

## **SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

We request that OMB review the following information collections for consideration. Based on the proposed rule 33-9117, which was published in the federal register on April 10, 2010, (75 FR 23328), the Commission is seeking new OMB Control Numbers for previously submitted pre-approved information collections: Form SF-1 (3235-0665), Privately-Issued Structured Finance Products Disclosure (3235-0660), Waterfall Computer Program (3235-0663), Form 144A-SF (3235-0661), Asset Data File (3235-0664) and requesting a Notice of Action disposition of “Comment filed on proposed rule”, so that we may revise the supporting statement that will be submitted to OMB when the final rule is adopted.

In addition, the Commission is requesting a Notice of Action of “Comment filed on proposed rule and continue” for the following information collections submitted in connection with proposed rules 33-9117: Form 10-K (201006-3235-024) and Form 8-K (3235-0060). This rulemaking submission for these specific information collections was delayed at the time based on the prioritized implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Commission is now moving forward with finalizing proposed rules 33-9117 and will need to have a “comment filed and continue” disposition for the collections so that the correct proposed rule submission is associated with the final rule submission.

### **A. JUSTIFICATION**

#### **1. NECESSITY OF INFORMATION COLLECTION**

In Release No. 33-9117,<sup>1</sup> the Securities and Exchange Commission (the “Commission”) proposed amendments to several rules and form requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 relating to asset-backed securities (“ABS” or “asset-backed securities” or “structured finance products”). The proposals are designed to enhance investor protection in the ABS market, in light of the role that ABS played in the recent financial crisis. The proposals are intended to provide investors with timely and sufficient information, including information in and about the private market for asset-backed securities, reduce the likelihood of undue reliance on credit ratings, and help restore investor confidence in the representations and warranties regarding the assets. Although these revisions are comprehensive and therefore would impose new burdens, the Commission believes that they would protect investors and promote efficient capital formation.<sup>2</sup>

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<sup>1</sup> Asset-Backed Securities, Release No. 33-9117 (April 7, 2010) [75 FR 23328].

<sup>2</sup> See Section I.A. of Release No. 33-9117.

The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles for the collections of information contained by the proposed amendments are:

- “Form S-1” (OMB Control No. 3235-0065);
- “Form 10-K” (OMB Control No. 3235-0063);
- “Form 8-K” (OMB Control No. 3235-0060);
- “Regulation S-T” (OMB Control No. 3235-0424);
- “Form D” (OMB Control No. 3235-0076);
- “Form SF-1” (a proposed new collection of information);
- “Asset Data File” (a proposed new collection of information);
- “Waterfall Computer Program” (a proposed new collection of information);
- “Form 144A-SF” (a proposed new collection of information); and
- “Privately-Issued Structured Finance Products” (a proposed new collection of information).<sup>3</sup>

“Form SF-1” is a new collection of information created by the proposed amendments. Because of the registered process, criteria, and disclosure would differ from offerings of other types of securities, the Commission proposed that non-shelf ABS offerings be registered on new form, “Form SF-1.” The Commission is proposing to add this form in order to distinguish the ABS registration system from the registration system for other securities. Because ABS issuers would register non-shelf offerings on this new registration form, the number of respondents for existing registration form, Form S-1, will decrease.

“Form 10-K” and “Form 8-K” are collections of information related to the periodic and current reports that are filed on an ongoing basis under the Exchange Act. As part of the proposed new shelf registration requirements, issuers will be required to file Exchange Act reports for the life of the security. Currently, because the record holders of ABS issuers are typically much lower than three hundred, ABS issuers’ reporting obligations under Section 15(d) of the Exchange Act are typically suspended after they file the first Form 10-K. The proposed new requirements would provide important transparency for investors on an ongoing basis.

“Asset Data File” and “Waterfall Computer Program” are new collections of information that would require filing of asset level disclosure and a computer program that gives effect to the cash flow provisions for a securitization. They provide investors of ABS securities with important information that issuers currently are not required to provide to investors. This information must be filed in eXtensible Markup Language (XML) format because that would make the information more useful to investors. The Waterfall Computer

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<sup>3</sup> As noted in Section X. of Release No. 33-9117 and also below (#12 and #13), we believe that the proposed amendments would not change the burden hours and costs associated with Regulation S-T and Form D.

Program must also be filed in the Python programming language which is open source and interpretive.

