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Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 232, et al.
Asset-Backed Securities Disclosure and Registration; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 243, and 249

[Release Nos. 33–9638; 34–72982; File No. S7–08–10]

RIN 3235–AK37

Asset-Backed Securities Disclosure and Registration

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting significant revisions to Regulation AB and other rules governing the offering process, disclosure, and reporting for asset-backed securities (''ABS''). The final rules require that, with some exceptions, prospectuses for public offerings under the Securities Act of 1933 (''Securities Act'') and ongoing reports under the Securities Exchange Act of 1934 (''Exchange Act'') of asset-backed securities backed by real estate related assets, auto related assets, or backed by debt securities, including resecuritizations, contain specified asset-level information about each of the assets in the pool. The asset-level information is required to be provided according to specified standards and in a tagged data format using eXtensible Markup Language (''XML''). We also are adopting rules to revise filing deadlines for ABS offerings to provide investors with more time to consider transaction-specific information, including information about the pool assets. We are also adopting new registration forms tailored to ABS offerings. The final rules also repeal the credit ratings references in shelf eligibility criteria for ABS issuers and establish new shelf eligibility criteria.

DATES: *Effective Date:* November 24, 2014.

Compliance Dates:

Offerings on Forms SF–1 and SF–3: Registrants must comply with new rules, forms, and disclosures no later than November 23, 2015.

Asset level Disclosures: Offerings of asset-backed securities backed by residential mortgages, commercial mortgages, auto loans, auto leases, and debt securities (including resecuritizations) must comply with asset-level disclosure requirements no later than November 23, 2016.

Forms 10–D and 10–K: Any Form 10–D or Form 10–K that is filed after November 23, 2015 must comply with new rules and disclosures, except asset-level disclosures.

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SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 512 [1] and 601 [2] of Regulation S–K; [3] Items 1100, 1101, 1102, 1103, 1104, 1105, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1119, 1121, and 1122 [4] of Regulation AB [5] (a subpart of Regulation S–K); Rules 139a, 167, 190, 193, 401, 405, 415, 424, 430B, 430C, 433, 456, and 457,[6] and Forms S–1 and S–3 [7] under the Securities Act of 1933 (Securities Act); [8] Rules 11, 101, 201, 202, and 305 [9] of Regulation S–T; [10] and Rules 3a68–1a, 3a68–1b, 15c2–8, 15d–22, 15Ga–1, and 17g–7 [11] and Forms 8–K, 10–K, and 10–D [12] under the Securities Exchange Act of 1934; [13] and Rule 103 [14] of Regulation FD.[15] We also are adding new Items 1124 and 1125 [16] to Regulation AB, and Rule 430D,[17] Form SF–1,[18] Form SF–3,[19] and Form ABS–EE [20] under the Securities Act.

Table of Contents

[1] 17 CFR 229.512.

[2] 17 CFR 229.601.

[3] 17 CFR 229.10 *et al.*

[4] 17 CFR 229.1100, 17 CFR 229.1101, 17 CFR 229.1102, 17 CFR 229.1103, 17 CFR 229.1104, 17 CFR 229.1105, 17 CFR 229.1108, 17 CFR 229.1109, 17 CFR 229.1110, 17 CFR 229.1111, 17 CFR 229.1112, 17 CFR 229.1113, 17 CFR 229.1114, 17 CFR 229.1119, 117 CFR 229.1121, and 17 CFR 229.1122.

[5] 17 CFR 229.1100 through 17 CFR 229.1124.

[6] 17 CFR 230.139a, 17 CFR 230.167, 17 CFR 230.190, 17 CFR 230.193, 17 CFR 230.401, 17 CFR 230.405, 17 CFR 230.415, 17 CFR 230.424, 17 CFR 230.430B, 17 CFR 230.430C, 17 CFR 230.433, 17 CFR 230.456, and 17 CFR 230.457.

[7] 17 CFR 239.11 and 17 CFR 239.13.

[8] 15 U.S.C. 77a *et seq.*

[9] 17 CFR 232.11, 17 CFR 232.101, 17 CFR 232.201, 17 CFR 232.202, and 17 CFR 232.305.

[10] 17 CFR 232.10 *et seq.*

[11] 17 CFR 240.3a68–1a, 17 CFR 240.3a68–1b, 17 CFR 240.15c2–8, 17 CFR 240.15d–22, 17 CFR 240.15Ga–1, and 17 CFR 240.17g–7.

[12] 17 CFR 249.308, 17 CFR 249.310, and 17 CFR 249.312.

[13] 15 U.S.C. 78a *et seq.*

[14] 17 CFR 243.103.

[15] 17 CFR 243.100 *et seq.*

[16] 17 CFR 229.1124 and 17 CFR 229.1125.

[17] 17 CFR 230.430D.

[18] 17 CFR 239.44.

[19] 17 CFR 239.45.

[20] 17 CFR 249.1500.

performance information, how the underlying securities were acquired, and whether and when the underlying securities experienced any trigger events or rating downgrades.

The final requirement to provide asset-level data in the prospectus and in periodic reports will require that issuers provide more information to investors about resecuritizations than previously required. The asset-level disclosures about the ABS in the asset pool will provide investors, at a minimum, with the basic characteristics of a resecuritization. Further, by requiring disclosure of the SEC file number and CIK number for ABS being resecuritized, it will be easier for investors to locate more information about each resecuritized ABS. Public access to such information, including, when applicable, access to information about the assets underlying the ABS being resecuritized, should reduce investors' burden to obtain this information, and reduce their need to rely on credit ratings because investors will have access to the information in order to conduct their own independent analysis. In turn, this will allow for a more effective and efficient analysis of the offering and should help foster more efficient capital formation.

We do not agree with a commenter's view that there is a limited correlation between loan performance and bond performance and, as a result, there is little benefit from investors receiving asset-level data about the assets underlying the ABS being resecuritized. Specifically, the commenter believed that the asset-level data about the underlying ABS would not be useful because only certain classes of an ABS are resecuritized, and the loans backing a particular class are typically supported by the entire underlying loan pool, and therefore do not correlate to any specific classes of ABS. We disagree and believe that to determine the performance of any particular resecuritization, an understanding of each loan in the underlying loan pool is necessary in order to analyze how the underlying loans impact the cash flows to the resecuritization.

In addition, with respect to the availability of information, Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty.[543] As a result, ABS issuers with Exchange Act Section 15(d) reporting obligations will be required to report asset-level information, thereby easing concerns that the asset-level information for residential mortgages, commercial mortgages, auto loans, auto leases, or debt securities underlying the ABS in the resecuritization would not be available on an ongoing basis.

With respect to the cost and burden to provide the disclosures and concerns about securities law liability for information obtained from third parties, we believe the existing ability to reference third party information, in part, addresses these concerns. As is the case today, issuers may satisfy their disclosure requirements by referencing third-party reports if certain conditions are met.[544] New Forms SF–1 and SF–3 require that the asset-level information be filed on Form ABS–EE and incorporated into the prospectus.[545] Similarly, revised Form 10–D requires incorporation by reference to Form ABS–EE.[546] If the underlying ABS is of a third-party, we will permit issuers to reference the third-party's filings of asset-level data provided that they otherwise meet the existing third-party referencing conditions. Consequently, reports of all third parties, not only those that are significant obligors, may be referenced. Because issuers are not incorporating third-party filings by reference, but instead merely referencing these filings, we believe we have addressed concerns about issuers' filing burdens and securities law liability for asset-level information filed by third parties.

While some commenters raised concerns about the cost to implement such requirements, commenters did not provide any quantitative cost estimates to comply with this requirement. Implementation of this requirement, even if a registrant can reference third-party filings, will require system re-programming and technological investment. In addition, registrants will incur a nominal cost to provide data about the securities being resecuritized. In general, the data about the securities, which track the debt security ABS requirements, should include data already readily available to issuers, especially since the requirements primarily include basic characteristics of the security, such as the title of the security, payment frequency, and whether it is callable. Registrants will incur a nominal cost to provide this data in the format requested. If asset-level data is required for the assets underlying the securities being resecuritized, registrants will, to the extent they cannot otherwise incorporate by reference or reference third-party filings, incur costs to obtain the data required about the assets underlying the securities being resecuritized or to convert data available to them into the required format. These costs were discussed earlier in the release in the context of complying with asset-level disclosure for RMBS, CMBS and Auto ABS. We believe such costs are appropriate because investors should receive information about the securities that will allow them to conduct their own independent analysis. In addition to the items noted above that mitigate cost concerns, we also believe the extended timeframe for compliance of 24 months lowers the overall burden placed on registrants and market participants and should provide ample time for registrants and market participants to assess the availability of the asset-level information required for resecuritizations and to put the information in the format required.

3. Asset-Level Data and Individual Privacy Concerns

(a) Proposed Rule

As we noted in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release and as the staff noted in the 2014 Staff Memorandum, we are sensitive to the possibility that certain asset-level disclosures may raise concerns about the underlying obligor's personal privacy. In particular, we noted that asset-level data points requiring disclosures about the geographic location of the obligor or the collateralized property, credit scores, income and debt may raise privacy concerns. We also noted, however, that information about credit scores, employment status and income would permit investors to perform better risk and return analysis of the underlying assets and therefore of the ABS.

In light of privacy concerns, we did not propose to require issuers to disclose an obligor's name, address or other identifying information, such as

[543] *See Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934,* Release No. 34–65148 (Aug. 17, 2011) [76 FR 52549].

