

SUPPORTING STATEMENT
for the Paperwork Reduction Act Revised Information Collection Submission
“Rule 17g-2: Records to be made and retained by nationally
recognized statistical rating organizations”

A. JUSTIFICATION

1. **Necessity of Information Collection**

The Credit Rating Agency Reform Act of 2006¹ (“Rating Agency Act”), enacted on September 29, 2006, defines the term “nationally recognized statistical rating organization,” or “NRSRO” and provides authority for the Securities and Exchange Commission (“Commission”) to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies.

Title IX, Subtitle C of the Dodd-Frank Act,² “Improvements to the Regulation of Credit Rating Agencies,” among other things, establishes new self-executing requirements applicable to NRSROs, requires certain studies,³ and requires that the Commission adopt rules applicable to NRSROs in a number of areas.⁴ The NRSRO provisions in the Dodd-Frank Act augment the Rating Agency Act, which established a registration and oversight program for NRSROs through self-executing provisions added to the Exchange Act and implementing rules adopted by the Commission under the Exchange Act as amended by the Rating Agency Act.⁵ Title IX, Subtitle C of the Dodd-Frank Act also provides that the Commission shall prescribe the format of a certification that providers of third-party due diligence services would need to provide to each NRSRO producing a credit rating for an asset-backed security to which the due diligence services relate.⁶ Finally, Title IX, Subtitle C of the Dodd-Frank Act establishes a new requirement for issuers and underwriters of asset-backed securities to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.⁷

Rule 17g-2 contains recordkeeping and disclosure requirements. The collection of information obligations imposed by the rule is mandatory. The requirements of Rule 17g-2, however, apply only to credit rating agencies that are applying to register or are registered with the Commission as NRSROs, and registration is voluntary.

The Rating Agency Act amended Section 17(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) to add NRSROs to the list of entities required to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as

¹ Pub. L. No. 109-291.

² Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

³ See Pub. L. No. 111-203 §§ 939, 939D - 939F.

⁴ See Pub. L. No. 111-203 §§ 931-939H; see also Pub. L. No. 111-203 § 943.

⁵ See Pub. L. No. 109-291 (2006).

⁶ See Pub. L. No. 111-203 § 932(a)(8) adding new paragraph (s)(4)(C) to Section 15E of the Exchange Act. 15 U.S.C. 78o-7(s)(4)(C).

⁷ See Pub. L. No. 111-203 § 932(a)(8) adding new paragraph (s)(4)(A) to Section 15E of the Exchange Act. 15 U.S.C. 78o-7(s)(4)(A).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.⁸ The inclusion of NRSROs on the list also provides the Commission with authority under Section 17(b)(1) of the Exchange Act to examine all the records of an NRSRO.⁹

Rule 17g-2, “Records to be made and retained by nationally recognized statistical rating organizations,” implements the Commission’s recordkeeping rulemaking authority under Section 17(a) of the Exchange Act.¹⁰ The rule requires an NRSRO to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained.

The requirements of Rule 17g-2 are designed to ensure that an NRSRO makes and retains records that assist the Commission in monitoring, through its examination authority, whether an NRSRO continues to meet the requirements for registration as an NRSRO and whether the NRSRO is complying with applicable laws and regulations.

Change in number of respondents

The proposed amendments to Rule 17g-2 require the Commission to update the burden estimate for the instant collection. The Commission is taking this opportunity to update the PRA burden estimates to reflect what the Commission believes is a more accurate estimate of the number of credit rating agencies that have registered as NRSROs: 10 NRSROs. The reason for this change is explained fully in A.12 below.

Proposed Amendments to Rule 17g-2

The Commission is proposing to repeal paragraph (d)(2) of Rule 17g-2 and re-codify and enhance the requirements in paragraph (d)(3) of Rule 17g-2 in new Rule 17g-7. The Commission estimates that these changes will result in a reduction of the PRA burden associated with Rule 17g-2, as is discussed more fully below in Section A.12.

The Commission is proposing to add paragraph (a)(9) to Rule 17g-2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of Rule 17g-8 as a record that must be maintained and retained. In addition, the Commission is proposing to add the following new paragraphs to Rule 17g-2 to identify records that must be retained:

(1) paragraph (b)(12) would identify the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to Exchange Act Section 15E(c)(3)(A);

⁸ See Section 5 of the Act and 15 U.S.C 78q(a)(1).

⁹ See 15 U.S.C 78q(b)(1).

¹⁰ 15 U.S.C 78q.

(2) paragraph (b)(13) would identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to proposed paragraph (a) of new Rule 17g-8;

(3) paragraph (b)(14) would identify the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to proposed paragraph (b) of new Rule 17g-8; and

(4) paragraph (b)(15) would identify the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g-9.