“Form 144A-SF” and “Privately-Issued Structured Finance Product Disclosure” are new collections of information for offerings of privately-issued structured finance products that are made in reliance on a Commission safe harbor.<sup>4</sup> In light of the role that collateralized debt obligations (CDOs) and other typically privately-issued ABS securities played in the financial crisis, the Commission is proposing to require that information be provided to investors. The Form 144A-SF is a notice of an initial placement of structure finance products that contain basic information about an offering made in reliance on Rule 144A under the Securities Act that would be filed with the Commission.

## **2. PURPOSE FOR THE INFORMATION COLLECTION**

The purpose of the proposed collections of information is to provide enhanced disclosure and transparency to participants and investors in the asset-backed securities market.

## **3. ROLE OF IMPROVED TECHNOLOGY AND OBSTACLES TO REDUCING BURDEN**

Except for the Privately-Issued Structured Finance Products Disclosure, the information in each of the collections of information discussed above is filed electronically with the Commission using Commission’s Electronic Data Gathering and Retrieval (EDGAR) system. Privately-Issued Structured Finance Products Disclosure is not required to be filed with the Commission.

## **4. DUPLICATION**

We are not aware of any rules that conflict with or substantially duplicate the proposed rules.

## **5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES**

The proposed amendments would not impact a significant number of small entities. Rules in the Securities Act and Exchange Act define an issuer, other than an investment company, to be a “small business” or a “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year. As the depositor and issuing entity are most often limited purpose entities in an ABS transaction, we focused on the

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<sup>4</sup> The Commission is also proposing to amend Form D to collect the same type of information for structured finance products that rely on Regulation D for a safe harbor for an exemption from registration as would be required to be provided in proposed new Form 144A-SF. However, for reasons below, we do not believe that the changes will impact the collection of information requirements for Form D.

sponsor in analyzing the potential impact on small entities. Based on our data, we only found one sponsor that could meet the definition of a small broker-dealer.

## **6. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION**

The objectives of offering disclosure requirements under the Securities Act and the ongoing disclosure requirements under the Exchange Act could not be met with less frequent collection of this information for asset-backed securities.

## **7. EXPLANATION OF SPECIAL CIRCUMSTANCES/INCONSISTENCIES WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

None.

## **8. CONSULTATION OUTSIDE THE AGENCY**

The Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on the 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. The Commission will consider all comments received.

## **9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

## **10. ASSURANCE OF CONFIDENTIALITY**

Except for the Privately-Issued Structured Finance Products Disclosure, the information in each of the collections of information discussed above would be made publicly available. Privately-Issued Structured Finance Products Disclosure is not filed with the Commission; such disclosure would be provided to investors of the issuer’s securities (and potential investors of the securities, upon the request of the security holder).

## **11. SENSITIVE QUESTIONS**

Not applicable.

## **12. AND 13. ESTIMATES OF HOUR AND BURDEN COSTS**

The paperwork burden estimates associated with the proposal include the burdens attributable to preparing, reviewing and reporting information to the Commission and

retaining records. In most cases, the burden also includes filing the information with the Commission on EDGAR, and for a few cases, we are proposing to require that the information be filed in a tagged, eXtensible Markup Language format.

Our PRA burden estimates for each of the existing collections of information are based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare a particular collection of information. In 2004, we codified requirements for ABS issuers in these regulations and forms, recognizing that the information relevant to asset-backed securities differs substantially from that relevant to other securities.

Our PRA burden estimates for the proposed amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used with respect to asset-backed securities, as well as information from outside data sources.<sup>5</sup> When possible, we base our estimates on an average of the data that we have available for years 2004, 2005, 2006, 2007, 2008, and 2009.

#### **a. Form S-1 and Form SF-1**

We are proposing to move the requirements for asset-backed issuers into new forms that would be solely for the registration of asset-backed issuers. Proposed Form SF-1 would be the non-shelf equivalent form of existing Form S-1 under our proposal. As noted above, for purposes of our calculation, we estimate that the new proposals for shelf eligibility and new shelf procedures would cause small movement in the number of filers from the shelf system to the non-shelf system. For purposes of the PRA, we estimate three ABS issuers will move from the shelf system to the non-shelf system of proposed Form SF-1.<sup>6</sup> From 2004 through 2009, an average of four Form S-1s were filed annually by ABS issuers. Correspondingly, we estimate that the number of filings on Form SF-1 will be seven, which is the sum of the four average filings per year and the estimated incremental three filings from shelf to Form SF-1.

For ABS filings on Form S-1, we have used the same estimate of burden per response that we used for Form S-3, because the disclosures in both filings are similar.<sup>7</sup> Even under the proposals, the disclosures would continue to be similar for shelf registration statements and non-shelf registration statements. The burdens for the proposed requirements for the

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<sup>5</sup> We rely on two outside sources of ABS issuance data. We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC).