[544] *See* Item 1100(c)(2) of Regulation AB [17 CFR 229.1100(c)(2)]. In many instances, the issuer of the ABS being resecuritized would be considered a significant obligor as defined in Item 1101(k) of Regulation AB. If so, issuers may reference information about the significant obligors located in third-party reports as set forth in Item 1100(c)(2).

[545] *See* Section III.B.5 New Form ABS–EE, General Instruction IV and Item 10 of Form SF–1 and General Instruction IV and Item 10 of Form SF–3.

[546] *See* Item 1A of Form 10–D.

the zip code of the property.[547] We also proposed ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score[548] or income or debt amounts in order to prevent the identification of specific information about an individual.[549]

The 2014 Staff Memorandum summarized the comments received related to potential privacy concerns and outlined an approach to address these concerns that would require issuers to make asset-level information available to investors and potential investors through an issuer-sponsored Web site rather than having issuers file on EDGAR and make all of the information, including potentially sensitive information, publicly available. Under the Web site approach, issuers could take steps to address potential privacy concerns associated with asset-level disclosures, including through restricting Web site access to potentially sensitive information. The Web site approach also would require issuers to file a copy of the information disclosed on a Web site with the Commission in a non-public filing to preserve the information and to enable the Commission to have a record of all asset-level information provided to investors. The prospectus would need to disclose the Web site address for the information, and the issuer would have to incorporate the Web site information by reference into the prospectus. In addition, issuers would be required to file asset-level information that does not raise potential privacy concerns on EDGAR in order to provide the public with access to some asset-level information.

(b) Comments on Proposed Rule

In response to the 2010 ABS Proposal, several commenters noted that the asset-level requirements would raise privacy concerns.[550] These commenters suggested that, while the proposed asset-level disclosures would not include direct identifiers, if the responses to certain asset-level data requirements are combined with other publicly available sources of information about consumers it could permit the identity of obligors in ABS pools to be uncovered or ''re-identified.'' [551] A number of commenters noted that, if an obligor was identified through this process, then the obligor's personal financial status could be determined.[552] The commenters noted that if obligors are re-identified, then information about an obligor's credit score, monthly income and monthly debt would be available to the general public through the EDGAR filing. Commenters also noted that if personal information was linked to an individual through the asset-level disclosures this may conflict with[553] or undermine[554] the consumer privacy protections provided by federal and foreign laws restricting the release of individual information and increase the potential for identity theft and fraud.[555]

Most commenters did not support the use of coded ranges, noting it would not address privacy concerns[556] and would not further the Commission's objective of improving disclosure for ABS investors. Two commenters noted that using coded ranges would not mitigate privacy concerns because the ranges are so narrowly defined they would identify the actual score or dollar amount of income.[557] Other commenters believed that the use of ranges for disclosures, such as credit scores and income, or requiring a broader geographic identifier for the property, such as MSAs, would greatly reduce the utility of the information.[558] Commenters also noted that disclosure of data that relates to the credit risk of the obligor, such as an obligor's exact credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.[559] Commenters also suggested that exact income and credit scores are necessary to appropriately price the securities[560] and verify issuer disclosures.[561]

We received few suggestions for alternative approaches to balancing individual privacy concerns and the needs of investors to have access to detailed financial information about obligors. Commenters suggested we work with other federal agencies to evaluate whether the proposed asset-level information was in fact anonymized[562] and to assess whether the required asset-level disclosures would subject issuers to liability under

[547] We proposed to require the broader geographic delineations of MSAs in lieu of the narrower geographic delineation of zip codes.

[548] For asset-level data points that require disclosure of obligor credit scores, we proposed coded responses that represent ranges of credit scores (e.g., 500–549, 550–599, etc.). The ranges were based on the ranges that some issuers used in pool-level disclosure.

[549] For monthly income and debt ranges, we developed the ranges based on a review of statistical reporting by other governmental agencies (e.g., $1,000–$1,499, $1500–$1,999, etc.). *See* the 2010 ABS Proposing Release at 23357.

[550] *See, e.g.,* letters from ABA I, CU, MBA I (suggesting that the use of Metropolitan Statistical Areas or Divisions in lieu of zip code would not mask the location of particular properties), VABSS I, and WPF I (also suggesting that the proposed asset-level disclosures would not mask the location of particular properties and additionally that they may provide information useful in the re-identification process). In general, these commenters were concerned that it may be possible to identify an individual obligor by matching asset-level data about the underlying property or asset with data available through other public or private sources about assets and their owners.

[551] *See, e.g.,* letter from WPF I (suggesting that attempts to mask the location of particular properties and the identity of borrowers are not workable because there is too much information about mortgages available that would allow the location of a particular property to be found).

[552] *See, e.g.,* letters from ABA I, AFSA I, American Resort Development Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release, ASF II, CDIA, CNH I, CU, Anita B. Carr dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Daniel Edstrom dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Epicurus, ELFA I, FSR, MBA I, National Association of Federal Credit Unions dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Navistar, SIFMA I, SLSA, TYI, VABSS I, Vantage Score Solutions LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Vantage I''), and WPF I.

[553] *See, e.g.,* letters from ABA I (stating that the asset-level disclosures would potentially result in release to the public of detailed non-public personal financial information (as defined in Title V of the Gramm-Leach-Bliley Act (''GLBA'')) as well as consumer report information (as defined in FCRA), CDIA (suggesting that certain data may fall under the protections of FCRA, GLBA, or both), Epicurus, TYI (suggesting that if the disclosures could be used to identify a borrower in a European-based ABS, this may violate European privacy laws), and WPF I.

[554] *See* letter from WPF I (suggesting that if data that may fall under the scope of FCRA is posted on EDGAR and subsequently linked to an individual, the data may become public and, therefore, the transfer of this information to others may contravene FCRA restrictions).

[555] *See* letters from CDIA, VABSS II, and WPF I (suggesting that the cost of identity theft would not only fall on borrowers, but also on asset holders and, therefore, investors would demand higher returns to protect against those losses).

[556] *But see* letters from CDIA (noting that the proposed ranges or categories may provide some privacy protection) and ASF II (expressed views of loan-level investors only) (suggesting the use of range-based reporting for certain credit sensitive fields may also provide a solution to privacy concerns).

[557] *See* letters from CDIA and MBA I.

[558] *See* letters from ASF I (expressed views of investors only), Beached Consultancy (suggesting that the metropolitan area is too broad to be useful, and, therefore, a ''3-digit zip code'' should be permitted), and Wells Fargo I.

[559] *See* letters from ASF I (requesting disclosure of exact credit score and noting that requiring ranges would be a step back in terms of transparency), Interactive (noting that asset-level granularity is essential for robust evaluation of loss, default and prepayment risk associated with RMBS), Prudential I (suggesting that ranges of FICO score bands are not sufficient to appreciate the linkages between collateral characteristics), and Wells Fargo I (expressing concern that restricting information available to investors could result in substantially lower pricing for new residential mortgage backed securities offerings). *See also* SIFMA I (expressed views of investors only) (recommending 25-point buckets for credits scores rather than the 50-point buckets as proposed).

[560] *See, e.g.,* letters from ASF I, Prudential I, and Wells Fargo I.

[561] *See* letter from ASF I (expressed views of investors only) (suggesting that exact income allows them to double check the issuer's DTI calculations).

[562] *See* letters from ABA I and ASF I.

the federal privacy laws.[563] Many commenters that supported grouped-account disclosures rather than asset-level disclosures indicated that grouped disclosures also could address privacy concerns with asset-level disclosures.[564] Other commenters suggested addressing privacy concerns by changing the disclosure format, such as by requiring that disclosure be presented in ratios rather than dollar amounts,[565] requiring a default propensity percentage in lieu of a credit score,[566] or only requiring narrative disclosure.[567]

We also received suggestions that we should restrict access to or impose conditions on the use of sensitive data. For instance, a commenter suggested that we establish a central ''registration system'' where access to sensitive data is only made to persons who have independently established their identities as investors, rating agencies, data providers, investment banks or other categories of users while forbidding others to use the data or include the data in commercially distributed databases.[568] Another commenter suggested that the Commission consider restricting access to registered users who acknowledge the potentially sensitive nature of the data and agree to maintain its confidentiality.[569] This commenter suggested that requiring users to identify themselves and accept appropriate terms of use would provide a deterrent to those who might attempt to abuse personal financial data and permit identification of such users should any abuse occur. Another commenter suggested establishing rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules.[570]

In light of the comments received raising individual privacy concerns and the requirements of new Section 7(c) of the Securities Act, we requested additional comment on privacy generally in the 2011 ABS Re-Proposing Release.[571] We received limited additional feedback on how to address the potential privacy issues surrounding the proposed asset-level disclosures. Commenters again stated that the asset-level requirements, as proposed, would raise privacy concerns.[572] One commenter suggested that the Commission could address privacy concerns by not requiring the disclosure of social security numbers, only requiring MSA information about the property instead of a property's full address, and replacing borrower name with an ID number.[573] Other commenters stated or reiterated that for some asset classes a grouped-account or pool-level disclosure format may mitigate privacy concerns.[574] One commenter repeated the suggestions that it provided in previous comment letters that the Commission could establish and manage (or have a third-party manage) a central ''registration system'' that could provide restricted access.[575]

On February 25, 2014, we re-opened the comment period to permit interested persons to comment on the Web site approach described in the 2014 Staff Memorandum. Only a few commenters indicated support for the Web site approach.[576] Most commenters generally opposed the Web site approach as a means to address privacy concerns,[577] and some commenters also noted that the Web site approach creates or shifts legal and reputational risks to issuers.[578] Commenters expressed concern about whether the Web site approach could result in issuer liability under applicable privacy laws.[579] Several commenters were specifically concerned that the Web site approach might create a risk that the issuer could be considered a ''consumer reporting agency'' under the FCRA and thus subject to its rules and regulations.[580] One commenter noted that the FCRA would not be relevant most of the time because the type of information contemplated by the Web site approach would be beyond the reach of the FCRA while also noting that privacy laws do not protect most consumer data, including the proposed asset-level data, regardless of how it may be disseminated.[581] A number of

[563] *See* letter from ABA I.