2. Purpose and Use of the Information Collection

Rule 17g-2 in general

The collections of information in Rule 17g-2 are designed to allow the Commission to determine whether an NRSRO continues to meet the requirements for registration and is complying with applicable laws and regulations. In particular, the collections of information in Rule 17g-2 will assist the Commission in effectively monitoring, through its examination function, whether an NRSRO is conducting its activities in accordance with Section 15E of the Exchange Act,¹¹ and applicable Exchange Act rules under the Rating Agency Act.

Proposed Amendments to Rule 17g-2

The proposed requirement that a record of the policies and procedures identified in new paragraph (a)(9) of Rule 17g-2 be made (*i.e.*, documented) would promote better understanding of them among the individuals within the organization and, therefore, promote compliance with such policies and procedures. The requirement that the policies and procedures identified in proposed new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) be retained would subject these records to the various retention and production requirements of paragraphs (c), (d), (e), and (f) of Rule 17g-2. The Commission staff would use these records to review whether an NRSRO was complying with the provisions of the securities laws requiring the NRSRO to establish, maintain, enforce, and document these policies, procedures, and standards.

3. Consideration Given to Information Technology

The records that the amendments to Rule 17g-2 require NRSROs to make and retain could be made and retained electronically. The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens associated with the amendments to Rule 17g-2. NRSROs are not prevented by Rule 17g-2 from using computers or other mechanical devices to generate the records required under the rule.

¹¹ 15 U.S.C. 78o-7.

4. Duplication

The Commission has not identified any duplication with respect to the information required by Rule 17g-2.

5. Effects on Small Entities

Small entities may be affected by the rule amendments because all credit rating agencies, regardless of size, that are registered as NRSROs will be required to make and retain records in accordance with Rule 17g-2. The Commission solicited comment on whether there are ways to minimize the burden of the collection of information requirements on those who are to respond.

6. Consequences of Less Frequent Collection

Up to date records are essential for the Commission to monitor whether an NRSRO continues to meet the requirements for registration as an NRSRO. If an NRSRO did not make these records, or if it made these records less frequently, the goals of the Rating Agency Act--including enhancing the information used by investors to make investment decisions--will be diminished.

7. Inconsistencies With Guidelines in 5 CFR 1320.8(d)

The Commission has reviewed its collection responsibilities and does not believe there are any inconsistencies with the guidelines set forth in 5 CFR 1320.8(d).

8. Consultations Outside the Agency

The Commission has issued a proposing release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment or Gift to Respondents

The Commission did not provide any payment or gift to respondents in connection with the proposed rulemaking.

10. Confidentiality

The confidentiality of the information submitted to the Commission under the proposed rule will be protected only to the extent permitted by FOIA.

11. Sensitive Questions

The Commission's proposal should not result in the Commission receiving sensitive information. To the extent that the Commission receives information that is sensitive to an NRSRO, the Commission will protect the confidentiality of such information to the extent permitted by FOIA.

12. Estimate of Respondent Reporting Burden

Change in the number of respondents:

In adopting the first rules under the Rating Agency Act, the Commission estimated that approximately 30 credit rating agencies ultimately would be registered as NRSROs.¹² There are currently nine NRSROs registered with the Commission.¹³ Based on staff experience, the Commission believes that there will likely be at least one additional credit rating agency that successfully registers as an NRSRO during the collection period. Therefore, the Commission estimates that there are ten NRSROs that would be impacted by this information collection. Because the Commission is changing the number of respondents from 30 to 10, the Commission is also adjusting the other burden estimates to reflect 10 instead of 30 NRSROs. Because the Commission is changing the number of respondents from 30 to 10, the Commission is also adjusting the other burden estimates to reflect 10 instead of 30 NRSROs.

The Commission has estimated that the average one-time burden of implementing a recordkeeping system to comply with Rule 17g-2 approximately 345 hours.¹⁴ Thus, across 10 NRSROs, the total one-time burden is 3,450 hours.¹⁵ Additionally, the Commission estimates that an NRSRO will spend an average of 279 hours per year¹⁶ to make and retain records under Rule 17g-2 as amended, for a total ongoing hour burden under Rule 17g-2 of 2,790 hours.¹⁷ The Commission considers both of these burdens to be record-keeping burdens.

Rule 17g-2 also requires that an NRSRO that uses a third-party record custodian furnish the Commission with an undertaking from the custodian. Based on staff experience, the Commission estimates that approximately five NRSROs will file this undertaking on a one-time

¹² See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, 72 FR at 33607 (June 18, 2007).

¹³ A.M. Best Company, Inc., DBRS Ltd., Egan-Jones Rating Company, Fitch, Inc., Japan Credit Rating Agency, Ltd., Kroll Bond Rating Agency, Inc. (formerly LACE Financial Corp.); Moody's Investors Service, Inc., Realpoint LLC, and Standard & Poor's Ratings Services.