<sup>6</sup> We estimate in the section above that the proposals relating to shelf eligibility and new shelf procedures would cause a ten percent movement in the number of filers out of the shelf system. We assume, for the purposes of our PRA estimates, that the other filers that do not move to Form SF-1 would utilize the private markets or offshore offerings for offerings of ABS.

<sup>7</sup> See Section IV.B.2 of the 2004 ABS Proposing Release.

asset data file and the waterfall computer program to be filed as exhibits to Form SF-1 are included in the newly proposed collections of information discussed below rather than in this section for Form SF-1. Thus, we estimate that an ABS Form SF-1 filing will impose an incremental burden of 100 hours per response, which is equal to the incremental burden to file Form SF-3. We estimate the total number of hours to prepare and file each Form SF-1 at 1,350, the total annual burden for the issuer at 2362.5 hours and added costs for professional expenses at \$2,835,000.<sup>8</sup> This would result in a corresponding decrease in Form S-1 burden hours of 1,250 and \$1,500,000 in professional costs.<sup>9</sup>

## **b. Form 10-K**

The ongoing periodic and current reporting requirements applicable to operating companies differ substantially from the reporting that is most relevant to investors in asset-backed securities. For asset-backed issuers, in addition to a limited menu of Form 10-K disclosure items, the issuer must file a servicer compliance statement, a servicer's assessment of compliance with servicing criteria, and an attestation of an independent public accountant as exhibits to the Form 10-K.

One of our proposed ABS shelf eligibility conditions (*i.e.*, criteria that must be met in order to be eligible to register ABS on Form SF-3) would require the issuer to undertake to file Exchange Act reports as long as non-affiliates hold any of its securities that were sold in registered transactions. Except for master trust issuers, the requirement to file Form 10-K for ABS issuers is typically suspended after the year of initial issuance because the issuer has fewer than 300 security holders of record.<sup>10</sup> Therefore, the incremental impact to the number of Forms 10-K filed by ABS issuers would increase each year after the proposal is adopted by the number of ABS shelf offerings. The yearly average of ABS registered shelf offerings with the Commission over the period from 2004 to 2009 was 929.<sup>11</sup> In the first year after implementation, we use 958, which is the average number of all offerings over 2004-2009, as an estimate for the number of Forms 10-K we expect to receive. In the second year after

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<sup>8</sup> The total burden hours to file Form SF-1 are calculated by adding the existing burden hours of 1,250 and the incremental burden of 100 hours imposed by our proposals for a total of 1,350 hours. To calculate the annual internal and external costs, we first multiply the total burden hours per Form SF-1 (1,350) by the number of Form SF-1s expected under the proposal (7), resulting in 9,450 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 2,362.5 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$2,835,000.

<sup>9</sup> To calculate these values, we first multiply the total burden hours per Form S-1 (1,250) by the average number of Form S-1s filed during 2004-2009 (4), resulting in 5,000 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 1,250 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$1,500,000.

<sup>10</sup> See Exchange Act Section 15(d).

<sup>11</sup> The 929 ABS registered shelf offerings is 97 percent of the average yearly number of ABS offerings from 2004 through 2009.

implementation, we increase our estimate of the number of Forms 10-K expected by 929 to a total of 1,887. In the third year after implementation, the addition of another 929 brings the total to 2,817. The average number of Forms 10-K over three years would, therefore, be 1,887. As a result, for PRA purposes, we estimate an increase in Form 10-K filings of 929 filings.

We estimate that, for Exchange Act reports, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of \$400 per hour. In 2004, we estimated that 120 hours would be needed to complete and file a Form 10-K for an ABS issuer. We estimate that our proposals relating to Form 10-K would not increase the estimate for the time needed to complete and file Form 10-K for an ABS issuer.

However, our proposed amendments may have a limited impact on the preparation of Form 10-K for the sponsor of the ABS issuer, if the sponsor is a company that is required to report under the Exchange Act. Though we are not proposing changes to Form 10-K disclosure requirements for sponsors, our proposals may impact the work that sponsors would have to do to disclose in their Form 10-K the securities they are required to hold as a result of the proposals and the investments they make to manage risks associated with the new requirements. We estimate that our proposals will cause an increase in the number of hours the sponsor will incur to prepare, review and file Form 10-K by 10 hours. From 2004 to 2009, the number of unique ABS sponsors was 343, for an average of 57 unique sponsors per year. Therefore, we estimate that, for PRA purposes, the total annual increase in the number of hours to prepare, review, and file Form 10-K would be 112,050.<sup>12</sup> We allocate 75% of those hours (84,038 hours) to internal burden and the remaining 25% to external costs totaling \$11,205,000 using a rate of \$400 per hour.<sup>13</sup>

### **c. Form 8-K**

Our current PRA estimate for Form 8-K is based on the use of the report to disclose the occurrence of certain defined reportable events, some of which are applicable to asset-backed securities.