[564] *See, e.g.,* letters from ASF II (expressed views of issuers and a portion of investors only) and VABSS II.

[565] *See* letter from CU (suggesting that liquid cash reserves be expressed as a ratio relative to the borrower's debt).

[566] *See* letter from Vantage I (describing default propensity as the chance that a consumer will become 90 or more days late on a debt that he or she owes expressed as a percentage).

[567] *See* letter from ABAASA I.

[568] *See* letter from VABSS II.

[569] *See* letter from CDIA.

[570] *See* letter from Epicurus.

[571] For instance, we asked how asset-level data could be required, both initially and on an ongoing basis, to implement Section 7(c) effectively, while also addressing privacy concerns. We asked which particular data elements could be revised or eliminated for each particular asset class in a manner that would address privacy concerns, while still enabling an investor to independently perform due diligence. We also requested comment on whether it would be appropriate to require issuers to provide an obligor's credit score and income on a grouped basis in a format similar to the proposal for credit cards in the 2010 ABS Proposing Release.

[572] *See, e.g.,* letter from Mortgage Bankers Association dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''MBA III'') (reiterating that several of the data points proposed could allow someone to identify the obligor and that ''the income and credit score ranges do not mitigate privacy issues because the suggested ranges are so narrowly defined that they virtually identify the actual score or dollar amount of income'').

[573] *See* letter from MetLife II.

[574] *See* letters from Sallie Mae, Inc. (SLM Corporation) dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Sallie Mae II'') (suggesting that ''data presented on a grouped basis should address all privacy concerns''), VABSS III (again suggesting that a grouped data approach minimizes, but does not eliminate, privacy concerns), and VABSS IV (stating that they believe a grouped data approach is the best way to provide additional information to investors while addressing obligor privacy and competitive concerns).

[575] *See* letters from VABSS III (suggesting that it would not be an ''overwhelming process to establish and maintain a restricted-access system'' and that Section 7(c) does not require that data that raises privacy concerns be made publicly available) and VABSS IV.

[576] *See* letters from AFR (noting the advantages of the Web site approach include the disclosure of more granular data and the ability to restrict the data to those who agree to accept legal liability for privacy violations), CII (stating, however, that the restrictions placed on accessing the Web site should not be any more restrictive than user accounts and confidentiality agreements and that issuers should provide, instead of coded ranges, specific credit scores, income, and debt), A. Schwartz (stating that the Web site approach places the liability for errors in the asset-level data on issuers and preserves the privacy interests of borrowers), and World Privacy Forum dated Apr. 18, 2014 submitted in response to the 2014 Re-Opening Release (''WPF II'') (suggesting, however, that the Commission rather than issuers be responsible for maintaining the data).

[577] *See, e.g.,* letters from ABA III, AFSA II, Capital One II, Deutsche Bank dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Deutsche Bank''), MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[578] *See, e.g.,* letters from AFSA II (also suggesting that the Web site approach did not conform to the White House's Consumer Privacy Bill of Rights because the Web site approach does not specify requirements to provide control or choice to consumers on the sharing of their data with others), Deutsche Bank, MBA IV (also stating that the Web site approach shifts operational risks to issuers), and SFIG II.

[579] *See, e.g.,* letters from AFSA II, CCMR, Deutsche Bank, Lewtan (suggesting that there is uncertainty surrounding FCRA liability for issuers, investors, and all deal parties who touch data originally obtained in the process of underwriting a loan to the consumer), MBA IV, SFIG II (also noting that issuers may be subject to restrictions under state laws), SIFMA/FSR I-dealers and sponsors, and Wells Fargo III. *See also* letters from ELFA II (noting that the dissemination of asset-level data under the Web site approach or through EDGAR would create legal and reputational risks), and Treasurer Group (noting the requirements of Canada's privacy laws).

[580] *See* letters from ABA III, CCMR, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, and Wells Fargo III (noting, for example, that if an issuer is considered a consumer reporting agency, among other things, it will have a duty to update and correct information about the consumer and failure to comply with these duties could subject the issuer to consumer actions and CFPB enforcement).

[581] *See* letter from WPF II.

commenters requested that the Commission obtain an authoritative interpretation or some other form of guidance from the CFPB to clarify issuer liability under the privacy laws when an issuer provides asset-level data before moving forward.[582] A few commenters suggested that under the Web site approach data could still be widely distributed,[583] and two commenters stated that taking steps to reduce the ability to re-identify a person would be more appropriate than limiting access to sensitive data.[584] Some other general concerns about the Web site approach included: the costs and burdens of the Web site approach; [585] the possibility of data breaches and the impacts from data breaches; [586] potential negative market impacts; [587] and the possibility that inconsistencies in technical standards between Web sites may make the Web sites difficult to use.[588]

Some commenters disagreed with the description in the 2014 Staff Memorandum of how issuer Web sites were being used at the time the 2014 Staff Memorandum was released.[589] For instance, one commenter noted that while Web sites were being used at that time to provide information to investors, the information is not the same as what the Commission had proposed to require and does not raise the same privacy concerns.[590] Another commenter noted that current disclosure of asset-level information through Web sites is available only to a limited number of known institutional investors.[591]

Several commenters stated that additional information was necessary to fully assess the potential implications of the Web site approach. For instance, commenters requested clarity on the scope of asset-level disclosures that the Commission is considering adopting, what data would be disclosed on EDGAR and on the Web site, what type of restrictions on access would be reasonable and what information is ''necessary'' for investor due diligence.[592] Another commenter sought information about whether the Commission is still considering asset-level disclosures for certain non-RMBS asset classes.[593] Five commenters urged the Commission to re-open the 2010 ABS Proposal and the 2011 ABS Re-Proposal, in general, to permit further consideration of the concerns surrounding asset-level disclosures.[594]

A number of commenters responded to the 2014 Re-Opening Release by commenting generally on privacy concerns. Several commenters reiterated the re-identification concerns that were raised in response to the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release.[595] Commenters again suggested that obligors may suffer harm if personal data is used to re-identify them.[596] Several commenters noted that the asset-level requirements, as proposed in 2010, contain a variety of highly sensitive personal information that consumers would not expect to be available to the general public, such as information about debt, income, bankruptcies, foreclosures, job losses, and even whether the consumer has experienced marital difficulties.[597] One commenter raised particular concern with disclosure of actual income as such data is highly desirable to the consumer data industry but hard to obtain.[598] One commenter requested that the Commission provide assurance that the data required to be filed on EDGAR could not be reasonably linked to an individual consumer.[599] Some commenters expressed concern that the proposed requirements could result in the disclosure of ''Personally Identifiable Information'' or ''PII,'' which could result in legal liability or reputational damage.[600] In addition, a few commenters identified various laws that may apply to the asset-level disclosures, including non-privacy related laws.[601] Another commenter noted, however, that the availability of potentially sensitive obligor data is not new to the market.[602] Another commenter believed criminal actors

[582] *See, e.g.,* letters from SIFMA/FSR II-dealers and sponsors, Wells Fargo III, MBA IV (with respect to RMBS), and SFIG II (noting concerns that the CFPB has not affirmed past FTC guidance on the transfer of information incident to the transfer of an asset in a securitization and stating that while it strongly believed that an issuer would not become a consumer reporting agency under FCRA by disclosing asset-level information, the CFPB needs to provide a rule or authoritative interpretation that the data posted in accordance with the Web site approach would not be a consumer report and that the issuer would not become a consumer reporting agency). *See also* letter from CCMR (requesting that the Commission, CFPB and Federal Trade Commission (FTC) provide assurance that misuse of disclosures made under the Web site approach would not render the issuer liable for privacy law violations).

[583] *See, e.g.,* letters from ABA III (stating that in the case of registered offerings ABS may be sold to any person, including individuals, without restriction, resulting in a potentially unlimited pool of investors and potential investors), Capital One II, and SFIG II.

[584] *See* letters from ABA III and Treasurer Group. These comments are discussed in more detail below.

[585] *See* letters from AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS) (suggesting that the costs would include improving security protocols and designing controls to minimize sharing of the information once a party accesses the Web site), SFIG II, SIFMA/FSR I-dealers and sponsors (objecting to a requirement that issuers file non-sensitive data on EDGAR because it is redundant, imposes unnecessary costs and is incomplete since certain fields would be omitted), and Wells Fargo III.

[586] *See, e.g.,* letters from ABA III, AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS), and Wells Fargo III.

[587] *See, e.g.,* letters from ELFA II (expressing concern that issuers may leave the ABS capital markets due to cost and liability concerns) and Lewtan (noting that issuers and investors may leave the market or move to the Rule 144A market because they cannot get comfortable with the risks associated with FCRA, while acknowledging that similar risks exist in the Rule 144A market).