¹⁴ See Securities Exchange Act Release No. 59342 (Feb. 2, 2009), 74 FR 6456 (Feb. 9, 2009) ("Release No. 59342").

¹⁵ 345 hours x 10 respondents = 3,450 hours.

¹⁶ See Release 59342, supra note 14.

¹⁷ 279 hours x 10 respondents = 2,790 hours.

basis. The Commission estimates, based on staff experience, that it will take an NRSRO approximately 10 hours to complete an undertaking prior to furnishing it to the Commission.¹⁸ Therefore, the Commission estimates that the total one-time hour burden for this undertaking will be 50 hours.¹⁹ The Commission considers this a reporting burden.

Proposed Amendments to Rule 17g-2

The Commission is proposing to repeal paragraph (d)(2) of Rule 17g-2 and re-codify and enhance the requirements in paragraph (d)(3) of Rule 17g-2 in new Rule 17g-7. The Commission estimates that the actual repeal and re-codification will result in de minimis one-time hour burdens to each NRSRO. (The one time and ongoing hour burden resulting from the proposed enhancements to the requirements currently codified in Rule 17g-2(d)(3) that the Commission proposed be codified in new Rule 17g-7 are addressed in the PRA analysis for Rule 17g-7.)

The Commission had estimated that an NRSRO subject to these requirements would spend approximately 30 hours to publicly disclose the required information in an XBRL format and, thereafter, 10 hours per year to update this information.²⁰ Further, the Commission estimated that seven of the ten currently registered NRSROs issue 500 or more issuer-paid credit ratings in at least one of the classes of credit ratings for which they are registered, and that even if the number of NRSROs were to expand, the number of NRSROs (seven) that issue 500 or more issuer-paid credit ratings in at least one of the classes of credit ratings for which they are registered would remain relatively constant.²¹ Accordingly, the Commission estimated that the total aggregate one-time burden to the industry to make the history of rating actions publicly available in an XBRL format was 210 hours,²² and the total aggregate ongoing burden hours was 70 hours.²³ Since the Commission has proposed to eliminate Rule 17g-2(d)(2), and Rule 17g-2(d)(3) is being codified in new Rule 17g-7, the aggregate ongoing hours burden associated with Rule 17g-2 is being *reduced* by 70 hours.

The Commission is also proposing to add paragraph (a)(9) to Rule 17g-2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of Rule 17g-8 as a record that must be made and retained. In addition, the Commission is proposing to add the following new paragraphs to Rule 17g-2 to identify records that must be retained: (1) paragraph (b)(12) would identify the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to Section 15E(c)(3)(A); (2) paragraph (b)(13) would identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to

¹⁸ The estimated 10 hours includes drafting, legal review, and receiving corporate authorization to file the undertaking with the Commission.

¹⁹ 10 hours x 5 NRSROs = 50 hours. This estimate is the same as the previous hours estimate to use a third-party record custodian.

²⁰ The Commission also bases this estimate on the current one-time and ongoing burden hours for an NRSRO to publicly disclose its Form NRSRO. No alternatives to these estimates as proposed were suggested by commenters. See June 5, 2007 Adopting Release, 72 FR at 33609.

²¹ See Release No. 59342, supra note 14.

²² 30 hours x 7 NRSROs = 210 hours.

²³ 10 hours x 7 NRSROs = 70 hours.

proposed paragraph (a) of new Rule 17g-8; (3) paragraph (b)(14) would identify the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to proposed paragraph (b) of new Rule 17g-8; and (4) paragraph (b)(15) would identify the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g-9. The Commission considers all of these proposed rules to consist of record-keeping burdens.

Because the requirement to document the policies and procedures required by Exchange Act Section 15E(h)(4)(A) and proposed paragraph (c) of Rule 17g-8 would be the same as the requirement in proposed paragraph (a)(9) of Rule 17g-2 to make this record, the PRA burdens associated with that aspect of the making of the record are addressed in the PRA analysis for Rule 17g-8. Consequently, for the purposes of Rule 17g-2, the Commission is providing preliminary estimates of the one-time and ongoing hour burdens resulting from the requirement to retain the records that would be identified in new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g-2. The Commission preliminarily estimates that the one-time hour burden would result from the NRSRO needing to update its record retention policies and procedures to incorporate these new records that would need to be retained. Based on staff experience, the Commission preliminarily estimates that each NRSRO would spend an average of approximately 20 hours updating its record retention policies and procedures, resulting in an industry-wide one-time hour burden of approximately 200 hours.