The number of ABS issuers filing Form 8-Ks on an annual basis may be affected by our proposal to require an ABS issuer that wishes to be shelf-eligible to undertake to file Exchange Act reports on an ongoing basis. In addition, our proposal to revise existing Item 6.05 of Form 8-K, which currently requires disclosure for any change in the actual asset pool over five percent from the description in the prospectus, by instead requiring an ABS issuer to instead provide information for any change equal to or greater than one percent in the asset

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<sup>12</sup> The 112,050 total burden hours are calculated by adding the impact on ABS issuers, which equals 929 incremental Forms 10-K times 120 burden hours per filing, and the impact on sponsors of ABS issuers, which equals 57 sponsors times 10 incremental burden hours.  $[(929*120) + (57*10) = 112,050]$

<sup>13</sup>  $112,050 * 0.25 * \$400 = \$11,205,000.$

pool from the prospectus description, may lead to an increase of Form 8-K filings.<sup>14</sup> We are also proposing to add a requirement that the sponsor provide disclosure on Form 8-K for a material change in its interest in the transaction.<sup>15</sup>

In 2004, we estimated that the new items added to Form 8-K to address ABS disclosure would cause an increase of two reports on Form 8-K per ABS issuer per year.<sup>16</sup> We estimate that our proposals would cause an increase of 1.5 reports on Form 8-K per ABS issuer per year, or a total of approximately 1,437 additional reports per year.<sup>17</sup>

In 2004, we estimated that an average ABS issuer would spend about five hours completing the form.<sup>18</sup> We estimate that the average burden for the disclosure per Form 8-K would remain relatively the same. Accordingly, we estimate the total annual increase in the number of hours to prepare, review, and file Form 8-K would be 7,185, with 75% of those hours (5,389) allocated to internal burden and the remaining 25% allocated to external costs of \$718,500 using a rate of \$400 per hour.<sup>19</sup>

#### **d. Regulation S-T**

As noted above, Regulation S-T contains the requirements that govern the electronic submission of documents. The proposed changes would make revisions to Regulation S-T. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to ABS issuers. The rules in Regulation S-T do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour to Regulation S-T for administrative convenience.

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<sup>14</sup> Our estimate here does not include an increase that would result in filing Item 6.06 or Item 6.07 Forms 8-K which are instead included in the our burden estimate for the newly proposed collection of information requirements for asset-level data and the waterfall computer program.

<sup>15</sup> See existing Item 6.03 of Form 8-K.

<sup>16</sup> See 2004 ABS Adopting Release.

<sup>17</sup> The number of ABS offerings is based on the average number of ABS deals issued annually over 2004 through 2009.

<sup>18</sup> See 2004 ABS Adopting Release.

<sup>19</sup> The total burden hours are calculated by multiplying the expected number of Form 8-K reports per year (1,437) times the estimated hours per filing (5) for a total of 7,185. Then, we allocate 75 percent of these hours to internal burden, resulting in 5,389 hours. We allocate the remaining 25 percent of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$718,500.



### e. Asset Data File

This new collection of information corresponds to asset data file information requirements that we are proposing to add to proposed Form SF-1, proposed Form SF-3, Form 10-D, and Form 8-K. They would be required to appear in exhibits to these forms. Our proposed standard definitions for asset-level information are similar to, and in part based on, other standards that have been developed by the industry, such as those developed under ASF's Project RESTART and those developed by the CRE Finance Council (formerly CMSA). These proposed standard definitions employ widely used metrics relating to asset-level information and, based on discussions with the industry, we believe that much of asset-level information may already be available for collection, although the format of such information may not be the one that we propose to require. We also believe that first year implementation costs may be much more significant than ongoing implementation costs.

An ABS issuer filing on proposed Form SF-1 or proposed Form SF-3 would be required to provide this new information. For the most part, this new information would be provided at the time that the newly proposed Rule 424(h) filing is required to be filed, at the time the final prospectus is required to be filed, and after there are certain changes to the pool, such as the substitution or addition of assets. Certain information would be required to be filed on an ongoing basis. We believe the information is currently available to the ABS issuer but additional time and expense will be involved in including the information in registration statements in the format that we are proposing.

