(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 1014.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111–203, section 1071, 124 Stat. 1376 (July 21, 2010). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

§ 1014.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection’s intention that the remaining provisions shall continue in effect.

PART 1015—MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O)

Sec.
1015.1 Scope of regulations in this part.
1015.2 Definitions.
1015.3 Prohibited representations.
1015.4 Disclosures required in commercial communications.
1015.5 Prohibition on collection of advance payments and related disclosures.
1015.6 Assisting and facilitating.
1015.7 Exemptions.
1015.8 Waiver not permitted.
1015.9 Recordkeeping and compliance requirements.
1015.10 Actions by states.
1015.11 Severability.


SOURCE: 76 FR 78133, Dec. 16, 2011, unless otherwise noted.
Bur. of Consumer Financial Protection § 1015.2
disclosures shall appear simultaneously in the audio and visual parts of
the commercial communication and be
delivered in a manner consistent with
paragraphs (1) and (2) of this definition.
The visual disclosure shall be at least
four percent of the vertical picture or
screen height and appear for the dura-
tion of the oral disclosure;
(4) In communications made through
interactive media, such as the internet,
online services, and software, the re-
quired disclosures shall:
(i) Be consistent with paragraphs (1)
through (3) of this definition;
(ii) Be made on, or immediately prior
to, the page on which the consumer
takes any action to incur any financial
obligation;
(iii) Be unavoidable, i.e., visible to
consumers without requiring them to
scroll down a Web page; and
(iv) Appear in type at least the same
size as the largest character of the ad-
vertisement;
(5) In all instances, the required dis-
closures shall be presented in an under-
standable language and syntax, and
with nothing contrary to, inconsistent
with, or in mitigation of the disclo-
sures used in any communication of
them; and
(6) For program-length television,
radio, or internet-based multimedia
commercial communications, the re-
quired disclosures shall be made at the
beginning, near the middle, and at the
end of the commercial communication.
Client trust account
means a separate
account created by a licensed attorney
for the purpose of holding client funds,
which is:
(1) Maintained in compliance with all
applicable state laws and regulations,
including licensing regulations; and
(2) Located in the state where the at-
torney’s office is located, or elsewhere
in the United States with the consent
of the consumer on whose behalf the
funds are held.
Commercial communication means any
written or oral statement, illustration,
or depiction, whether in English or any
other language, that is designed to ef-
fect a sale or create interest in pur-
chasing any service, plan, or program,
whether it appears on or in a label,
package, package insert, radio, tele-
vision, cable television, brochure,
newspaper, magazine, pamphlet, leaf-
let, circular, mailer, book insert, free
standing insert, letter, catalogue, post-
er, chart, billboard, public transit card,
point of purchase display, film, slide,
audio program transmitted over a tele-
phone system, telemarketing script,
onhold script, upsell script, training
materials provided to telemarketing
firms, program-length commercial
(“infomercial”), the internet, cellular
network, or any other medium. Pro-
motional materials and items and Web
pages are included in the term “com-
mercial communication.”
(1) General Commercial Communication
means a commercial communication
that occurs prior to the consumer
agreeing to permit the provider to seek
offers of mortgage assistance relief on
behalf of the consumer, or otherwise
agreeing to use the mortgage assist-
tance relief service, and that is not di-
rected at a specific consumer.
(2) Consumer-Specific Commercial Com-
munication means a commercial com-
munication that occurs prior to the
consumer agreeing to permit the pro-
vider to seek offers of mortgage assist-
tance relief on behalf of the consumer,
or otherwise agreeing to use the mort-
gage assistance relief service, and that
is directed at a specific consumer.
Consumer
means any natural person
who is obligated under any loan se-
cured by a dwelling.
Dwelling
means a residential struc-
ture containing four or fewer units,
whether or not that structure is at-
tached to real property, that is pri-
marily for personal, family, or house-
hold purposes. The term includes any
of the following if used as a residence:
An individual condominium unit, coop-
erative unit, mobile home, manufac-
tured home, or trailer.
Dwelling loan
means any loan secured
by a dwelling, and any associated deed
of trust or mortgage.
Dwelling Loan Holder
means any indi-
vidual or entity who holds the dwelling
loan that is the subject of the offer to
provide mortgage assistance relief
services.
Material
means likely to affect a con-
sumer’s choice of, or conduct regard-
ing, any mortgage assistance relief
service.
§ 1015.3 Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer;

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in §1015.2;

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in §1015.2;
§ 1015.4 Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Disclosures in All General Commercial Communications—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in §1015.2, “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” which must be in bold face font that is two point-type larger than the font size of the required disclosures; and
(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following information.”