[588] *See* letter from AFR.

[589] *See* letters from ABA III, AFSA II, and SFIG II.

[590] *See* letter from AFSA II. *See also* letter from ABA III (noting that the amount of information proposed for release under the Web site approach exceeds the amount of information typically made available through Web sites).

[591] *See* letter from SFIG II.

[592] *See, e.g.,* letters from ABA III, Deutsche Bank, Lewtan (noting that they did not comment on data point requirements due to the brief comment period and uncertainty about which aspects of the 2010 ABS Proposals remain under consideration), SIFMA/FSR I-dealers and sponsors (requesting clarity on whether any of the asset-level data may be considered ''material'' under the securities laws and whether disclosure of asset-level data as proposed complies with privacy laws), and Wells Fargo III (requesting clarification of which data points would require specific values in order to evaluate privacy issues).

[593] *See* letter from SIFMA/FSR I-dealers and sponsors.

[594] *See* letters from Capital One II, ELFA II (asking the Commission to reconsider requirements for equipment ABS), SFIG II (noting uncertainty as to whether ranges or specific values will be required for sensitive data points and whether the rules will apply to the Rule 144A market), SIFMA/FSR I-dealers and sponsors (suggesting that any re-proposal should include definitive, coordinated federal guidance about compliance with privacy laws, whether the disclosure requirements will apply to the Rule 144A market, which asset classes will be subject to the disclosure requirements and assurances about whether the data can be re-identified), and Wells Fargo III.

[595] *See, e.g.,* letters from ABA III, Capital One II, Deutsche Bank, SFIG II (noting that whether an obligor underlying a foreign loan can be re-identified through the proposed asset-level data will depend on the jurisdiction), SIFMA/FSR I-dealers and sponsors, Treasurer Group (suggesting that the final requirements not include geographic identifiers or other individual identifiers that can identify a borrower), and WPF II.

[596] *See, e.g.,* letters from ABA III, SFIG II, and SIFMA I (expressed view of issuers and sponsors only).

[597] *See, e.g.,* letters from Deutsche Bank, SIFMA/FSR I-dealers and sponsors, and Wells Fargo III.

[598] *See* letter from WPF II.

[599] *See* letter from SIFMA/FSR I-dealers and sponsors.

[600] *See* letter from SIFMA/FSR I-dealers and sponsors (questioning whether some or all of the asset-level information could be considered PII under federal and state laws). *See also* letters from ABA III and MBA IV (with respect to RMBS).

[601] *See* letters from ABA III (noting questions about the application of the GLBA, FCRA and Freedom of Information Act (''FOIA'')), and SIFMA/FSR-dealers and sponsors (noting questions about the application of GLBA and the Fair Debt Collections Practices Act, and whether the information would be subject to FOIA).

[602] *See* letter from Lewtan (noting that they collect and disseminate ABS-related data, including asset-level data).

would prefer to obtain access to other databases containing information more conducive to identity theft, such as social security numbers and date of birth, neither of which would be required by the Commission.[603]

Many commenters expressed particular concern with the disclosure of a property's geographic location because it, along with other data points, can be used with other public databases to match a property with a specific borrower.[604] Commenters' recommendations to revise the geographic data point varied. One commenter recommended that the Commission limit disclosure of the zip code to only the first two digits.[605] Another commenter, without providing a specific recommendation, believed that any geographic data point must be sufficiently broad to ensure that there is no risk of re-identification.[606] One commenter reiterated its support for aggregation of geographic location.[607] In contrast, another commenter noted its opposition to the 2010 ABS Proposal to require only MSA because it would compromise the utility of the data for investors.[608]

Several commenters suggested various alternatives and modifications to the Web site approach. Three commenters suggested aggregating the asset-level data.[609] These commenters, however, did not specify what they meant by ''aggregated.''[610] Another commenter suggested development of a system that permits investors to conduct analysis and produce models without providing access to asset-level information.[611] One commenter said the requirements should mirror the disclosures that the GSEs make with respect to RMBS and that issuers should have the discretion not to disclose sensitive information.[612] Others suggested that issuers should have the flexibility to modify the disclosures and decide the method of delivery to address privacy concerns.[613] Another commenter agreed that the better approach would be to modify the disclosure requirements such that the data increases transparency while still respecting the privacy of borrowers' information, but did not specify how those disclosures should be made available to investors.[614] Several commenters suggested that we adopt mechanisms or controls to restrict access to asset-level information filed with the Commission to investors and potential investors.[615]

Another commenter suggested a central repository or ''aggregated data warehouse'' to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.[616] Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.[617] Another commenter also suggested that credit bureaus, instead of issuers, should provide credit related information.[618] One commenter outlined revisions to the Web site approach that it believed are necessary if such an approach is adopted, including a data chain of custody, privacy and security rules and public disclosure of each issuer's privacy and security policies.[619]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received related to privacy concerns and on the Web site approach, and our obligations under Section 7(c) of the Securities Act,[620] we are adopting new rules to require that issuers file asset-level disclosures on EDGAR both at the time of the offering and on an ongoing basis in periodic reports. We are revising the required disclosures contained in the proposal to address the risk of parties being able to re-identify obligors and the associated privacy concerns. Specifically, as discussed below, we are modifying or omitting certain asset-level disclosures relating to RMBS and Auto ABS to reduce both the amount of potentially sensitive data about the underlying obligors and the potential risk that the obligors could be re-identified. In addition, in response to commenters' suggestions, we have sought and obtained guidance from the CFPB on the application of the FCRA to the required disclosures. As discussed

[603] *See* letter from AFR. Despite its belief that the Web site approach would not create a new target for criminal actors, AFR recommended that the Commission not adopt such an approach because: (i) Issuers could inappropriately discriminate in providing access to the restricted Web site; (ii) there is a potential that not all issuers would have the technical capacity to implement appropriate privacy controls; and (iii) if the design of the data is left to issuers, standardization of the data format would not be possible, making it more difficult to use.

[604] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

[605] *See* letter from ABA III (noting that the Department of Health and Human Services, as part of its efforts to keep consumers' health information anonymous, has limited disclosure of zip codes to the first three digits, and also noting that the European Securities and Market Authority has created draft templates for asset-level disclosure, including for RMBS, in which it requires only the first two or three digits of the postal code).

[606] *See* letter from Treasurer Group.

[607] *See* letter from CFA Institute dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release.

[608] *See* letter from AFR.

[609] *See* letters from ABA III, Lewtan (noting that aggregation would significantly reduce the risk of re-identification and data security breaches, but data security concerns related to internal operations would remain), and MBA IV (with respect to RMBS).

[610] For example, they did not specify whether they were referring to pool-level data, grouped-account data similar to the disclosures proposed for credit card ABS in the 2010 ABS Proposal, less granular loan-level information or some other form of data aggregation.

[611] *See* letter from Treasurer Group.

[612] *See* letter from MBA IV (with respect to RMBS).

[613] *See, e.g.,* letters from ABA III (suggesting that if the Commission adopts the Web site approach, then issuers should be able to aggregate, group or anonymize the data, as needed, to comply with the privacy laws or be allowed to omit data under Securities Act Rule 409, and also suggesting that issuers should have the flexibility to determine the method of delivery of the disclosure) and SIFMA/FSR II-dealers and sponsors (suggesting that issuers be allowed to withhold, aggregate, or otherwise modify the asset level disclosures in order to comply with legal and regulatory obligations, reduce re-identification risk or otherwise protect consumer privacy, or to limit disclosure of information that is not material to an investment decision).

[614] *See* letter from Capital One II.

[615] *See* letters from CDIA (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data, and agree to maintain its confidentiality), Epicurus (suggesting that the Commission establish rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules), WPF I, and WPF II.

[616] *See* letter from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse).

[617] *See* letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository and application of FCRA). *See also* SFIG II (stating that issuers should have the option to use third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

[618] *See* letter from ABA III.

[619] *See* letter from WPF II. The commenter also outlined the elements of an appropriate data use agreement, such as disclosure restrictions, standards to qualify recipients, and providing consumers a private right of action for those who misuse the data.

[620] As noted above, Section 7(c) of the Securities Act requires that we adopt rules to require ABS issuers to disclose asset-level information if the data is necessary for investors to independently perform due diligence.

below, the CFPB has issued a letter[621] to the Commission stating that the FCRA will not apply to asset-level disclosures where the Commission determines that disclosure of certain asset-level information is ''necessary for investors to independently perform due diligence,'' in accordance with Section 7(c). We believe these steps implement the statutory mandate of Section 7(c) and will provide investors with the asset-level information they need while reducing concerns about potential re-identification risk associated with disclosing consumers' personal and financial information.

While we have considered the Web site approach described in the 2014 Staff Memorandum, as discussed below, we are not adopting this approach due to concerns about the practical difficulties and unintended consequences of limiting access to only investors and potential investors.[622] Commenters also indicated that the Web site approach could negatively affect the ability of investors and the broader ABS market to have adequate access to the data.[623]

We continue to believe that the disclosure of data that relates to the credit risk of the obligor, such as an obligor's credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.[624] We believe these disclosures, combined with other asset-level disclosures, such as the terms and performance of the underlying loan and information about the property, will enable investors to conduct their own due diligence for ABS involving consumer assets, and thus facilitate capital formation in the ABS market. Consequently, it is critically important that the manner in which such information is disseminated enables all investors to receive access to the required asset-level disclosures. The ability of other market participants, such as analysts and academics, to access this information may also benefit the market by encouraging a broader range of commentary and analysis with respect to ABS.[625]

Although we did not propose to require that an obligor's name, address, or other identifying information be disclosed, we are sensitive to the possibility that an obligor in an asset pool could be identified (now or in the future) due to the availability of the required disclosures (coupled with the XML requirement), the amount of data about obligors that is publicly available through other sources, and information about real estate transactions and other types of transactions that is available or that may become available in the future. In the event the obligor was re-identified, the information that would have been required by the proposal, even in ranges, might reveal information about the obligor's financial condition.