The requirements are tailored by asset class. All asset classes except credit card receivables and stranded costs are required to provide asset-level information on each asset in the pool. Information relating to the performance of the assets would be required to be filed on an ongoing basis. Credit card ABS issuers would be required to provide grouped asset data, both at the time of securitization and on an ongoing basis. The grouped asset data could be incorporated by reference (from a previously filed Form 10-D).

We believe that the costs of implementation would include software costs, costs to tag the required data, costs of maintaining the required information, and costs of filing. The number of unique ABS sponsors over 2004-2009 was 343, for an average of 57 unique sponsors per year. We estimate that there are 10 unique sponsors of credit card securitizations over a three-year period (or three unique sponsors per year). We base our burden estimates for this collection of information on the assumption that most of the costs of implementation of the proposed asset-level data filing requirements would be incurred before the sponsor files its first asset-level data filing in compliance with the proposed rules. Because asset-backed issuers are currently required by Regulation AB to file pool-level information on the assets in the underlying pool,<sup>20</sup> we assume, for purposes of our PRA estimates, that much of the information that is required to be provided by the new disclosure requirements should be accessible from existing sponsor data systems.

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<sup>20</sup> Also, some registered issuers may be providing asset-level information to investors, although such information is not standardized.

Because of the number of fields involved, our estimates for the proposed asset-level requirements are based on EDGAR data on RMBS and CMBS issuers. We estimate that, for purposes of the PRA burden estimate for the asset-level disclosure requirements, approximately two percent of the proposed asset-level data fields that are required at the time of securitization and approximately two percent of the asset-level data fields that are required on an ongoing basis would require the sponsor to adjust its systems and procedures for collecting information on each asset. We estimate that, for purposes of an initial filing of asset-level information at the time of securitization, a sponsor would be required to expend at least 18 minutes for each item where adjustments must be made for each asset in a pool. We estimate that an RMBS sponsor would incur a one-time setup cost for the initial filing of 3,194 hours to adjust its existing systems to provide the required information at the time of securitization for each asset in the initial filing, 86 hours for a CMBS sponsor, and 2,010 hours for a credit card receivables sponsor.<sup>21</sup> After a sponsor has made the necessary adjustments to its systems and after an initial filing of asset-level data has been made, we estimate that subsequent filings for asset-level data will take approximately ten hours to prepare, review, and file. For credit card ABS sponsors, grouped asset data may be incorporated by reference, as proposed, and therefore, we are not including additional costs for subsequent filings by a credit card master trust.

Similarly, we estimate that for purposes of an initial filing of asset-level ongoing information, a sponsor would be required to expend at least 18 minutes for each item where adjustments must be made for each asset in a pool. We estimate that an RMBS sponsor would incur a one-time set-up cost of 3,811 hours to adjust its existing systems to provide the required ongoing information for each asset in the initial filing, 92 hours for a CMBS sponsor, while a credit card receivables sponsor would not incur additional setup costs for ongoing information.<sup>22</sup> After a sponsor has made the necessary adjustments to its systems in connection with the proposed rule and, after an initial filing of asset-level ongoing information has been made, we estimate that subsequent filings for asset-level ongoing information by a sponsor will take approximately ten hours to prepare, review, and file. We estimate that filings of grouped asset data for credit card ABS issuers would take approximately ten hours to prepare, review and file.

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<sup>21</sup> For RMBS and CMBS issuers, this is based on an average pool size for RMBS of 3,317 assets and an average pool size for CMBS of 165 assets and also includes ten hours for tagging and filing the required asset-level disclosure. Because we believe that the information that is required by the proposed grouped asset data requirement would be information that a credit card ABS sponsor already collects in its existing systems, we believe the initial set-up costs for a sponsor would not include expenses necessary to adjust systems to collect new information. However, a sponsor may expend some additional effort for other adjustments due to the requirement and therefore, we estimate that the initial filing of grouped asset data would require 2000 hours for a credit card ABS sponsor, plus an added ten hours for tagging and filing the information.

