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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice.

**SUMMARY:** The FTC intends to ask the Office of Management and Budget (OMB) to extend through November 30, 2016, the current Paperwork Reduction Act (PRA) clearance for the FTC's shared enforcement with the Consumer Financial Protection Bureau (CFPB) of the information collection requirements in Regulation N (Mortgage Acts and Practices – Advertising). That clearance expires on November 30, 2013. The FTC's current PRA clearance (OMB Control Number 3084-0156) for Regulation N is under the FTC's Mortgage Acts and Practices—Advertising Rule, which was republished by the CFPB as Regulation N on December 16, 2011, and became effective December 30, 2011. The Commission rescinded the Mortgage Acts and Practices—Advertising Rule on, and effective, April 13, 2012.

**DATES:** Comments must be received by [insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Carole L. Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue,

NW, Washington, DC 20580, (202) 326-3230.

**SUPPLEMENTARY INFORMATION:**

*Proposed Information Collection Activities*

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. “Collection of information” means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 USC 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the CFPB’s Regulation N (Mortgage Acts and Practices – Advertising), 12 CFR 1014.

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

The FTC’s Mortgage Acts and Practices—Advertising Rule, 16 CFR 321, was issued by the FTC on July 19, 2011, at [www.ftc.gov](http://www.ftc.gov), published in the Federal Register, 76 FR 43845, and became effective on August 19, 2011.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)<sup>1</sup> substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB the Commission’s rulemaking authority under section 626 of the 2009 Omnibus Appropriations Act on July 21, 2011. As a result, the CFPB republished the Mortgage Acts and Practices—Advertising Rule, at 12 CFR 1014, which became effective December 30, 2011. 76 FR 78130. Thereafter, the Commission rescinded its Rule, on and effective April 13, 2012. 77 FR 22200. Under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation N.<sup>2</sup> The FTC and the CFPB share enforcement authority for Regulation N and thus the CFPB has incorporated into its recently approved burden estimates<sup>3</sup> for Regulation N one half of the FTC’s pre-existing cleared burden estimates.

Regulation N’s recordkeeping requirements constitute a “collection of information”<sup>4</sup> for purposes of the PRA.<sup>5</sup> The Rule does not impose a disclosure requirement.

Regulation N requires covered persons to retain: (1) copies of materially different commercial communications and related materials, regarding any term of any mortgage

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1 Public Law 111–203, 124 Stat. 1376 (2010).

2 The Commission also retained its authority to enforce the Mortgage Acts and Practices—Advertising Rule from the Rule’s issuance in July 2011 until the CFPB’s republished rule, Regulation N, became effective on December 30, 2011. *See infra* note 10.

3 The CFPB clearance for their information collections associated with Regulation N was approved by the OMB on July 25, 2012 (OMB Control Number 3170-0009) through July 31, 2015.

4 Section 1014.5 of the Rule sets forth the recordkeeping requirements.

5 *See* 44 U.S.C. 3502(3)(A).

credit product, that the person made or disseminated during the relevant time period; (2) documents describing or evidencing all mortgage credit products available to consumers during the relevant time period; 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 relevant time period. A failure to keep such records would be an independent violation of the Rule.

Commission staff believes these recordkeeping requirements pertain to records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers.<sup>6</sup> As to these persons, the retention of these documents does not constitute a “collection of information,” as defined by OMB’s regulations that implement the PRA.<sup>7</sup> Other covered persons, however, such as real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others, may not currently maintain these records in the ordinary course of business. Thus, the recordkeeping requirements for those persons would constitute a “collection of information.”

The information retained under the Rule’s recordkeeping requirements is used by

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<sup>6</sup> Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. See, e.g., Fla. Stat. 494.00165 (2012); Ind. Code Ann. 23–2–5–18 (2012); Kan. Stat. Ann. 9–2208 (2012); Minn. Stat. 58.14 (2012); Wash. Rev. Code 19.146.060 (2013). Many mortgage brokers, lenders, and servicers are also subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. See, e.g., Mich. Comp. Laws Serv. 445.1671 (2013); N.Y. Banking Law 597 (Consol. 2012); Tenn. Code Ann. 45–13–206 (2013). In addition, lenders and mortgagees approved by the FHA must retain copies of all print and electronic advertisements and promotional materials for a period of two years from the date the materials are circulated or used to advertise. See 24 CFR 202.

<sup>7</sup> See 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

### **Burden Statement**

**Estimated total annual hours burden:** 1,800,000 hours (for the FTC).

Commission staff estimates that the Rule's recordkeeping requirements will affect approximately 1.2 million persons<sup>8</sup> who would not otherwise retain such records in the ordinary course of business. As noted, this estimate includes real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others that may provide commercial communications regarding mortgage credit product terms.<sup>9</sup> 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 3.6 million hours (1.2

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<sup>8</sup> 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) 1 million real estate brokers and agents—from the National Association of Realtors, *see* <http://www.realtor.org> (last visited June 24, 2013); (2) 140,000 home builders—from the National Association of Home Builders, *see* <http://www.NAHB.org> (last visited June 24, 2013); (3) 350 finance companies—from the American Financial Services Association, *see* <http://www.afsaonline.org> (last visited June 24, 2013); (4) 29,770 advertising agencies—from the North American Industry Classification System Association's database of U.S. businesses, *see* <http://www.naics.com> (last visited June 24, 2013); (5) 1,000 lead generators and rate aggregators—based on staff's administrative experience. These inputs add to 1,171,120; for rounding, and to account further for potentially unspecified other covered persons, however, staff has increased the resulting total to 1.2 million.

<sup>9</sup> 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.

million persons × 3 hours). Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,800,000 annual hours.<sup>10</sup>

**Estimated labor costs:** \$24,264,000 (rounded to the nearest thousand).

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 \$13.48.<sup>11</sup> Based upon the above estimates and assumptions, the total annual labor cost to retain and file documents, for the FTC's allotted burden, is \$24,264,000 (1.8 million hours × \$13.48 per hour).

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.

### *Request for Comments*

You can file a comment online or on paper. Write "Regulation N: FTC File No.

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<sup>10</sup> This burden estimate includes recordkeeping requirements of the FTC's Mortgage Acts and Practices Rule for the period from December 1, 2013 – December 29, 2013. The Commission retained its authority to enforce the Mortgage Acts and Practices—Advertising Rule from the Rule's issuance in July 2011 until the CFPB's republished rule, Regulation N, became effective on December 30, 2011. Thus, the Commission's Rule had a correlative two-year recordkeeping for the above period concluding on December 29, 2013. Burden imposed on covered entities after that time are covered by the same recordkeeping requirements under Regulation N, which commenced December 30, 2011.

<sup>11</sup> 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 2012*, table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation," released Mar. 29, 2013, available at <http://www.bls.gov/news.release/pdf/ocwage.pdf>).

P134811; K05” on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/regulationnpra>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Regulation N: FTC File No. P134811; K05” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,  
Principal Deputy General Counsel.

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