This issue is especially pronounced for securitizations backed by residential mortgages, as an obligor could potentially be re-identified using a combination of asset-level disclosures and real estate transaction data that is routinely disclosed by certain local governments.[626] Commenters noted that property address, sales price, and closing date are typically disclosed by local governments and could be used to link the asset-level disclosures to an individual.[627] If a specific mortgage is re-identified, sensitive financial data about an obligor (e.g., credit score, DTI, and payment history) could potentially be connected to the obligor.

In light of this concern, we are revising the proposed data set for RMBS as follows.[628] First, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code.[629] Several commenters emphasized the importance of geography in assessing the re-identification risk for RMBS asset-level disclosure.[630] We believe that, because publicly available information like property records is typically sorted and searchable by geography, requiring issuers to identify assets by a broader geographic area should decrease the ability to re-identify individual obligors. In considering how to broaden the geographic area, we considered both the specific recommendations of commenters as well as current disclosure practices, including those of the GSEs and Ginnie Mae.[631] As noted above, one commenter specifically recommended that we require disclosure of either a 2-digit or 3-digit zip code.[632] There are currently less than 99 distinct 2-digit zip codes and approximately 900 distinct 3-digit zip codes.[633] By contrast, our proposal would have required disclosure of MSA, which represents approximately 960 unique geographic areas. We understand that Ginnie Mae currently discloses state (60 distinct areas, including Washington, DC and U.S. territories and associated states).[634] Depending on the data set, Fannie Mae and Freddie Mac disclose MSA, 3-digit zip code or state.[635] After considering the various alternatives, we are adopting a 2-digit zip code. In reaching this conclusion, we considered that a 3-digit zip code would not significantly reduce the re-identification risk relative to the proposal's use of MSA and that use of state may be too broad of an area to be useful to RMBS investors.[636]

To further reduce the risk of re-identification, we are also omitting several data points that, while

[621] *See* letter from the Consumer Financial Protection Bureau dated August 26, 2014.

[622] *See, e.g.,* letters from ABA III (noting concern that without guidance as to who is a potential investor issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), AFR (expressing concern that if issuers are given the ability to limit access to asset-level data they may use this ability to discriminate between investors by, for example, giving investors with more market power preferential access to the data), CCMR, MBA IV, and SFIG II.

[623] *See, e.g.,* letters from ABA III, Moody's II, and R&R.

[624] *See* footnotes 559, 560 and 561 (discussing commenters' views on the importance of receiving granular data about obligors, such as exact income and credit scores).

[625] *See* letters from ABA III, Moody's I, Moody's II, M. Joffe, and R&R.

[626] These issues potentially exist but are less pronounced for Auto ABS. We are not aware of any public databases of auto loan and lease records made available by local governments. It is possible that these types of databases could be available from other sources for a fee. After the time of purchase, an obligor may move and register the automobile in a different state. In contrast, the property that is collateral for a mortgage is connected to a permanent address and therefore could be matched more easily with publicly available information from land records.

[627] *See, e.g.,* letters from ABA III, CU, SIFMA/FSR I-dealers and sponsors, SFIG II, and Treasurer Group.

[628] Although the changes discussed relate to RMBS data points, we also indicate, where relevant, corresponding changes we have made to the data points for Auto ABS that address privacy concerns.

[629] *See* new Item 1(d)(1) of Schedule AL. For Auto ABS, at the suggestion of commenters, we are modifying the geographic identifier of the obligor to state. *See* new Items 3(e)(7) and 4(e)(7). *See also* letters from ASF II (expressed views of loan-level investors only) and VABSS IV. We are not adopting proposed data points that would have disclosed the geographic location of the dealership. *See* proposed Items 4(b)(1) and 5(b)(1) of Schedule L.

[630] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

[631] *See* letter from MBA IV (with respect to RMBS).

[632] *See* letter from ABA III.

[633] *See* the U.S. Postal Service Web site for a list of 3-digit zip codes, *http://pe.usps.com/text/LabelingLists/L002.htm.*

[634] *See* Ginnie Mae's MBS Loan-Level Disclosure File *available at http://www.ginniemae.gov/doing_business_with_ginniemae/investor_resources/mbs_disclosure_data/Lists/LayoutsAndSamples/Attachments/105/mbsloanlevel_layout.pdf.*

[635] *See* Fannie Mae's Loan-Level Disclosure File *available at http://www.fanniemae.com/resources/file/mbs/pdf/filelayout-lld.pdf* and Loan Performance Data Disclosure File *available at https://loanperformancedata.fanniemae.com/lppub-docs/lppub_file_layout.pdf. See also* Freddie Mac's Loan-Level Disclosure requirements *available at http://www.freddiemac.com/mbs/docs/fs_lld.pdf* and Single Family Loan-Level Dataset General User Guide *available at http://www.freddiemac.com/news/finance/pdf/user_guide.pdf.*

[636] *See also* footnote 670 and accompanying text.

potentially useful to investors, could increase the ability to identify underlying obligors. Specifically, we are omitting the unique broker identifier data point [637] as well as the sales price,[638] origination date, and first payment date [639] data points. In addition, we are omitting some information about an obligor's bankruptcy and foreclosure history,[640] although, if an obligor had experienced a past bankruptcy or foreclosure, we would expect that those events would have been considered in generating a credit score. As noted above, the final rules require disclosure of an exact credit score.

Another step that we are taking to address commenters' concerns about re-identification risk is to omit the proposed income and debt data points. While we believe that income and debt information would strengthen an investor's risk analysis of ABS involving consumer assets,[641] we are not requiring them based on concerns about the sensitive nature of this information and increased re-identification risk posed by this information.[642] As discussed in Section III.A.2.b)(1) Residential Mortgage-Backed Securities, however, we are requiring DTI ratios.[643] These are key calculations used to assess an obligor's ability to repay the loan that, we believe, will permit investors to perform due diligence in the absence of specific debt and income data points.

We also are revising [644] or removing [645] certain other proposed data points to further mitigate re-identification risk concerns since the responses to these items will be made available to the public through EDGAR.[646] We do not believe these proposed requirements necessarily would have increased re-identification risk alone, but we have concluded that these data points, if adopted as proposed, could disclose sensitive obligor data without providing additional information necessary for investor due diligence.

Finally, in response to commenters' suggestions, we have obtained guidance from the CFPB on the application of the FCRA to the proposed disclosure requirements.[647] In a letter issued to the Commission dated August 26, 2014, the CFPB stated that the FCRA will not apply to asset-level disclosures that exclude direct identifiers where the Commission determines that disclosure of such information is ''necessary for investors to independently perform due diligence.'' [648] Specifically, the CFPB letter confirms that (i) issuers and the Commission would not become consumer reporting agencies by obtaining and disseminating asset level information, and (ii) no violation of Section 604(f) of the FCRA [649] would occur if issuers or the Commission obtain or disseminate any information that is a consumer report (such as a credit score), in each case if the Commission determines that disclosure of the information is necessary for investors to independently perform due diligence and that the information should be filed with the Commission and disclosed on EDGAR to best fulfill a Congressional mandate. As noted above, we have revised or eliminated certain asset-level data points that implicate consumer privacy concerns where we determined that doing so would not compromise investors' ability to perform due diligence on the underlying assets. We believe the asset-level data points that we are requiring about underlying obligors for ABS involving consumers assets are necessary for investors to perform due diligence, as required by Section 7(c). After taking these steps and after careful consideration of alternative means of disseminating such information, we have determined that having the information filed with the Commission and disclosed on EDGAR is the most effective means of ensuring that investors have access to asset-level data.

As discussed above, we have taken significant steps to reduce the re-identification risk associated with providing certain asset-level data while adhering to the statutory mandate in Section 7(c) to require disclosure of such information to the extent necessary

[637] *See* proposed Item 2(a)(11) of Schedule L. For RMBS, we are adopting a data point that indicates whether or not a broker originated or was involved in the origination of the loan as well as a data point that discloses the National Mortgage License System registration number for the company that originated the loan. These data points will allow investors to compare loans by particular originators and across originators. Investors will also be able to compare loans where a broker was used. Together, these data points will provide investors with information they need to perform due diligence and make informed investment decisions. See new Items 1(c)(24) and 1(c)(26) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

[638] *See* proposed Item 2(b)(3) of Schedule L. We are also omitting the original property valuation data points because we believe they could provide a close approximation of sales price, and thus could have raised the same re-identification concern as sales price. *See also* proposed Items 2(b)(5), 2(b)(6), 2(b)(7), 2(b)(8), and 2(b)(9) of Schedule L. For RMBS, we believe that certain other data points we are adopting, such as Original loan amount and Original loan-to-value, will provide investors with information they need to perform due diligence and make informed investment decisions. *See* new Items 1(c)(3) and 1(d)(11) of Schedule AL. For Auto ABS, we are adopting data points that capture the vehicle value, as these values are already made publicly available from sources such as the Kelly Blue Book. See new Items 3(d)(7), 3(d)(8), 4(d)(6) and 4(d)(7) of Schedule AL.