In terms of ongoing hour burden, the Commission notes that the adjusted industry-wide ongoing hour burden attributable to Rule 17g-2 is 4,000 hours, resulting in an average ongoing burden of 400 hours per NRSRO. This burden amount is attributable to 8 different types of records that must be made and retained by the NRSRO, 11 types of records that must be retained if made or received, and to the disclosure requirements in paragraphs (d)(2) and (d)(3) of Rule 17g-2. The Commission preliminarily believes that most of the hour burden is attributable to making the records identified in paragraph (a) of the Rule 17g-2 and making the disclosures required in paragraph (d) of Rule 17g-2 as this work is substantially more labor intensive than retaining a record. Consequently, the Commission preliminarily estimates that the burden associated with retaining the 5 new records that would be identified in new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g-2 would be minimal because NRSROs already should have well-established procedures with respect to the records they must make and retain pursuant to Rule 17g-2. In addition, the Commission does not expect the new records would change frequently given that they would be the NRSRO's internal control structure required pursuant to Section 15E(c)(3)(A) of the Exchange Act, various types of policies and procedures, and the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g-9. Accordingly, once the original record is retained, the need to expend resources to retain updated versions of the original record would be infrequent. Therefore, the Commission preliminarily estimates that it would take approximately one hour per record each year to retain updated versions of these records. For these reasons, the Commission preliminarily estimates that the ongoing hour burden for each NRSRO attributable to these proposals would be approximately 5 hours,²⁴ resulting in an industry-wide ongoing hour burden of approximately 50 hours.²⁵

²⁴ 5 records x 1 hour = 5 hours.

²⁵ 10 NRSROs x 5 hours = 50 hours.

The Commission therefore estimates that the total one-time burden for Rule 17g-2 is 375 hours per NRSRO and 3,700 hours on an industry-wide basis;²⁶ and the ongoing burden is 284 hours per NRSRO and 2,840 hours on an industry-wide basis.²⁷ For purposes of the PRA submission, the one-time hour and cost burden are amortized over the three-year approval period. This produces an ongoing hour burden of 4,073 hours (3,700 / 3 plus 2,840) and an ongoing cost of \$3,333 (\$10,000 / 3).

13. Costs to Respondents

Under the currently approved PRA collection for Rule 17g-2, the Commission estimated that an NRSRO may need to purchase recordkeeping system software to establish a recordkeeping system in conformance with Rule 17g-2. The Commission estimated that the cost of the software would vary based on the size and complexity of the NRSRO. Also, the Commission estimated that some NRSROs would not need such software because they already have adequate recordkeeping systems or, given their small size, such software would not be necessary. Therefore, the Commission estimates that the average cost for recordkeeping software across all NRSROs would be approximately \$1,000 per firm, with an aggregate maximum one-time cost to the industry of \$10,000.

Under the currently approved PRA collection for Rule 17g-2, the Commission also estimated that the requirement to publicly disclose certain ratings action histories in an XBRL format would cost approximately \$800 per firm. Because the Commission has proposed to eliminate Rule 17g-2(d)(2), and proposed to codify Rule 17g-2(d)(3) in new Rule 17g-7, the Commission is now *subtracting* these one-time costs from its prior burden estimate. Thus, the Commission believes the approximate one-time cost per NRSRO is approximately \$1,000 and the one-time industry-wide cost is approximately \$10,000. For purposes of the PRA submission, the one-time hour and cost burden are amortized over the three-year approval period. This produces an ongoing cost of \$3,333 (\$10,000 / 3).

14. Costs to Federal Government

The Commission does not anticipate any costs to the Federal Government that result from the proposed rule.

15. Explanation of Changes in Burden

The new burden associated with Rule 17g-2 as a result of the proposed rule amendments is 3,700 hours on a one-time basis, a decrease of 6,910 hours; 2,840 hours on an ongoing basis, a decrease of 5,600 hours; and a one-time cost of \$10,000, a decrease of \$15,600. As described more fully in paragraph 12, there are two reasons for the change in burden: (1) the

²⁶ 3,450 hours (implement recordkeeping system at 345 hours per NRSRO times 10 NRSROs) + 50 hours (estimate that third party record custodian would be used by 5 NRSROs) + 200 hours (update of record retention requirements at 20 hours per NRSRO times 10 NRSROs) = 3,700 hours.

²⁷ 2,790 hours (retain recordkeeping system at 279 hours per NRSRO times 10 NRSROs) + 50 hours (five new records at one hour per record times 10 NRSROs)

Commission's adjustment of the estimated number of NRSROs from 30 to 10; and (2) the proposal to eliminate paragraph (d)(2) of Rule 17g-2 and move paragraph (d)(3) to Rule 17g-7 (with certain enhancements).

16. Information Collection Planned for Statistical Purposes

Not applicable. There is no intention to publish the information for any purpose.

17. OMB Expiration Date Display

The Commission is not seeking approval to not display the OMB expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable because no exceptions to certification are contained in the proposed rule.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information does not involve statistical methods or analyze the information for the agency.