<sup>22</sup> For RMBS and CMBS issuers, this is based on an average pool size for RMBS of 3,317 assets and an average pool size for CMBS of 165 assets and also includes ten hours for tagging and filing the required asset-level disclosure. We do not believe that sponsors credit card receivables would incur additional setup costs for filing grouped asset data information on an ongoing basis since the information that is filed on an ongoing basis is the same information that is required at the time of securitization

Based on the number of loans that may be securitized in a particular offering and the asset-level requirements for each of the asset classes, and the number of offerings for each of the asset classes, we estimate that the total annual burden hours for preparing, tagging and filing asset-level disclosure or grouped asset data at the time of securitization will be 151,368.<sup>23</sup> We allocate 25% of those hours (37,842.04) to internal burden hours for all ABS issuers and 75% of the hours to out-of-pocket expenses for software consulting and filing agent costs at a rate of \$250 per hour totaling \$28,381,527.95. We estimate that the average annual hours for preparing, tagging and filing asset-level disclosure or grouped asset data on an ongoing basis with the Form 10-D will be 207,009 hours for all ABS issuers.<sup>24</sup> We allocated 75% of those hours (155,256.5 hours) to internal burden hours and 25% of those hours for out-of-pocket expenses for software consulting and filing agent costs at a rate of \$250 per hour totaling \$12,938,042.83. Thus, we estimate the total annual incremental burden for the asset-level disclosure requirements or grouped asset data at 193,098.6 hours<sup>25</sup> and the added total amount of out-pocket expenses for software and filing agent costs at \$41,319,570.78.<sup>26</sup>

#### **f. Waterfall Computer Program**

While the proposed requirement that ABS issuers file machine-readable computer code detailing the waterfall of the ABS securities issued would be a new collection of information, we believe issuers already produce such a code to structure the ABS deal. However, issuers would bear the costs of converting the code that they typically create into code that meets our proposed requirements. We believe that a substantial portion of those costs will be incurred for each sponsor at the time of implementation of the rule to set up mechanisms to convert the typical program used for waterfall purposes.

Some examples of the need for such mechanisms are: (i) waterfall programs written in languages not directly portable to Python that will have to be adapted to the Python language, (ii) code within the waterfall program that is not required by the rule or necessary

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<sup>23</sup> We apportion the burden according to the proportion of offerings in each asset class using the following asset classes: (1) CMBS, (2) Credit Cards, (3) RMBS and other. We believe that using the RMBS estimates to represent the burden for other asset classes offers a conservative burden estimate because of the number of data items necessary for RMBS. To calculate the proportions, we divide the average number of offerings per year for each asset class (79 for credit cards, 43 for CMBS, and 836 for RMBS or other asset classes) by the average number of offerings for all asset classes (958).

<sup>24</sup> Again, we apportion the burden according to the proportion of offerings in each asset class using the following asset classes: (1) CMBS, (2) Credit Cards, (3) RMBS and other. We believe that using the RMBS estimates to represent the burden for other asset classes offers a conservative burden estimate because of the number of data items necessary for RMBS. To calculate the proportions, we divide the average number of offerings per year for each asset class (79 for credit cards, 43 for CMBS, and 836 for RMBS or other asset classes) by the average number of offerings for all asset classes (958).

<sup>25</sup>  $193,098.6 = 37,842.04 + 155,256.5$

<sup>26</sup>  $\$41,319,570.78 = \$28,381,527.95 + \$12,938,042.83.$

for investors to use and understand the waterfall may need to be removed or adapted for the program to run as required by the rule, (iii) and additional functionality of the program, such as a user interface to input assumptions or to input the asset data file, not currently used by sponsors will have to be incorporated. We estimate that issuers will incur a one-time setup cost of 672 hours to create such mechanisms to meet this filing requirement.<sup>27</sup> Additionally, we estimate a two-hour burden at the time of filing for each ABS deal for which a waterfall program is required to be filed to verify that the mechanisms worked properly and that the program meets the requirements of the rule.

As noted above, the number of unique ABS sponsors over 2004-2009 was 343, for an average of 57 unique sponsors per year. Therefore, we estimate that it would take a total of 38,304 hours for ABS issuers to set up the mechanisms to file the waterfall computer program.<sup>28</sup> We allocate 25 percent of these hours (9,576 hours) to internal burden for all sponsors. For the remaining 75 percent of these hours (28,728 hours), we use an estimate of \$250 per hour for the costs of computer programmers to derive an external cost of \$7,182,000.<sup>29</sup>

The yearly burden at the time of filing for each deal is estimated to be 1,916 hours.<sup>30</sup> For PRA purposes we allocate 25% of these hours (479 hours) to internal burden hours and 75% for out-of-pocket expenses for professional costs totaling \$574,800 using a rate of \$400 per hour. Therefore, the total internal burden hours are 10,055 and the total external costs are \$7,756,800.<sup>31</sup>

#### **g. Form 144A-SF and Form D**

Form 144A-SF is a new collection of information that would cover the notice of sales of asset-backed securities that would be required under the proposed revisions to Rule 144A. This notice would contain information related to major participants in the securitization, the date of the offering, the type of securities offered, the basic structure of the securitization and

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<sup>27</sup> The value of 672 hours for setup costs is based on staff experience and is calculated using an estimate of two computer programmers for two months, which equals 21 days per month times two employees times two months times eight hours per day.