[639] *See* proposed Items 1(a)(5) and 1(a)(14)of Schedule L. *See also* letters from ABA III, Lewtan, MBA I, and SFIG II. We believe that certain other data points we are adopting, such as Original loan maturity date, Original amortization term and Remaining term to maturity, will provide investors with information they need to perform due diligence and make informed investment decisions. *See* new Items 1(c)(4), 1(c)(5) and 1(g)(2) of Schedule AL. Because the same publicly available property records are not available for auto loans and leases, we are adopting data points that capture the month and year of origination and the original first payment date for Auto ABS. *See* new Items 3(c)(2), 3(c)(10), 4(c)(2), and 4(c)(10) of Schedule AL.

[640] *See* proposed Items 2(c)(24) and 2(c)(25) of Schedule L and proposed Items 2(c)(1), 2(c)(2), 2(c)(3), 2(c)(4), 2(c)(5), 2(c)(6), 2(c)(7), 2(c)(8), 2(h), 2(k)(2), 2(k)(3), 2(k)(4), 2(k)(5), 2(k)(7), 2(k)(8), 2(k)(11), 2(k)(12), 2(k)(13), and 2(m)(3) of Schedule L–D. While commenters did not specifically note that these data points would pose re-identification risk, we received letters about the sensitivity of the data. *See, e.g.,* letters from Deutsche Bank, MBA IV, and SIFMA/FSR I-dealers and sponsors. RMBS issuers will, however, be required to provide information about an asset in the pool that is subject to a foreclosure, or if the reason for non-payment by an obligor is due to bankruptcy. *See* new Items 1(g)(33), 1(r)(1), 1(r)(2), 1(r)(3), 1(r)(4), 1(r)(5), 1(v)(1) and 1(v)(2) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

[641] Investor members of one commenter noted that this information is useful for verifying DTI calculations. *See* letter from ASF I.

[642] *See* letters from VABSS IV, Wells Fargo III, and WPF II.

[643] *See* Section III.A.2.b)(3) Automobile Loan or Lease ABS above for a discussion of the payment-to-income ratio data points that are being adopted in lieu of proposed data points that would have collected obligor or lessee income information. There were no data points proposed for Auto ABS that would have collected obligor or lessee debt information.

[644] *See, e.g.,* proposed Item 2(l)(13) Eviction start date of Schedule L–D (revised to new Item 1(s)(8) Eviction indicator of Schedule AL). Similar data points were not proposed for Auto ABS.

[645] *See, e.g.,* proposed Items 2(c)(13) Liquid/cash reserves, 2(c)(14) Number of mortgages properties, 2(c)(18) Percentage of down payment from obligor own funds, 2(c)(20) Self-employment flag; 2(c)(21) Current other monthly payment, 2(d)(6) Mortgage insurance certificate number, 2(a)(1) Non-pay reason, and 2(l)(14) Eviction end date of Schedule L–D. Similar data points were not proposed for Auto ABS.

[646] These changes involved modifying the possible responses, such as removing certain responses from the coded list of possible responses. For example, in new Item 1(c)(1) Original loan purpose of Schedule AL, which was proposed as Item 2(a)(1) of Schedule L, we are removing certain possible responses from the enumerated list of codes due to privacy concerns.

[647] Commenters also raised concerns about the applicability of other federal and state privacy laws and analogous foreign laws. We do not believe the final rules are likely to implicate these other laws for a variety of reasons, including that they do not require disclosure of direct identifiers (PII) and because certain of these laws provide an exemption for the disclosure of information in order to comply with federal, state or local laws and other applicable legal requirements. More generally, we believe the changes we are adopting to help address privacy concerns should help to mitigate concerns about the applicability of other privacy laws.

[648] *See* Section 7(c) of the Securities Act [15 U.S.C. 77g(c)].

[649] 15 U.S.C. 1681b(f).

for investors to independently perform due diligence. We do recognize, however, that the final rules do not completely eliminate the risk of obligor re-identification [650] and there may be costs associated with providing certain sensitive information required by the final rules. These costs may include costs to issuers of consulting with privacy experts to understand the impact of providing these disclosures. We also recognize that some issuers and investors may move to unregistered offerings, which may affect capital formation.[651] Alternatively, the increased costs may be passed on to the underlying obligors in the form of a higher cost to borrowers (e.g., interest rates or fees).

Re-identification risk can also increase the cost of capital due to obligor preferences. If an obligor is particularly sensitive to the possibility of re-identification, the obligor may prefer to transact with originators that offer additional methods for preserving anonymity, which could increase that obligor's cost of or access to capital. For example, if a loan agreement gives an obligor the ability to opt out of disclosure, thereby prohibiting the ability to securitize the loan where asset-level information would be disclosed, originators may pass costs on to the obligor. Originators could also bear some increased costs if, as a result of being unable to securitize the loan or sell it to the GSEs, the originator would hold the asset on its balance sheet, thus limiting its ability to redeploy capital to more productive or efficient uses. In addition, the risk of re-identification could limit an obligor's access to capital if the obligor is unable to obtain assurances, even at a higher cost, that his or her loan would not be securitized in a way that gives rise to a potential risk of re-identification. Ultimately, an obligor's sensitivity to re-identification risk could lead to a reduction in the number of loans available for securitization. This could, in turn, lead to a reduction in liquidity of ABS markets and a corresponding increase in cost of capital even for those loans that are otherwise securitized through registered offerings.[652] In general, for these reasons, we believe that reducing the likelihood of obligor re-identification will reduce the impact of these potential costs of asset-level disclosure for the ABS market.

As discussed above, in considering how to modify the proposed disclosures to reduce the risk of re-identification, we considered the specific recommendations of commenters and current disclosure practices. Although we received various suggestions for reducing re-identification risk, commenters did not provide any data or analysis that quantified the likelihood of re-identification based on the proposed disclosures or their suggested approaches to addressing re-identification risk. Some commenters indicated that using less precise geographic identifiers would reduce the risk that an obligor could be re-identified.[653] Using less precise data points for sales price and origination date would also reduce the risk of re-identification.

To help confirm the effect of requiring less precise information, we performed an analysis of various modifications to the required data points. In particular, we have estimated the likelihood of isolating a unique mortgage in a sample pool of mortgage loans by considering different levels and combinations of precision for the geographic location of the property, sales price, and origination date. Our analysis examined mortgages collected from mortgage loan servicer providers and reported in the MBSData, LLC, dataset, which includes asset-level data for most of the mortgages securitized in the private-label RMBS market during the period from 2000 to 2012.[654] Categorizing loans according to their uniqueness is the first step someone could take to re-identify an obligor. Each of the 19.3 million mortgages reported during this period were sorted according to uniqueness of three loan characteristics—geographic location, sales price, and origination date—which could potentially link the mortgage to another publicly available dataset that contains obligors' identities.[655] We assume that loans that have unique values for these three variables, when compared to all other loans in the MBSData dataset, have an elevated potential for obligor re-identification. We note, however, that our analysis is not an actual measure of re-identification risk. Importantly, in order to actually re-identify an obligor, a unique mortgage must also be matched with publicly available data sources, such as from local government real estate transaction ledgers and tax records that contain information on property addresses, sales prices, and origination dates.[656] We have not attempted to quantify the likelihood that a unique mortgage, once isolated, can be matched with publicly available data sources. Instead, we have focused our analysis on this first step of the re-identification process, which is to isolate a unique mortgage.

To provide a basis for comparison, we first considered the likelihood of identifying a unique loan using a 5-digit zip code for the property location, the exact sales price and the exact origination date. Approximately 76% of the 19.3 million loans analyzed are unique when these three characteristics are compared across all mortgages in the database. That is, these loans could be distinguished from all other loans with respect to geography, imputed sales price, and origination date, and they were originated in states for which there

[650] In this regard we note that there is continuing debate about the ability to fully anonymize or ''de-identify'' a data set and whether it is possible to have any confidence that re-identification risk can be totally mitigated. *See, e.g.,* Paul Ohm, ''Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization,'' 57 UCLA L. Rev. 1701 (2010); Arvind Narayana and Vitaly Shmatikov, ''Myths and Fallacies of 'Personally Identifiable Information,'" 53 Comm. ACM 24, 26 n.7 (2010) (''The emergence of powerful reidentification algorithms demonstrates not just a flaw in a specific anonymization technique(s), but the fundamental inadequacy of the entire privacy protection paradigm based on 'de-identifying' the data.''). *But see* Jane Yakowitz, ''Tragedy of the Data Commons,'' 25 Harv. J.L. & Tech., 1 (2011) (expressing concern about the impact of reducing the availability of de-identified data for medical research purposes).

[651] *But see* letter from Lewtan (noting that this course is less likely, because although unregistered offerings may provide for more customized data delivery where an issuer has more direct control, the issues surrounding FCRA exposure are the same as if the securitization were made through a registered offering).

[652] *See* letter from SIFMA/FSR I-dealers and sponsors (noting that increased costs would ultimately be passed on to consumers, including an increase in financing costs and a decrease in credit availability).

[653] *See, e.g.,* letters from ABA III (recommending 2-digit zip code), CFA II (suggesting aggregation of geographic location), and Treasurer Group.