(b) Disclosures in All Consumer-Specific Commercial Communications—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

(1) “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.” For the purposes of this paragraph (b)(1), the amount “you will have to pay” shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.

(2) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in §1015.2, “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following information” and, in telephone communications, must be made at the beginning of the call.

(c) Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that “If you stop paying your mortgage, you could lose your home and damage your credit rating.”

§1015.5 Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: “This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (same amount as disclosed pursuant to §1015.4(b)(1)) for our services.” The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: “IMPORTANT NOTICE: Before buying this service, consider the following information.” The heading must be in bold
face font that is two point-type larger than the font size of the required disclosure; or
(c)(1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer’s dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer’s current mortgage loan and the terms, conditions, and limitations associated with the consumer’s mortgage loan if he or she accepts the dwelling loan holder’s or servicer’s offer, including but not limited to differences in the loan’s:
(i) Principal balance;
(ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;
(iii) Amount and number of the consumer’s scheduled periodic payments on the loan;
(iv) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;
(v) Amount of any delinquent payments owing or outstanding;
(vi) Assessed fees or penalties; and
(vii) Term.
(2) The notice must be made in a clear and prominent manner, on a separate written page, and preceded by heading: “IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER.” The heading must be in bold face font that is two-point-type larger than the font size of the required disclosure.
(d) Fail to disclose in the notice specified in paragraph (c) of this section, in cases where the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer is a trial mortgage loan modification, the terms, conditions, and limitations of this offer, including but not limited to:
(1) The fact that the consumer may not qualify for a permanent mortgage loan modification; and
(2) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the consumer would owe in failing to qualify.
§ 1015.6 Assisting and facilitating.
It is a violation of this rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates this rule.
§ 1015.7 Exemptions.
(a) An attorney is exempt from this part, with the exception of §1015.5, if the attorney:
(1) Provides mortgage assistance relief services as part of the practice of law;
(2) Is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer’s dwelling is located; and
(3) Complies with state laws and regulations that cover the same type of conduct the rule requires.
(b) An attorney who is exempt pursuant to paragraph (a) of this section is also exempt from §1015.5 if the attorney:
(1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and
(2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.
§ 1015.8 Waiver not permitted.
It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.
§ 1015.9 Recordkeeping and compliance requirements.
(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:
(1) All contracts or other agreements between the provider and any consumer occurring prior to the date on which the consumer entered into an
agreement with the provider for any mortgage assistance relief service;

(3) Copies of all documents or telephone recordings created in connection with compliance with paragraph (b) of this section;

(4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including Web sites and weblogs, for any mortgage assistance relief service; and

(6) Copies of the documentation provided to the consumer as specified in §1015.5 of this rule;

(b) A mortgage assistance relief service provider also must:

(1) Take reasonable steps sufficient to monitor and ensure that all employees and independent contractors comply with this rule. Such steps shall include the monitoring of communications directed at specific consumers, and shall also include, at a minimum, the following:

(i) If the mortgage assistance relief service provider is engaged in the telemarketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;

(ii) Establishing a procedure for receiving and responding to all consumer complaints; and

(iii) Ascertaining the number and nature of consumer complaints regarding transactions in which all employees and independent contractors are involved;

(2) Investigate promptly and fully each consumer complaint received;

(3) Take corrective action with respect to any employee or contractor whom the mortgage assistance relief service provider determines is not complying with this rule, which may include training, disciplining, or terminating such individual; and

(4) Maintain any information and material necessary to demonstrate its compliance with paragraphs (b)(1) through (3) of this section.

c) A mortgage assistance relief provider may keep the records required by paragraphs (a) and (b) of this section in any form, and in the same manner, format, or place as it keeps such records in the ordinary course of business.

(d) It is a violation of this rule for a mortgage assistance relief service provider not to comply with this section.

§ 1015.10 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Public Law 111–203, section 1097, 124 Stat. 2102 (July 21, 2010).

§ 1015.11 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

PART 1016—PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

Sec.
1016.1 Purpose and scope.
1016.2 Model privacy form and examples.
1016.3 Definitions.

Subpart A—Privacy and Opt Out Notices

1016.4 Initial privacy notice to consumers required.
1016.5 Annual privacy notice to consumers required.
1016.6 Information to be included in privacy notices.
1016.7 Form of opt out notice to consumers; opt out methods.
1016.8 Revised privacy notices.
1016.9 Delivering privacy and opt out notices.