<sup>28</sup> The burden of 38,304 hours to set up mechanisms to file the waterfall program is calculated by multiplying the average number of unique sponsors (57) by the estimated set up hours per sponsor (672).

<sup>29</sup> Multiplying the 28,728 external cost hours by the \$250 per hour estimate results in the external cost of \$7,182,000.

<sup>30</sup> Multiplying the average number of ABS issues per year (958) by the burden hours at the time of filing each deal (2.0) results in 1,916 hours.

<sup>31</sup> We sum the internal burden hours from setup of the waterfall code mechanisms (9,576) and the per-offering internal filing burden hours (479) to get the total internal burden of 10,055. The total external cost of \$7,756,800 is calculated by adding the cost from setup (\$7,182,000) and the cost from filing each waterfall at the time of offering (\$574,800).

the principal amount of the securities offered. Over the period 2004-2009, the annual average number of Rule 144A ABS offerings was 716.<sup>32</sup>

We believe that the burden assigned to Form 144A-SF should reflect the cost of preparing the notice and the cost of filing the notice. We estimate that preparing, tagging, and filing the Form 144A-SF will require approximately 2.0 hours per response. Using the annual average of 716 Rule 144A offerings, the total burden hours equals 1,432. We allocate 25% as a burden to the seller and 75% as costs of counsel utilized for the preparation and filing of the form. Therefore, the incremental annual impact of Form 144A-SF will be 358 hours and \$429,600 in professional costs using an hourly rate of \$400.

Form D is an existing collection of information under the PRA. Form D is a notice of sales for offerings made under Regulation D. Currently, we estimate that the burden hours of Form D to be approximately 4.0 hours per response, of which one hour is borne internally and three hours are borne externally. Under the proposal, Form D would be revised to collect, in addition to the information that the form currently collects, the same information as proposed Form 144A-SF when filed in connection with an ABS offering. We are aware of only one Form D filed for an ABS offering in 2009.<sup>33</sup> Thus, we believe that the change to this collection of information should be very small. For PRA purposes, we estimate that the Form D filing burden would not increase. Therefore, we continue to estimate that the burden hours for Form D will be 4.0 hours.

#### **h. Privately-Issued Structured Finance Product Disclosure**

This new collection of information relates to proposed disclosure requirements for structured finance product issuers that wish to take advantage of the safe harbors provided by Rule 144A, Regulation D and Rule 144. Under the proposed amendments, such issuers would be required to provide the purchaser or prospective purchaser with the same information that would be required if the offering were registered with the Commission. Some of the information that is required for registered offerings, we believe, is being provided to investors who purchase structured finance products in the private markets.<sup>34</sup> For purposes of the PRA, we are assuming that the hours that private structured finance product issuers expend to provide information to investors are approximately the same hours that would be required to prepare information in the registered context. Therefore, our estimate for this new collection of information will be based on the incremental costs that the

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<sup>32</sup> This is based on ABS issuance data from Asset-Backed Alert and information from Securities Data Corporation (SDC).

<sup>33</sup> We believe typically private offerings of ABS are conducted pursuant to Section 4(2) of the Securities Act without reliance on the safe harbor of Regulation D and are followed by resale(s) of the securities in reliance on Rule 144A.

<sup>34</sup> Because of the lack of transparency in the private structured finance product market, we do not have estimates regarding the amount of information and completion time that a typical private structured finance product issuer will need in order to provide investors offering and ongoing information nor estimates of the cost of such information. As discussed below, we are requesting comment on this information.

proposed amendments in this release would include. Although information for a private ABS issuer is not required to be filed with the Commission, the cost of preparing such information should be relatively the same as the estimated burdens for preparing and filing information required in the registered context. We estimate that it will take approximately 300 hours per offering to prepare additional offering information that would be required under the proposed amendments. This is based on the incremental cost of the proposed amendments to ABS issuers that register their offerings with the Commission, along with the cost estimates for the asset data file that would be filed at the time of securitization and the waterfall computer program that we are proposing to require be filed for each ABS offering. Under our proposal, ABS issuers that relied on the safe harbors would be required to provide the same ongoing information that would be required in registered offerings. We estimate that it will take an issuer approximately 18 hours to complete a distribution report accompanied by asset-level and grouped asset data ongoing information for the distribution period. This is based on the incremental costs of providing Form 10-K, Form 10-D, and Form 8-K reports, which would comprise of the cost estimates for the asset data file that is required to be filed on an ongoing basis, as proposed.