[654] Loan-level data is available on Fannie Mae and Freddie Mac Web sites; however, we did not incorporate this data into our analysis because we believe that historically the characteristics of loans purchased and securitized by GSEs have been somewhat different from the characteristics of loans securitized through private-label RMBS. We do not expect that incorporating the GSE data would significantly reduce the likelihood of finding records with unique characteristics among properties bought with mortgages securitized through private-label RMBS.

[655] Because the required asset-level disclosures do not include sales price, in our analysis, we have imputed it from the reported loan amount and LTV ratio and rounded to the nearest $100. Although the origination date is not required to be disclosed, it can be approximated in many cases using other required data points, such as Original loan maturity date, Original amortization term and Remaining term to maturity. *See* new Items 1(c)(4), 1(c)(5) and 1(g)(2).

[656] We have not analyzed re-identification techniques using commercially available datasets (e.g., datasets from consumer reporting agencies) because even though using such data may be more effective in re-identification, providers of such datasets usually charge a fee and impose restrictions on their usage, such as, access controls and user identity verification.

is no prohibition on public disclosure of the property sales price.[657]

We next considered the likelihood of identifying a unique loan using the required disclosures in the final rules. As discussed above, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code and are requiring securitizers to report only the original amortization term, and remaining term to maturity, from which year and month of origination can be approximated, but not the precise origination or sales date.[658] Based on the historical data and the same method described above of determining uniqueness, we estimate that by requiring 2-digit zip code, imputed sales price, and the month and year of origination, less than 20% of mortgages in the sample pool could be unique in their characteristics. This is also significantly lower than the almost 30% likelihood of isolating a unique loan determined based on the required disclosure items in the 2010 ABS Proposal.[659]

These estimates, however, do not fully reflect the difficulty of actually re-identifying an underlying obligor.[660] As noted above, the loan would have to be matched to a record in the relevant public database of real estate transactions. As noted, some counties within states do not release property sale values. Even in those jurisdictions that do make property sale information publicly available, matching the loans to a particular property record might be challenging to do because the jurisdiction providing the information might not offer access in a way that would make the information easily accessible or in convenient format. For example, knowing the 5-digit zip code of the unique property would not necessarily be helpful in a jurisdiction that requires a street name in order to search and view records. Hence, in some cases it may be too burdensome to find the matching loan even if that information is publicly available, particularly if such search is part of a large scale matching effort (i.e., for commercial purposes). We also note that public property databases contain, in addition to property transactions with mortgages securitized through private-label RMBS, property transactions without using borrowed funds, property transactions with mortgages that are never securitized, or property transactions with mortgages that are securitized through GSEs. The addition of these other transactions only compounds the burden of matching a particular loan with a particular property record.

Although the approach that we are adopting does not eliminate the possibility of obligor re-identification, we believe it strikes the appropriate balance between privacy and transparency. Some obligors may still be particularly sensitive to the possibility of re-identification and may seek originators that offer additional methods of preserving their anonymity. We do not, however, anticipate that this will have an adverse effect on the functioning of the private-label RMBS market or the cost of capital to the originators of mortgages and their obligors because of the relatively low likelihood of re-identification associated with the revised data points. Moreover, as noted above, asset-level information has been provided by issuers and third-party data providers for private-label RMBS (although not standardized), as well as by the GSEs and Ginnie Mae,[661] and this availability has not led to market disruption or adverse effects on cost of capital for obligors. We believe that there will be significant benefits to RMBS investors by having access to obligor-specific financial information in their evaluation of the potential default risk of the securitized assets, thus improving their ability to price registered RMBS tranches. This information also will allow investors to better understand, analyze and track the performance of RMBS, and, in turn, will allow for more accurate ongoing pricing and increase market efficiency.[662]

We acknowledge that further modification of certain data points could further reduce the risk of obligor re-identification. For example, several commenters emphasized the importance of geographic location in potentially re-identifying an underlying obligor.[663] Based on our analysis, eliminating a geographic identifier reduces the likelihood of isolating a unique mortgage in the sample pool to less than 2%. We considered whether further modification to certain data points will reduce transparency of critical data points for ABS investors. As we discuss below, we believe that a geographic location identifier is critical to pricing RMBS and is therefore necessary for investors to perform due diligence.

To confirm our view, and the views of commenters,[664] that certain data points are critical for ABS investment decisions, we analyzed the potential pricing impact of various data points on RMBS transactions. Our analysis indicates that, for RMBS, certain characteristics and loan term features, such as geographic location, are key determinants of expected performance of underlying mortgage loans as measured by the historical rate of serious delinquency (''SDQ'').[665] We used a model to predict the presence or absence of SDQ within a historical dataset of private-label securitized loans.[666] We found that, by a wide margin, the following four data points make the largest contribution to explaining SDQ:[667] the year of

[657] Some states (or counties within states) consider the property sales value to be private and confidential information and therefore do not release these numbers publicly. These states include: Alaska, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Montana, New Mexico, North Dakota, Texas, Utah and Wyoming. The analysis does not account for non-disclosure counties that lie within a state that allows for disclosure.

[658] As discussed below, this change should not materially impact an investor's ability to price RMBS tranches, but will significantly lower the probability that a mortgage is unique in its characteristics.

[659] As noted above, the proposal would have required a geographic identifier of MSA, exact sales price and the month and year of origination.

[660] This technique is based on historical data and may not necessarily reflect future re-identification likelihoods. Also, in the future, securitizers that are conscious of privacy implications may avoid securitizing loans that have high risk of being identified (i.e., loans that are unique in their characteristics).

[661] *See* Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

[662] This would also apply to other asset classes where obligor-specific financial information may be disclosed, such as Auto ABS.

[663] *See, e.g.,* letters from ABA III, SIFMA/FSR 2014 I-dealers and sponsors, SFIG II, and Treasurer Group.

[664] *See, e.g.,* letters from ABA III (recommending that the Commission consider using 2-digit zip code), ASF I (supporting exact credit score), and Mass. Atty. Gen. (noting that the DTI ratio and LTV are important metrics in an investor's assessment of risk of loss).

[665] SDQ is defined as a loan having ever been 90 days late, foreclosed, or real estate owned.

[666] We used a binomial logistic predictive model that is also referred to as a logit regression. Binomial logistic regression deals with situations in which the observed outcome for a dependent variable can have only two possible types (for purposes of this analysis—presence or absence of a serious delinquency). Logistic regression is used to predict the odds of being a case based on the value of the independent variables (i.e., the predictors). We estimate the regression model with commonly used predictive factors identified by the industry and the academic literature, such as combined LTV ratio, credit score, and DTI ratio and analyze the effects of various loan characteristics observable at origination on the ability of a researcher to forecast serious delinquency. For more details and references, see footnote 82, the White-Bauguess Study, Section V. Logit Regression Analysis (for the description of the model) and Appendix B (for variable definitions and references to studies supporting the variables choice). The analysis is based on a sample of 2,456,548 mortgages from 2000–2009 included in the MBSData dataset that have complete information for all variables of interest, in particular, DTI information.

[667] The model uses a goodness-of-fit measure (pseudo-R^2) to describe how well an SDQ can be modeled with given predictive variables. Higher R^2

Continued

origination, the LTV ratio, the geographic location of the property as measured by 2-digit zip code, and the obligor's credit score (FICO score was reported in the dataset). Our analysis shows that the year of origination provides the greatest contribution to the measure of how well these factors explain the likelihood of serious delinquency.[668] LTV, geographic location of the property and FICO score provide the next greatest contribution to explaining the likelihood of serious delinquency and have a similar magnitude in overall contribution.[669] Eliminating any of these three variables from the final disclosure requirements significantly and negatively affects the predictive ability of the model. On the other hand, in the instances we studied, providing a geographic location that represents a smaller area or the exact origination date only marginally improves the model's predictive ability,[670] but it could significantly increase the possibility of obligor re-identification.

Another approach we considered, although not specifically suggested by commenters, was an approach that rounds the loan amount, other loan balance-related data points, and monthly performance data points to further hinder potential obligor re-identification.[671] The rounding of loan amount would result in an imputed sales price that may be sufficiently different from the true sales price so as to lessen the possibility of a match to other publicly accessible real estate datasets. Rounding the loan balance to the nearest $1,000 results in the reduction of the likelihood of isolating a unique mortgage in the MBSData dataset to 11%. It would, however, come at a loss of precision in the cash flow variables that we believe is necessary for investors.[672] As noted above, such precision is key to investors' ability to analyze and track the performance of various parties involved in RMBS transactions.

We considered several alternative approaches to disseminating asset-level data as potential means to address privacy concerns, including the Web site approach.[673] Most commenters were generally opposed to the Web site approach as the appropriate means to address privacy concerns.[674] For example, commenters raised concerns about the difficulty in determining who would be a potential investor and thus should have access to asset-level data;[675] the liability for failing to disclose all material information to investors in the event a potential investor was denied access to asset-level data;[676] the need for guidance on what controls are necessary to address privacy;[677] and access to the data by other market participants.[678] Given these concerns and our belief that it is critically important that investors receive access to asset-level information, we are not adopting the Web site approach. We believe the final asset-level requirements, which have been modified from the proposal to address privacy concerns, provide investors with information they need to perform due diligence and make informed investment decisions, and therefore, we are requiring the asset-level information to be filed on EDGAR where it will be readily available to and accessible by investors. For similar reasons, we do not think it would be appropriate to restrict access to such information on EDGAR.

