sup>. 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.<sup>15</sup>” For this reason the CFPB 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 CFPB estimates that there are approximately 506 such respondents.

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<sup>10</sup> Under the Dodd-Frank Act, the CFPB assumes half the burden imposed non-depository institutions with the FTC.

<sup>11</sup> See PRA 5. C.F.R. § 1320.3(b)(2).

<sup>12</sup> 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](#))

<sup>13</sup> Including advertising agencies, lead generators, online media distributors, home builders and renovators, rate aggregators, and other depository institutions.

<sup>14</sup> 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).

<sup>15</sup> See PRA 5. C.F.R. § 1320.3(b)(3).

Based on information provided by industry, law, and supervisory sources, the CFPB estimates that these respondents need an hour annually to review and maintain compliance with Regulation N.

Associated Labor Costs: \$10,290

The CFPB calculated labor costs by applying appropriate hourly cost figures to the 253 burden hours attributed to the CFPB as described above. The wage estimate is based on data from the Bureau of Labor statistics.<sup>16</sup> With a composite wage of \$40.67, the cost for these labor hours is given as 506 hours \* \$40.67/hour = \$20,579 labor cost overall, of which 253 hours \* \$40.67/hour = \$10,290 labor cost is attributed to the CFPB.

**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).**

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

Description	Number of Respondents	Per Unit Cost	Quantity per respondent	Total Material cost
12 CFR 1014.5(a) (General Commercial Communications Disclosure)	506	\$0.004007	1,382,798	~\$5,607,878
12 CFR 1014.5(b) (Consumer-Specific Communications Disclosure(s))	3,055,984	N/A	0	\$0
<b>CFPB Share</b>				<b>\$2,803,939</b>

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 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 CFPB and industry accounting estimates. The high startup cost faced by some respondents results from the need for

<sup>16</sup> 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 \$34.45/hour, 5% Sales Manager (occupation code 11-2022) at \$61.30/hour, 45% Lawyer at \$61.54/hour (occupation code 23-1011), and 45% administrative assistant (occupation code 43-6014) at \$18.68/hour, for a composite wage of \$40.67.

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. 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.**

As the CFPB does not collect any information, 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 making the following adjustments to the burden estimate:

- Increasing the number of respondents to 506
- Increasing the number of responses (annual) to 699,695,664
- Increasing the time burden (annual) to 253
- Increasing the cost burden (annual) to \$2,803,939.

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	699,695,664	0	0	34,252,557	665,443,107
Annual Time Burden (Hours)	253	0	0	11	242
Annual Cost Burden (\$)	2,803,939	0	0	474,888	2,329,051

**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.**



Mortgage Acts and Practices-Advertising (Regulation N)  
OMB Control Number: 3170-0009  
RIN: N/A  
OMB Expiration Date: 7/31/2022

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.