As noted above, the average number of private offerings of ABS per year pursuant to Rule 144A over the period 2004-2009 was 716. Based on that number, we estimate an average number of 8,592 ongoing reports containing distribution information and ongoing asset data file information would be provided to investors each year,<sup>35</sup> and a total of 716 annual reports that would be provided to investors each year. Therefore, at the time of securitization, we estimate that the proposed collection of information will impose a total annual burden of 214,791 hours,<sup>36</sup> with 25% of the cost borne internally (53,698 hours) and the remainder of hours paid to outside professionals or software consulting and programming costs (\$48,328,318).<sup>37</sup> For information that is provided on an ongoing basis, we estimate that the proposed collection of information will impose a total annual burden of 157,067 hours,<sup>38</sup> with 75% of the cost borne internally (117,800 hours) and the remainder paid to outside

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<sup>35</sup> This is based on an average number of such ongoing reports that we estimate private structured finance product issuers would provide to investors over the three years after implementation. Consistent with our estimates in the registered context, we estimate that issuers would provide such ongoing reports at a multiple of six times the number of offerings per year.

<sup>36</sup> We calculate the total annual burden of 214,791 hours by multiplying the expected number of filings per year (716) times the burden hours per securitization filing (300).

<sup>37</sup> We estimate that hours related to providing asset-level information and the waterfall computer program is allocated to software consulting or other labor costs (\$22,621,125) at a cost of \$250 per hour and hours related to providing other types of information is allocated to costs of outside professionals (\$21,480,000) at a cost of \$400 per hour.

<sup>38</sup> We calculate the total annual burden of 157,067 hours by adding the total number of hours we believe it would take to provide ongoing asset-level information (18 hours\*8,592 reports).

professionals or software consulting costs (\$9,816,658).<sup>39</sup> Thus, the total estimate for internal burden hours is 171,498,<sup>40</sup> and the total estimate for outside costs is \$58,144,976.<sup>41</sup>

**i. Summary of Proposed Changes to Annual Burden Compliance in Collection of Information**

The table below illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports and registration statements and for the proposed new registration statements for asset-backed issuers. Below, the asset data file is annotated as “Asset Data,” the waterfall computer formula is annotated as “WCP”, and privately-issued structured-finance disclosure is annotated as “P-SF.” Bracketed numbers indicate a decrease in the estimate.

Form	Current Annual Responses	Proposed Annual Responses	Current Burden Hours	Decrease or Increase in Burden Hours	Proposed Burden Hours	Current Professional Costs	Decrease or Increase in Professional Costs	Proposed Professional Costs
<b>S-1</b>	1,168	1,164	247,982	[1,250]	246,732	297,578,400	[1,500,000]	296,078,400
<b>SF-1</b>	--	7	--	2,363	2,363	--	2,835,000	2,835,000
<b>10-K</b>	14,296	15,225	21,430,988	84,038	21,515,026	2,857,465,000	11,205,000	2,868,670,000
<b>8-K</b>	118,387	119,824	507,665	5,389	513,054	67,688,700	718,500	68,407,200
<b>Asset Data</b>	--	16,534	--	193,099	193,099	--	41,319,571	41,319,571
<b>WCP</b>	--	958	--	10,055	10,055	--	7,756,800	7,756,800
<b>144A-SF</b>	--	716	--	358	358	--	429,600	429,600
<b>P-SF</b>	--	9,308	--	171,498	171,498	--	58,144,976	58,144,976

**14. ESTIMATE OF COST TO FEDERAL GOVERNMENT**

We estimate annualized cost to the government will be \$200,000 per year for the collections of information changes discussed above.

**15. EXPLANATION OF CHANGES IN BURDEN**

<sup>39</sup> We estimate that hours relating to asset-level information paid to software consultants or other labor costs would be paid at cost of \$250 per hour.

<sup>40</sup> 171,498 = 53,698 + 117,800

<sup>41</sup> \$58,144,976 = \$9,816,658 + \$48,328,318

See Question 12 and 13 (including the table in paragraph (k)).

**16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES**

Not applicable.

**17. EXPLANATION AS TO WHY EXPIRATION DATE WILL NOT BE DISPLAYED**

Not applicable.

**18. EXCEPTIONS TO CERTIFICATION**

Not applicable.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.