Commenters suggested a central repository or ''aggregated data warehouse'' to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.[679] Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.[680] Another commenter also

represents higher predictive ability of a model in forecasting SDQ of mortgages. We consequently eliminate each individual factor from predictive regression and record its impact on the reduction in the goodness-of-fit measure. Higher reduction represents higher contribution of a factor to predictive ability of the full model. The R^2 that we find here is in line with R^2 found in academic studies that perform similar analyses. *See id.*

[668] We believe this primarily is due to the fact that the year of loan origination served as a proxy for unobservable factors like the quality of underwriting standards during the years immediately preceding the financial crisis when serious delinquency rate was higher, and a large portion of the loans in the sample were originated during that time. The importance of the origination year is smaller for sub-samples that do not include loans originated in 2006–2007.

[669] Origination year contributed 5% to the goodness-of-fit measure. LTV, 2-digit zip code, and the obligor's credit score contributed about 1.5% each. All other 12 data points we considered made a comparatively smaller contribution to the predictive ability of the model (1.5% combined), but are still important in predicting SDQ. These 12 data points include: Interest rate on the loan, DTI, indicators whether a loan had full documentation, had prepayment penalty provisions, was interest-only, had a balloon payment, had negative amortization, was a first lien, was long term, had a teaser rate, had private mortgage insurance, and whether the property was owner-occupied.

[670] The analysis indicated that the goodness-of-fit of the complete model (i.e., the model that includes all predictive variables considered in this study) would increase from 15.5% to 15.7% if an MSA is used instead of a 2-digit zip code, and to 16.0% if a 3-digit zip code is used instead of a 2-digit zip code.

[671] To be effective in reducing the probability of isolating a loan that is unique with respect to location, imputed sales price, and origination date, rounding loan amount (and other loan balance related variables like most recent appraised value, sales price, paid-in-full amount, etc.) to the nearest $1,000 ($10,000) must be accompanied by rounding monthly payment performance related variables approximately to the nearest $10 ($100).

[672] *See* letter from Prudential III (noting that loan-level data (e.g., current asset balance, next interest rate, current delinquency status, remaining term to maturity) will allow investors to better estimate the timing of the principal and interest cash flows of the collateral pool, which will in turn allow investors to better estimate the cash flow of the securitization and be more confident in their risk/reward consideration of the security).

[673] *See* the 2014 Re-Opening Release and the 2014 Staff Memorandum.

[674] *See* letters from ABA III, AFSA II, Capital One II, Deutsche Bank, MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[675] *See, e.g.,* letters from ABA III (noting concern that without guidance as to who is a potential investor, issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), CCMR, MBA IV, and SFIG II.

[676] For example, issuers have expressed concern about possible claims for failure to disclose material information by a potential investor who is denied access to the Web site or refuses to agree to the terms of access but nonetheless purchases the security. *See, e.g.,* letters from ABA III, CCMR, ELFA II, SIFMA/FSR II-dealers and sponsors, and SFIG II.

[677] Some commenters noted that in order to determine whether a user should be granted access it would need to screen parties, conduct reviews of these parties' data protection controls, and obtain appropriate disclosure agreements, among other controls. *See* letters from MBA IV (noting, for example, that issuers would be faced with the burden of determining how to control the spread of the information once a credentialed entity accesses the Web site), SIFMA/FSR I-dealers and sponsors (noting that issuers would generally not be equipped to verify any prospective user's identity or credentials or be able to enforce compliance with the terms of access), SFIG II (noting that investors do not want the liability risk that may be imposed with the access restrictions), and Wells Fargo III.

[678] *See, e.g.,* letters from ABA III, Moody's II, and R&R.

[679] *See* letters from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse) and VABSS II (recommending, as one option to address privacy concerns, to establish a central ''registration system'' managed by the Commission or a third party that would permit access to sensitive asset-level data only to persons who had established their identities as investors, rating agencies, data providers, investment banks or other permitted categories of users).

[680] *See* letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository, and application of FCRA). *See also* SFIG II (stating that issuers should have the option to use

suggested that credit bureaus, instead of issuers, should provide credit-related information.[681] While these suggestions have the potential to address privacy concerns, as noted by one commenter, they are not currently in use, would require further development, and would depend upon the willing participation of certain third parties in order to function as a viable means of disseminating asset-level data.[682]

4. Requirements Under Section 7(c) of the Securities Act

As we note elsewhere, subsequent to the 2010 ABS Proposing Release, Congress adopted the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act which requires the Commission to adopt regulations requiring an issuer of ABS to disclose, for each tranche or class of security, information regarding the assets backing that security. It specifies, in part, that in adopting regulations, the Commission shall require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence including—data having unique identifiers relating to loan brokers or originators; the nature and extent of the compensation of the broker or originator of the assets backing the security; and the amount of risk retention by the originator and the securitizer of such assets.[683]

In the 2011 ABS Re-Proposing Release, we requested comment as to whether our 2010 ABS Proposals implemented Section 7(c) effectively and whether any changes or additions to the proposals would better implement Section 7(c). We discuss below the comments we received in response to the requests for comment regarding the requirements of Section 7(c).

(a) Section 7(c)(2)(B)—Data Necessary for Investor Due Diligence

Section 7(c)(2)(B) states, in part, that we require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary to independently perform due diligence. We requested comment in the 2011 ABS Re-Proposing Release whether the 2010 ABS Proposal implements Section 7(c) effectively. In response, two investors supported requiring asset-level disclosures for all asset types, except for credit cards.[684] The investor membership of one trade association suggested that the disclosure of relevant asset-level data is necessary for well-functioning markets[685] and another commenter suggested that the 2010 ABS proposals would successfully implement Section 7(c) of the Securities Act.[686] Two other commenters, however, questioned whether borrower data proposed in the 2010 ABS proposals was ''necessary'' for investors to perform their own due-diligence.[687] These commenters, however, did not specifically identify the asset-level disclosures that are necessary for investors to independently perform due diligence.

We are adopting asset-level requirements for RMBS, CMBS, Auto ABS, debt security ABS, and resecuritizations. We prioritized these asset classes for various reasons that we discuss above.[688] Our decision to adopt these requirements is based on our belief that investors should have access to robust information concerning the pool assets that provides them the ability to independently perform due diligence. We continue to consider the appropriate disclosures for other asset classes. We believe the data points we are adopting fulfill, for those asset types, the Section 7(c) requirement that we adopt asset-level disclosures that are necessary for investors to independently perform due diligence. To the extent issuers believe additional data is needed, we encourage them to provide such additional disclosures in an Asset Related Document.[689]

(b) Section 7(c)(2)(B)(i)—Unique Identifiers Relating to Loan Brokers and Originators

Section 7(c)(2)(B)(i) requires the Commission to require disclosure of asset-level or loan-level data, including, but not limited to, data having unique identifiers relating to loan brokers or originators if such data are necessary for investors to independently perform due diligence. In the 2010 ABS Proposing Release, we proposed to require issuers to provide the originator's name for all asset types and, if the asset is a residential mortgage, the MERS number[690] for the originator, if available. We also proposed requiring RMBS issuers to provide the National Mortgage License System registration number required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, otherwise known as the NMLS number, for the loan originators and company that originated the loan.[691]

In the 2011 ABS Re-proposing Release, we stated our belief that the proposal to require NMLS numbers would implement the requirements of Section 7(c) with respect to mortgages by requiring a numerical identifier for a loan broker.[692] We requested comment on whether unique identifiers for loan brokers and/or originators were necessary to permit investors to independently perform due diligence for asset classes other than RMBS or CMBS and, if so, whether there is a unique system of identifiers for brokers and originators for other asset classes.[693] We did not receive any comments suggesting this requirement would not satisfy the requirements of Section 7(c), although one commenter opposed requiring an NMLS identifier (for RMBS) because disclosure should focus on the collateral and its performance and an NMLS identifier does not provide investors with information they can use to value the assets.[694]

For RMBS, we are adopting the requirement that issuers provide for ABS backed by residential mortgages the NMLS number of the loan originator company. As noted above, we are not adopting the requirement that issuers provide a unique broker identifier, (i.e., the NMLS number of the specific loan originator) because we are concerned this disclosure may increase re-identification risk.[695] Even though we

third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

[681] *See* letter from ABA III.

[682] *See* letter from SIFMA/FSR II-dealers and sponsors.

[683] *See* Section 7(c)(2) of the Securities Act, as added by Section 942(b) of the Dodd-Frank Act.

[684] *See* letters from MetLife II and Prudential II.

[685] *See* letter from SIFMA II-investors (stating that well-functioning markets require the disclosure of as much relevant asset-level data as is reasonably available).

[686] *See* letter from Chris Barnard dated Aug. 22, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''C. Barnard'').

[687] *See* letters from ABA III and MBA IV.

[688] *See* Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

[689] *See* Section III.B.4 Asset Related Documents for further discussion on how to provide such additional disclosures.

[690] MERS has developed a unique numbering system and reporting packages to capture and report data at different times during the life of the underlying residential or commercial loan.

[691] The NMLS numbers for the originator and the company refer to the individual and company taking the loan application, which would include loan brokers and the company that the broker works for. We noted in the 2011 ABS Re-Proposing Release that we were unaware of any other unique identifying systems used for the purpose of identifying brokers or originators of other asset types, across all asset types or within an asset type.

[692] *See* the 2011 ABS Re-Proposing Release at 47965–66.

[693] *See* the 2011 ABS Re-Proposing Release at 47966.

[694] *See* letter from MBA III.

[695] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.