



[Billing code: 6750-01-S]

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (“FTC”).

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for the FTC’s portion of the information collection requirements contained in the Consumer Financial Protection Bureau’s Regulation N (the Mortgage Acts and Practices—Advertising Rule). The FTC shares enforcement of Regulation N with the Consumer Financial Protection Bureau (“CFPB”). This clearance expires on December 31, 2016.

DATES: Comments must be received by [insert date 30 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 Comment part of the SUPPLEMENTARY INFORMATION section below. Write “Regulation N: FTC File No. P134811; K05” on your comment, and file your comment online at <https://ftcpbpublic.commentworks.com/ftc/regulationnpra2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements 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:

Title: Mortgage Acts and Practices – Advertising (Regulation N), 12 CFR 1014.

OMB Control Number: 3084-0156.

Type of Review: Extension of a currently approved collection.

Abstract: 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, 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)¹ substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer

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

Financial Protection Bureau (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.² The FTC and the CFPB share enforcement authority for Regulation N and thus the two agencies share burden estimates³ for Regulation N.

Regulation N’s recordkeeping requirements constitute a “collection of information”⁴ for purposes of the PRA.⁵ 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 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

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.

³ The CFPB clearance for their information collections associated with Regulation N was approved by the OMB on September 30, 2015 (OMB Control Number 3170–0009) through September 30, 2018.

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

⁵ See 44 U.S.C. 3502(3)(A).

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; real estate brokers and agents; home builders, and advertising agencies.⁶ 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.⁷ Certain other covered persons such as lead generators and rate aggregators may not currently maintain these records in the ordinary

⁶ Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. *See, e.g.*, Fla. Stat. 494.00165 (2016); Ind. Code Ann. 23–2–5–18 (2016); Kan. Stat. Ann. 9–2208 (2015); Minn. Stat. 58.14 (2015); Wash. Rev. Code 19.146.060 (2015). Many mortgage brokers, lenders (including finance companies), and servicers are 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 (2016); N.Y. Banking Law 597 (Consol. 2015); Tenn. Code Ann. 45–13–206 (2015). Lenders and mortgagees approved by the Federal Housing Administration 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. Various other entities, such as real estate brokers and agents, home builders, and advertising agencies can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law. *See, e.g.*, 76 Del. Laws, c. 421, § 1.

⁷ *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

course of business.⁸ 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 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.

On August 31, 2016, the Commission sought comment on the Rule’s information collection requirements.⁹ No germane comments were received.¹⁰

As required by OMB regulations, 5 CFR Part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Lead generators and rate aggregators.

Estimated Annual Hours Burden: 1,500 hours.

- Derived from 1,000 likely respondents¹¹ x approximately 3 hours each respondent

⁸ See, e.g., *United States v. Intermundo Media, LLC, dba Delta Prime Refinance*, No. 1:14-cv-2529 (D. Colo. filed Sept. 12, 2014) (D. Colo. Oct.7, 2014) (stipulated order for permanent injunction and civil penalty judgment), *available at* <https://www.ftc.gov/system/files/documents/cases/140912deltaprimestiporder.pdf>. The complaint charged this lead generator with numerous violations of Regulation N, including recordkeeping, and of other federal mortgage advertising mandates.

⁹ See 81 FR 60001.

¹⁰ The Commission received five non-germane comments, of which one was a duplicate.

¹¹ 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. The Commission does not know what percentage of these persons are, in fact, engaged in covered

per year to do these tasks = 3,000 hours.

- Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,500 annual hours.¹²

Estimated Annual Cost Burden: \$21,570, which is derived from 1,500 hours × \$14.38 per hour.¹³

Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE THAT IS 30 DAYS FROM FEDERAL REGISTER DATE OF PUBLICATION]. Write "Regulation N: FTC File No. 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

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.

¹² This estimate reflects a decrease in 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 supra* note 6. 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, 80 FR 45645 (July 31, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-07-31/pdf/2015-18809.pdf>.

¹³ 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 2015, table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation"), released Mar. 30, 2016, available 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, such as 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 any "[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 are required 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 grants your request in accordance with the law and the public interest.

<http://www.bls.gov/news.release/pdf/ocwage.pdf>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/regulationnpra2>, 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, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. 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 30 days from FEDERAL REGISTER date of publication]. 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.shtm>.

Comments on the information collection requirements subject to review under the

PRA should also be submitted to OMB. If sent by U.S. mail, address comments to:
Office of Information and Regulatory Affairs, Office of Management and Budget,
Attention: Desk Officer for the Federal Trade Commission, New Executive Office
Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503.
Comments sent to OMB by U.S. postal mail, however, are subject to delays due to
heightened security precautions. Thus, comments instead should be sent by facsimile to
(202) 395-5167.

David C. Shonka
Acting General Counsel.
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